

# Ethical and Legal Problems with Assisted Reproduction in Turkey

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## Summary

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In vitro fertilization (IVF) and embryo transfer (ET) studies in Turkey are being carried out by the units of certain university and private gynecology clinics in some provinces.

Embryos developed in vitro in labs can be transferred into uterus pr, if it is not realized, can go on developing in vitro, can be used for research purposes, discharged like aborted through induced abortions or kept frozen for use later. All these applications have important medical, legal and ethical problems in them.

The aim of this study is ethical evaluation of related legislation in Turkey. The first legal regulation concerning assisted reproduction is title "Regulation on In Vitro Fertilization and Embryo Transfer Centers" is dated 21.08.1987. Certain amendment have been made since than.

According to regulation a couple's consent is a prerequisite for them to be admitted to treatment using assisted reproductive techniques (ART's). Heterological fecundation and embryo research are forbidden .

In order to keep up with such rapid advances in medical science and to get the expected benefits, further discussion in this area are needed.

**Key Words;** In Vitro Fertilization, Embryo Transfer, Legal and Ethical Problems, Turkey.

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## Introduction

Infertility necessarily means childlessness, not all childless states (voluntary or involuntary) equate with the medical disability of infertility. Some people would like to have and care for a child, but for many reasons, including personal circumstances, can not.

Reproductive medicine is technologically powerful but clinically and socially complex. Medical management aims to prevent or cure physiologically or pathologically abnormal states and thereby to minimize the suffering that disease and disability cause (1).

Defined by the World Health Organization as a complete state of physical and mental well being, health is understood as being more than the absence of disease; It includes the harmonious development of the human person. Infertility in its classic sense refers to the impossibility of reproduction in spite of unpro-

tected sexual relations during a period of 1-2 years. This infertility affects the person mentally and physically and constitutes a medical indication allowing resource to assisted reproductive technologies.

This is the approach of most of the countries that have legislated or provided recommendations on this question (2).

Assisted reproductive technologies (ARTs) can be very helpful for certain patients, but concerns have been raised about the inherent nature of specific techniques and context in which many techniques are used. ARTs are unique among medical procedures because they aim specifically to create new individuals and family relationships. The ethics of ARTs must be understood within this social context which is often characterized by conflicts among competing interests. Physicians play important roles in support-

ing those who wish to become parents and in educating patients about impediments to fertilization and ways to promote conception (3).

We want to explain various ethical issues surrounding ARTs, family relationship, informed choice, embryo status, legal and policy issues.

### **In Vitro Fertilization and Embryo Transfer in Turkey**

In vitro fertilization (IVF) and embryo transfers (ET) may be carried out in Turkey on conditions stated in the “**By -law Concerning Treatment Centers for Assisted Procreation**” of 19 November 1996.

In Turkey the first regulation on medically assisted procreation was the “**By-law on Centers for in vitro Fertilization and Embryo Transfer**” that was issued on 21 August 1987 in accordance with the “Governmental Decree No:181 with Having the Power of Law on Organization and Functions of the Ministry of Health and Social Assistance” of 13 December 1983 (Thereafter KHK/181). It was amended, later by the by-law dated 19 November 1996 (in Official Gazette, no. 22822 of 19 November 1996). The new by-law has renamed several concepts relating to IVF and ET. The new By-Law has named the concept of in vitro fertilization (IVF) and embryo transfer (ET) as “**Methods for Assisted Procreation (MAP)**”. Moreover, the heading of the by-law of 21 August 1987 was changed as “**By -Law Concerning Treatment Centers for Assisted Procreation**”.

Under by-law, treatment methods for assisting reproduction (TMAR) mean practices admitted as treatment method aiming at to bring the egg (ovum) of future mother with her husband’s sperm through several methods in a suitable situation of fertilization, if necessary ex uterus, and implant gametes or embryo to the genital organs of expecting mother.

“**In vitro fertilization**” means any intervention for the purpose of formation of embryos in vitro. “**In vitro fertilization procedures**” cover, however, not only the formation of embryos, but also their maintenance in culture, their storage and transfer.(By-Law on **Treatment Centers for Assisting reproduction** ((TCAR),Art.17).

