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Study Commission on the Law and Ethics of Modern Medicine

Stem Cell Research and the Debate in the Bundestag
on the Importation of Human Embryonic Stem Cells

Schuchardt, Erika:

A proposal to build bridges between opponents and advocates of embryonic stem cell research by means of statutory parent-patient dispositions regarding so-called “orphaned embryos

Dr. Erika Schuchardt (CDU/CSU): I feel compelled to make this personal statement because, in my opinion, the motion introduced by Mrs. Böhmer, Mrs. von Renesse and others entails an ethical dilemma, a double standard. We intend to profit from embryos killed abroad in order to avoid any killing on German soil. In this context, can insiders overlook the fact that in Germany, as elsewhere, every *in vitro* fertilization procedure gives rise to superfluous embryos which are no longer viable after five years' storage in ice and are discarded, i.e. incinerated or flushed away? Is that not *de facto* killing?

I believe the motion introduced by Mrs. Böhmer, Mrs. von Renesse and others, a proposal to “import” but not “produce”, to be a logically flawed compromise, an outcome of a protracted and controversial discussion within our democratic culture. If I nevertheless lend my support to this motion out of respect for the other side, then I do so in the hope that, through further discussion in Germany, we will be able to achieve conditional approval of embryonic stem cell research in Germany. What I have in mind here is a **statutory parent-patient disposition** regarding the use of superfluous embryos, so-called “orphan” embryos, as possible donations for medical research – a disposition which must be concluded before any *in vitro* fertilization treatment is undertaken.

Below I summarize my observations, which have already been presented in the publication “**The Politics of Life**” to document the discussion of the opportunities and risks of biotechnology and gene technology within the CDU/CSU *Bundestag* group, Berlin, pp. 44 ff.: On the discussion in Europe and in the bioethical context. What I wish to contribute and propose has gained in significance with each hearing. This became especially clear to me when I recently had the opportunity to represent our Law and Ethics of Modern Medicine Study Commission in Brussels. The round table was organized by the non-standing Human Genetics Committee of the European

Parliament in order to create an opportunity to reflect on how the current confrontation can be resolved through dialog between all the parties involved. I would first like to say that when I was in Brussels I was struck by the fact that we in the Federal Republic of Germany have as yet given no room in our parliamentary discussion to the Human Rights Convention on Biomedicine. You may recall that a year and a half ago I lent my support to a cross-party motion backed by Mrs. von Renesse, SPD, and Mr. Schmidt-Jortzig, FDP, for an **interpretative explanation of the disputed Article 17 followed by approval of the European Convention on Human Rights and Biomedicine** – incidentally, before our Study Commission was set up (See Schuchardt: “Humans Beings First”).

Before I present my proposal in detail, let me make a preliminary remark. I would like to recall the Bundestag debate during the 13th legislation period regarding organ transplantation. At the time I referred to the memorandum issued by the Protestant Church in Germany entitled “God is a Friend of Life”. A joint declaration with the Catholic Bishops Conference, it served as a basis for legislation by the Bundestag for regulating organ donations. The churches' basic premise was “God is a friend of life;” He therefore also gives us the freedom to decide independently, in this context whether to accept or reject organ donations.

I wanted to say that first, knowing full well that organ transplantation and embryonic stem cell research are comparable only to a limited extent. Nevertheless, I cannot help but reflect whether it would be feasible to transfer the right to decide independently to stem cell research on the basis of legal provisions to be created and thus extend the possibility of contributing to medical research through independent decisions.

As for the **parent-patient disposition**, I propose the following: a statutory disposition to be concluded by parents-patients

regarding so-called “orphaned” embryos. As you are all aware, the international medical discovery of *in vitro* fertilization is a dream come true for the approximately 20% or 1.2 to 1.6 million couples in Germany who are involuntarily childless. Initially banned in Germany, it was practiced all the more vigorously abroad, strictly prohibited by the Catholic Church and accepted grudgingly by the Protestant Church. Meanwhile the original “wish” for a child has been transformed almost tacitly into a demanding “right” to a child – more or less implicitly meaning a “healthy” child.

This situation with all its ethical implications is barely perceived by the public and has not been discussed at all. It has essentially remained a taboo subject. Nevertheless, the average number of *in vitro* fertilizations in the Federal Republic of Germany has increased to 70,000 a year and an *in vitro* fertilization register has been set up, while the success rate of *in vitro* fertilization has stagnated at around 25%, the painful procedure has been quietly endured by women and no mention has been made of the resulting superfluous, so-called “orphaned”, embryos. We can now make up for this omission in our debate. My concern is that we must not merely create some kind of practical statutory regulation; instead, we need to focus on the responsibility of those concerned in the sense of subsidiarity – of course also within the framework of an appropriate legal basis.

