



Reproductive Rights: Status & Future

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Reproductive rights: status & future?

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A right to procreate utilizing ART has not been recognized in human rights law. However, the marketization of infertility care allows for cross-border circumvention of domestic regulation.

- A liberalization is thus ongoing
- It is driven by those who have the resources to seek out infertility care in places where the market offers the demanded care
- This eventually drives national regulatory responses, gradually enabling more treatments to be legalized domestically

We can see this as an ongoing liberalization “through the back door”



Background

International and regional human rights instruments protect:

- the “right to found a family”,
- the “right to respect for private and family life”,
- and the right to have disease addressed through the “right to health”

Yet, a positive right to procreate through medically safe ART has not been recognized

Materials and methods

Analyses of human rights conventions and judgments plus Danish statutory law and judgments.

The project combines a dogmatic legal methodology with a sociolegal analysis of legal genealogy. It demonstrates how litigation and subversive practices (cross-border reproductive care, and “activist”/reproductive justice practices meant to challenge prohibitive legislation) can drive legal development.

This development is probably not isolated to Denmark, but illuminates what is likely a European trend

Background

STATUS

The right to procreate as a human right has not evolved substantially during the last decades. Yet, a liberalization of permitted treatment forms is occurring.

This development is driven by a marketization and utilization of regulative variations among different jurisdictions. However, *ex post* when a child has been born, the principle of the *best interest of the child* is developing into a strong legal argument, which requires national legislators to adjust their child and family law to safeguard the interest of the children born by ART abroad

Status

Future

FUTURE

Reproductive rights have been on the human rights agenda for 70 years, yet the current human rights conceptualization of reproductive rights seems to have reached the end of its evolutionary capacity.

Will the future bring a development driven by a rejuvenated understanding of reproductive rights per se?

Or will other rights, such as children’s rights and anti-discrimination, together with the utilization of cross-border treatments continue a de facto expansion of reproductive rights?

Our analyses point to the latter, thus for the foreseeable future ‘the back door’ will be the most frequently used: liberalization driven by international marketization.



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