In vitro fertilization can only be carried out for **health reasons** (treatment of fertility) in Turkey.

Under by-law, “**Treatment Methods for Assisting Reproduction (TMAR)**” mean practices in modern medicine admitted as a treatment method that aims at bringing the egg (ovum) of future mother (Expecting mother) with her husband’s sperm through several methods in a suitable situation for fertilization, if necessary ex utero (outside the body)and implanting gametes or embryo to the genital organs of the expecting mother (Art 4/f). According to the By-Law only **married spouses** may be permitted to benefit from treatment methods for assisted reproduction (Art 17). For the treatment, “informed and free consent” of both spouses are required. Therefore, before the IVF procedure, the persons concerned specify in **writing** their decision on the use of embryos, their storage and their destiny after the storage period (three years).According to the by-law on TCAR, a” Form of Consent”is required (Art.17) (4,5). **Table I.**

#### **The Permission and Consent Form of the Couples Who Apply for Assisted Procreation**

*The patient permission form that will be applied to the couples who apply for assisted procreation:*

| <i>Identity</i>      | <i>Female</i> | <i>Male</i> |
|----------------------|---------------|-------------|
| <i>Last name</i>     | :             | :           |
| <i>First name</i>    | :             | :           |
| <i>Father’s name</i> | :             | :           |
| <i>Birthplace</i>    | :             | :           |
| <i>Date of birth</i> | :             | :           |
| <i>City</i>          | :             | :           |
| <i>Province</i>      | :             | :           |
| <i>Village</i>       | :             | :           |
| <i>Log volume</i>    | :             | :           |
| <i>House no</i>      | :             | :           |
| <i>Page of log</i>   | :             | :           |

#### **Explanation by the doctor before practice**

*The medical results of the procedure of the assisted procreation, probable complications, difficulties and importance, how the embryo will be kept and the embryo will be injected in only the legal mother, practice will not be implemented unless legal permis-*

sion and wish, were told to both the person who applied for assisted procreation and his/her couple.

Date: Responsible Doctor (First Name, Last Name, and Signature)

### Written Statement of Consent

Before practice, we have listened all the explanations that the charged doctor made. We have been told that assisted procreation procedure would not start without our permission and consent, and we have been completely noticed about the medical consequences and probable complications. We have been noticed:

1. About the guarantee of the procedure
2. That the laparoscopy and other procedures are risqué during oosit taking,
3. We have especially understood that probable fetal anomalies may exist and during pregnancy, there is risk in testing for searching probable anomalies. We accept that all responsibilities belong to us; we accept this procedure without any threat, violence, suggestion and oppression. We know that the frozen embryo, which belongs to us, will be kept for three years in clinics in order to be used in following months. We permit for destruction of the embryo in case, keeping period expires or one of us dies or of divorce. We promise that we will not use the probable consequences against either the hospital and the doctors. We will accept every consequence and we permit the practices related with this procedure.

Date                      Female                      Male

This document related with assisted procreation was signed before me:

Date : Responsible Doctor:

Notice: literate people will sign it; illiterate ones will press their thumb sign.(5).

### Informed Consent and Right to be Informed

Under Turkish law, every patient has the right to be informed on the nature and consequences of med-

ical intervention before giving his consent (Act on Practice of Medicine and Its Branches, No.1219).

Medical intervention without the patient's informed consent is regarded as a trespass or assault to the patient's body. It is an infringement of the individual's "personality right" on his body and organs. Therefore lack of information and consent are grounds of medical liability (Turkish Civil Code, Art.23/II,24 and 24/a; Code of Obligations, Art 49 as amended by the Act, No. 3444 of 03 May 1998).

Before taking the consent, the patient must be given information as to the purpose and nature of intervention. Moreover the patient must be informed on the risks and consequences of the intervention.

Information must be sufficiently clear. The suitable explanation must be made, the proper terms and words must be used so that the patient can understand the purpose, nature, consequences and risk of the intervention. Individual characteristics and educational level of the patient must be taken into account when the patient is informed.

Under by-law, in case of multiple embryos, it is possible to **freeze** and **store** them with the consent of both spouses for three years. During the three years, within a period of time to be fixed by TCAR, the frozen embryos can be implemented to the same (expecting ) mother with the consent of both spouses.