Concrete steps: Once parents have been advised of the possibility of superfluous embryos, they must undergo a process of realization so that they are able to come to terms with their responsibility for these so-called “orphaned” embryos by making a decision about the destiny of any embryos that cannot be implanted for sound reasons. They do this by concluding a disposition before *in vitro* fertilization is performed. Should the “orphaned” embryos be “left to their fate” or be disposed of by incineration or flushing? Should they be frozen for later use? Or, in line with the memorandum of the Protestant Church of Germa – “God is a friend of life” – is there a possibility to donate them, bestow them, in order to permit embryonic stem cell research in the hope of finding treatments for diseases that are still incurable today?

To summarize: I believe that my proposal will, firstly, help to make up for the absence of discussion of the medical, legal and ethical dimensions of *in vitro* fertilization. Secondly, it would make the parents’ own responsibility a decisive standard and place parents in the focus of consideration. Thirdly, it would provide a firm legal basis for the solution of a conditional approval of embryonic donations and thus, fourthly, build bridges between two positions – for or against embryonic stem cell research.

As I mentioned earlier, one way to achieve this would be to make a parent-patient disposition legally mandatory – a patient being, by definition, anyone who makes use of a healthcare institution – regarding so-called “orphaned” embryos. This disposition would have to be made in writing by the woman or couple before any planned *in vitro* fertilization is carried out. To my mind, this justifies the analogy to the “extended approval” of organ donation in the Transplantation Act (TPG). An approach with such an aim is probably more compatible with ethical principles than consultation pursuant to Article 218*.

Appendix * The current legal situation

According to Article 2 (1) of the Embryo Protection Act (ESchG), research on and with human embryos is a punishable offense. The result is that research on and with embryonic stem cells removed from an embryo is also a punishable act. Moreover, the removal of a totipotent cell, i.e. one able to give rise to the complete individual, from an embryo meets the criteria of cloning (Article 6 (1) ESchG), which is also a punishable offense. In simple terms, this legal regulation is based on the ethical principle that embryos from which such stem cells originate enjoy protection of life as enshrined in Article 2 (2) 1 of the Constitution. Whether they are entitled to full protection of human dignity as defined by Article 1 (1) 1 of the Constitution is a matter of dispute.

Provided that the mother is appropriately advised, Article 218 of the Penal Code (StGB) permits the killing with impunity of embryos during an abortion for reasons other than a threat to life and limb. In other words, the embryo’s fate is subjected to outside maternal determination which is not free from arbitrary elements. We need to realize that this right of outside determination of the embryo’s fate by the mother with intent to kill is widely recognized and socially accepted.

Bearing in mind the expected therapeutic potential of embryonic stem cells, the question arises for me as to the possibilities of the “use” – destruction, utilization, donation – of embryonic stem cells for research with noble therapeutic aims. At present, ESchG does not permit such targeted research with embryonic stem cells (see above). There is a consensus that the creation of embryos and thus the harvesting of stem cells must remain illegal (Article 1 (2) 2 ESchG). In connection with *in vitro* fertilization, it is inevitable that in isolated cases fertilized eggs cannot be implanted. These must be left to their fate in the long term and are not amenable to an ethically acceptable or even ethically imperative purpose in the form of exalted therapeutically oriented research.

Literature

Schuchardt, Erika: **Why Is This Happening to Me? – Learning to Live in Crises.** The result of a study of life – histories spanning the course of a century. With 13 illustrations and 11 diagrams and a bibliography of over 2000 life histories from 1900 to the present in alphabetical order; annotated; winner the Literature Award; translated into several languages. Jubilee edition, 11th revised and expanded edition. Göttingen: Vandenhoeck and Ruprecht, 2002; ISBN 3-525-62370-4.

Schuchardt, Erika: **Human Beings First. A commentary on the Council of Europe’s Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine** – with the draft of a non-partisan motion for an interpretative explanation from the point of view of international law of Article 17, Section 2 of the Council of Europe’s Convention on Biomedicine and with a synopsis of the changes in the three versions of this convention of 1994, 1995 and 1996 as well as references to databases and ethics committees, 131 pages, Berlin, 2000.

Further literature: www.prof-schuchardt.de

