



Austrian Legal Framework on Egg Donation

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Relevant Acts

- Reproductive Medicine Act (“Fortpflanzungsmedizingesetz”)
- Tissue Security Act and corresponding Regulation (“Gewebesicherheitsgesetz”)
- In-Vitro-Fertilisation-Fund-Act (“IVF-Fondsgesetz”)
- Genetic Engineering Act (“Gentechnikgesetz”)
- Artt 8, 14 ECHR of constitutional rank

Evolution of the Legal Framework

- 1992: entry into force of the Reproductive Medicine Act
 - available for heterosexual couples
 - ART as ultima ratio
 - respect of the child's best interest
 - restricted use of donated sperm for homologous ART-techniques
 - **no**: oocyte donation, surrogacy, embryo adoption, access for female couples, mix of methods
 - 2011: ECtHR S.H. et al vs Austria
 - 2012: ECtHR Costa/Pavan vs Italy
 - 2013: Constitutional Court Ruling on access to ART for same-sex couples
- Reform of the Reproductive Medicine Act 2015

Principles of the current legal framework of ART

- best interest of the child
- access for all couples (female-male; female-female)
- usage of donated sperm and oocytes allowed
- PGD allowed
- medical freezing is allowed; social freezing banned (§ 2b RMA)
- prohibition of financial gains of all persons involved (§ 16 RMA)
- ban on advertising (§ 16 RMA)
- child older than 14 may obtain information about the donor(s) (§ 20 (2) RMA)
- prior use of the following methods:
 - homologous techniques
 - least health impact
 - fewest embryos are created

Current legal framework of heterologous ART

- sperm or oocyte donation for the usage of others

	sperm donation	oocyte donation
donor	decision making capacity; older than 18 years	decision making capacity; older than 18 years; younger than 30 years
recipient	decision making capacity	decision making capacity infertile, younger than 45 years
partner	decision making capacity infertile	decision making capacity infertile?

§ 3 (2) The **semen** of a third person may exceptionally be used if that **of the spouse or partner is not capable** of reproduction **or** if medically assisted reproduction is to be carried out in a registered **partnership** or cohabitation **between two women**.

§ 3 (3) The oocytes of a third person may exceptionally be used if those of the woman in whom the pregnancy is to be induced are not capable of reproduction and this woman has not yet reached the age of 45 at the time of the start of treatment.

Current legal framework of heterologous ART

- consent of the intended parents needs the form of a notarial deed (§ 8 (1) RMA)
 - written consent of the donors (§ 13 RMA)
 - withdrawal until transplantation of the cells (§ 8 (4) RMA) for the intended parents; until the fusion of the cells in vitro for the donor (§ 13 (2) RMA)
 - ART to be carried out in authorised hospital (§ 11 RMA)
 - hospital must examine donors and donated cells before usage (§ 11 RMA) in order to avoid health **risks for the „woman and the child“** and to ensure the fertility of the cells (§ 12 RMA)
 - donation is restricted to one hospital (§ 14 (1) RMA)
 - donated gametes may be used for max 3 couples (§ 14 (2) RMA)
- obligatory documentation by the hospital but **no donor-register** so far!

Sperm and oocyte donors

- medical counselling of the oocyte donor explicitly mentioned but not for the sperm donor (§ 7 (1) RMA) but § 7 (2) RMA:
“The doctor shall suggest **psychological counselling or psychotherapeutic care** to the spouses, registered partners or cohabiting partners or **third persons whose sperm or ova are used** and inform them of the possibility of consulting other independent counselling services.”
- legal counselling mandatory only for the intended parents not for the donors
- no explicit further-treatment obligation for the hospital
- health risks of the oocyte donors
- no secured usage of frozen oocyte/embryos (“egg sharing” – “embryo adoption”)
- no incentive to donate except of altruism (or pressure? within (social) family)

Parents: mother, father, other parent

- § 143 Civil Code: “The **mother** is the **woman** who has given birth to the child.”
- § 144 Civil Code:
 - (1) The **father** of a child is a **man** who
 1. is married to or in a registered partnership with the mother at the time of the child's birth or whose marriage or registered partnership with the mother did not end earlier than 300 days before the child's birth or
 2. has acknowledged paternity before or after the child's birth or
 3. determination by court.
 - (2) Insofar as paragraph 1 is not applicable, the **other parent** is the **woman or other person** who
 1. is married to the mother at the time of the child's birth or is in a registered partnership with her, or who, as a spouse or registered partner, did not die earlier than 300 days before the child's birth, or
 2. has acknowledged parenthood before or after the child's birth, or
 3. determination by court.
- sperm donors are explicitly excluded from parenthood

Consent for PGD

- not considered by the legislator
- homologous system: intended parents

- **heterologous system:**

intended parents give consent

but the donor needs to be informed about

- potential future genetic analysis
- consequences of abnormal findings
- donor is not authorised to consent to the PGD

not all genetic tests are allowed; only such that cannot have any 'direct clinical significance' (§ 71 (4) Genetic Engineering Act) for the donor

Legal Framework of heterologous ART

- access for all couples to all ART-techniques
- no access for singles
- intended parents are focused by the RMA – the donors by the Tissue Security Act
- no social freezing – only medical freezing
- no “egg sharing”
- no embryo “adoption” but elimination of stored embryos after max 10 years (§ 17 (1) RMA)
- no surrogacy

Reform draft (8/2022):

- introduction of embryo adoption
- introduction of a register of sperm and oocyte donations



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