Under by-law, frozen embryos should be destroyed after three years (Art. 17). They can also be destroyed upon the joint request of the spouses or the death of one of them or after a divorce (Art.17).

As regards the right of parents on "**embryo in vitro**", our explanation on "**embryo in vivo**" above are valid. Likewise, neither an expecting mother nor an expecting father does have a "property right" on "**frozen embryos**". Frozen embryos cannot be sold However, they can be subject of a research upon the consent of both spouses.

An intervention on the human embryo and fetus may only be carried out after the **informed consent and free consents of the concerned persons** are obtained.

The persons are concerned who consented to donate embryos can **withdraw**

Their consent so long as the embryos have not been transferred.

The human embryo and fetus should be treated in conditions appropriate to “**human dignity**”. Therefore, the number of embryos formed in vitro may not be higher than that which ensures a good chance of a successful treatment.

In Turkey TMAR can be carry out only by “special centers assisting production (owned by persons or Public Law on Private law entities) upon permit of the Ministry of Health and under the supervision of the scientific committee for TMAR.

It is not permitted practicing, using, selling, or transferring the embryos- converted from the eggs and sperms taken from the candidates that were to receive IVF and ET treatment- or the ones from non-candidates, for other candidates. It is not allowed to transfer the embryos to the people who are not allowed by law article 17. (6).

### Legal Protection of Embryo and Foetus in Turkey

The ethical and legal status of human embryos has long been a core ethical concern in ARTs. The range of legal definitions include embryos as a person, embryos as a property or object and embryos as a unique category (3).

Under the **Turkish Constitution** of 7 November 1982 “**everyone**” has the “**right to life**” and the right to protect his material and spiritual entity(Art 17/1).

The term” everyone “comprises all “human beings”. It is not certain, however, whether this term includes ”embryo and foetus”. In our opinion, it can be argued that the term “everyone” includes also embryo and foetus, for the “capacity to right “is acquired at the moment of conception provided that the child is born alive under the **Turkish Civil Code** (Art.28/II9).

Besides the constitutional guarantees, the **Turkish Civil Code** provides also legal protection for “embryo and foetus” in several fields of civil law (e.g.law of person, family law, inheritance law)

Morover the “unborn child” is protected by the **Turkish Penal Code** against criminal conduct with regard to “miscarriage “ and termination of pregnancy”.

In spite of several primary (e. g., Turkish Civil Code, Turkish Penal Code, Law on Family Population Planning, No.2827) and secondary legal norms concerning “embryo and foetus” (e.g. Regulation on Performance and Supervision of Abortion and Sterilization Services, No.510; By-Law on Treatment Centers for Assisting Reproduction etc.) a specific law for the direct protection of embryo and fetus like the German “Embryonenschutzgesetz” does not exist in Turkey.

According to the **Oviedo Convention**, “assisted reproduction “or use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child ‘s sex, except where serious hereditary sex -related disease is to be avoided.

Turkey has signed the **Oviedo Convention** and the **Additional Protocol the Convention on Prohibition of Cloning Human Beings**. However, both texts have not been yet ratified.(4).

### Protection of Embryo

“Embryo in vitro” means embryo formed outside a woman’s body.

Protection of human “embryo in vitro “with regard to fertilization procedures, and to researches is of great importance . Human embryos or foetus cannot be subject to any “**property rights**”. They cannot be subject to marketing and financial gain.

Persons who give **consent** to donation of gametes (gamete donors)for formation of embryo in vitro must be informed on the use of their gametes. The gamete donors can withdraw their consent so long as their gametes have not been used.

### Research on Embryo in Vitro

The main objectives of research on embryo in vitro are to increase knowledge of the causes of infertility and to promote progress in the treatment of infertility; to develop therapeutic procedures to benefit to embryos and to increase the “knowledge of human development”.

Research on human embryo and fetuses,diagnostic or therapeutic interventions with them should be under conditions appropriate to human dignity.

In our country research on embryo in vitro and on “embryo or fetus in vivo “ are rather rare. Such researches can be carried out in accordance with general rules (ie. Regulation on Medical Deontology, Rules of Ethics, Approval of the Ethics Committees). In our view, specific regulation is needed in this field. The solution in additional protocols to Oviedo Convention on Biomedical Research and Protection of Human Embryo and foetus can guide future legislative developments in Turkey in these rather sensitive areas.

### **Conclusion and Suggestions**

ART clinics have so far provided services selectively, using both resource considerations and ethical guidelines to decide, which patients are eligible for treatment .The ethical guidelines vary from country to country and sometimes from clinic to clinic.

Generally, clinics consider each applicant or an individual basis. The ethical issues raised in individual cases can be complex and questions about social values are inescapable (7).

Even though it is not the only purpose of marriage to have child/children, having child/children is an important factor starting a marriage and continuing it especially in Turkey. As long as being unable to conceive is a cause of divorce, assisted procreation will always be on the agenda.

In attempts related with reproductive health, beside respect for the individual, and the individual freedom, the child and its future should also be cared for.

### **Marital Status**

In most countries, ARTs, are supposed to be carried out only on heterosexual couples, either married or in a stable relationship (8).

Heterologous fertilization is not allowed in Turkey. Only the homologous fertilization between a man and a woman is allowed. There are legal regulations related with this subject.

The children, who are the result of a sperm, or an oocyte, an embryo transferring, may have more than one parent. This causes turmoil in defining their ancestors. Because there is not a special regulation on this subject in our law, the related cases are tried to be

solved by Civil Codes. According to the 241st article of the Civil Code, children born in a marriage have actual ancestors. But determining the ancestors of children born out of marriage as is the cause with a sperm an oocyte or an embryo transferring etc. are very difficult. These practices force the limits of the regulations that the Civil Code determined related with ancestry.

### **Assisted Reproductive Technology (Art) and the Number of Embryos to be Transferred**

As it is known multiple embryos developed at IVF. There is no limit for the embryos that will be inserted to the uterus.

While using more than one embryo increase the chance of the pregnancy, less embryo transfer lessen the risk of multiple pregnancy. Two or three embryo transfer (but not more than three) is directly related with the prognosis of the IVF pregnancy.

Doctors should give information to the patients about multiple embryo transfers. And they should be sure that the patients understand this information fully. Decisions of the patients should reflect their own preferences (9).

### **Donation of the Gametes and Embryos**

Trading with human gametes, embryos and pregnancy has raised widespread ethical problems throughout the world.

The use of donor eggs, sperm or embryos is more of a societal cultural problem than medical. Among the nations with legislation, Austria, Egypt, Norway, Saudi Arabia and Turkey prohibit use of donor eggs (8).

In our country, donation of the oocytes, sperm and embryo is not permitted.

### **Micromanupulation**

Micromanipulation includes ICSI, assisted hatching and other types (ctoplasmic transfer and nuclear transfer). For practical purposes, the principles emphasis is on ICSI.

Micro-insemination is allowed in Turkey only in relation with assisted procreation techniques.

### Cryopreservation

Cryopreservation, like the use of extraconjugal gametes, can be controversial, especially, if there is opposition by a religious authority. It is interesting that many moral theologians have been concerned only about the loss of preembryos during the cryopreservation process. If cryopreservation were 100% efficient, i.e., all preembryos frozen could, when thawed, survive, these scholars believe that cryopreservation would not be considered ethically objectionable because it preserves individual human life (10).

Cryopreservation is not allowed for oocyte and sperm in Turkey. It is very difficult and expensive collecting ovum from the candidate mother. This necessitates hormonal and medical treatment for a while. Superovulation treatment, egg collection and embryo transfer may have their complications at times and transferring them in a time proper for the cycle will increase the success rates of the method (11).

### Embryo Researches

Embryo research yields very useful results in measuring the fertilizing capacity of sperm for infertile couples and testing whether any genetic defects exist. This is especially important in our country where intermarriage of close family members is not uncommon.

Patient in affluent countries expect universal health care from birth to death, effective treatment by skilled doctors and access to a doctor at any time.

Such assumptions do not necessarily equate with rights, but increasingly patients perceive such health delivery as a right

Techniques to overcome infertility, their costs and putting these techniques in national health programs are very important subjects. Infertility is not accepted as an illness in many countries. But it should not be forgotten that it requires medical assistance.

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