

Italy: Fertile Ground for Reform

By Dominic Standish

ITALIANS SEEKING FERTILITY TREATMENT HAVE BEEN thrown into confusion by the Medically Assisted Reproduction Law passed in March 2004. This law contradicts Italy's laws on abortion and has made Italy

appear out of step with most European countries on embryo screening and legislation affecting women's rights.

Historically, while there has been considerable resistance to regulating fertility treatments in Italy, the Vatican has unequivocally condemned them. In March 2003, the Vatican newspaper *L'Osservatore Romano* published the final communiqué from the Vatican's Pontifical Academy for Life that called the destruction or loss of embryos in the in-vitro process "a true massacre of the innocents of our time: no war or catastrophe has ever caused so many victims."

The Vatican and some Italian Catholic politicians have feared legal clarity would give concessions to fertility treatment in the aftermath of abortion's legalization in Italy more than 25 years ago. Indeed, the Catholic hierarchy criticized the new fertility law, even though it significantly restricted fertility treatment. When the

legislation was approved by the Italian Senate in December 2003, Bishop Elio Sgreccia, vice-president of the Pontifical Academy for Life, stated that the law "does not reflect Catholic morality." However, Bishop Sgreccia added that the new law is positive in its restrictions on practices like embryo freezing and the use of "donor" sperm.

Italian Catholic lawmakers have hailed the new legislation as a guarantee for the unborn. "This law...recognizes that an embryo is a person and as such must be protected from the point of conception," commented Elisabetta Alberti Casellati of the Forza Italia party. And the new fertility law has been more widely welcomed by those who campaign for the rights of the embryo. "We congratulate our Italian colleagues for such inspirational leadership. At last a European country has had the courage to vote for laws which respect the dignity and right to life of the human embryo," said Josephine Quintavalle, director of Comment on Reproductive Ethics, a UK-based organization that opposes assisted conception and embryo research.

While the new fertility law was heavily influenced by campaigners for embryo rights, there were more practical concerns. Two of the aims behind the new legislation were to give Italy a more modern image regarding fertility treatment and to bring previous practices under greater control. But neither of these objectives has been achieved.

Before the new fertility law was enacted, Italy was considered by many as the "Wild West" of fertility treatment with few regulatory controls and "lawless, market-driven practices." (Sophie Arie, *Christian Science Monitor*, March 10, 2004) This reputation was consolidated after Italian doctors helped women as old as 63 become pregnant and the maverick Italian doctor Severino Antinori claimed to have cloned a human being. "It is clear that in the collective imagination in Europe, Italy was the place where everything was possible," declared Christian Democrat politician Dorina Bianchi. Media concentration on such stories helped provoke a backlash from the majority of Catholic politicians who, working across party lines, supported the Medically Assisted Reproduction Law. This law introduced many stringent restrictions on fertility rights:

- Sperm donations, frozen embryos and surrogate motherhood were banned.
- Only infertile couples who can prove they are in stable relationships may apply for artificial insemination at government-

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approved centers. It has therefore become illegal for gay couples and single people to receive fertility treatment.

- Women seeking fertility treatment must have three embryos—the maximum the law allows—implanted at the same time. This lowers the chances of conception compared with the past practice of freezing embryos for future implant attempts. In addition, it increases the risk of multiple births.
- Embryo research is forbidden.
- Those who attempt to clone a human being face up to 20 years in jail and being struck from the professional register of physicians.

Dusan Keber, the Slovenian Minister of Health has made it clear that fertility services available to Slovenian citizens should also be offered to people from neighboring Italy. “This country is free to help other citizens to obtain what is allowed to Slovenian citizens, according to our laws,” he said. This fertility tourism has inevitably reduced the Italian government’s control over the treatment.

IMPLICATIONS FOR ABORTION

It has been especially tough for those seeking treatment to accept the new law’s ban on screening embryos before implantation. Couples who know they could

difficult questions about the fertility law and existing abortion legislation.

Therefore it should come as no surprise that the passage of the fertility law has led to calls for abortion regulations to be tightened. Many believe that the Medically Assisted Reproduction Law gives legal recognition to the embryo. “This law recognizes an embryo’s legal rights,” declared Giulio Andreotti, the former Christian Democrat prime minister and senator-for-life. Some have suggested that this means that legislation on abortion should be changed. “It is clear that the recognition that the embryo is a human being makes necessary a profound revision of the abor-

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- Anyone breaking the law on fertility treatment could be fined €400,000 (\$540,000).

This law has had a profound impact on Italians seeking help with childbirth. The BBC reported that the success rate for fertility treatment dropped from one-in-four to one-in-nine over a five month period. (BBC News, “Fertility laws frustrate Italians,” August 9, 2004) “It’s a medically and psychologically devastating law for couples who already have very little chance of having children,” said Federica Casadei, director of Cerco Un Bimbo, a support group for couples with fertility problems.

The demand for fertility treatment seems set to rise with Italian women, like women elsewhere, having children later in life. “Fertility tourism” is on the increase with clinics in Spain, Austria and Switzerland recording a 20 percent rise in Italian patients in the five months after the law was passed. The tiny Republic of San Marino is preparing to offer IVF services unavailable under Italian Law and

be carriers of some genetic diseases have a 25 percent chance of passing it on to an embryo. Screening before implantation could detect such diseases. This ban appears extremely unjust given that it is legal under Italian law to screen a fetus during pregnancy and abort it before it is 24 weeks old.

Furthermore, it has been reported that women desperate for abortions have resorted to seeking legal rulings against the Medically Assisted Reproduction Law. (Sophie Arie, *Guardian* (UK), October 1, 2004) In one of many cases, a Sardinian woman pregnant with twins wanted to abort one of the embryos that had a genetic illness, thalassemia. “Under an Italian law on assisted reproduction passed earlier this year, their only options were to keep both children or abort them both. And abortion would only be legal if it was carried out within the following two weeks,” explained Arie. But a local judge ruled in their favor and against the law because the judge believed the woman’s mental health needed to be protected. Such cases have raised

tion law,” argued Maurizio Ronconi, a Christian Democrat politician and supporter of the governing coalition.

But the problem with the new fertility law is that it has not specified when an embryo comes into existence. Therefore the legal rights of the embryo are open to interpretation. “The Italian law, however, has not defined ‘embryo’, thus suggesting the popular understanding that an embryo exists from fertilization,” explained John Robertson, chair of the Ethics Committee of the American Society for Reproductive Medicine. (*Human Reproduction*, June 30, 2004)

This legal ambiguity needs to be rectified. As it stands, the fertility legislation has given momentum to those who oppose abortion and new research on the embryo. The Italian government’s Health Minister, Girolamo Sirchia, has said that the fertility law is “a good starting point” for protecting the embryo and that “research should be carried out on animals, not Christians.”

Yet the Medically Assisted Reproduction Law has also faced considerable

opposition, even from those wanting greater protection for the embryo. "The principle of safeguarding the embryo from [the point of] fertilization, which I subscribe to, is the main goal of this law, [but this law results in a] loss of efficiency and increase of risks," stated Antonio Lanzone, head of the Center for Assisted Reproduction at the Catholic University, Rome.

Many Italian experts on assisted reproduction have highlighted the additional risks for women. Luca Gianaroli, scientific director of the Italian Society for the Study of Reproductive Medicine, said the law was in sharp contrast to the guidelines of the World Health Organization. "According to an analysis we conducted on the medical charts of 100 successful pregnancies," he said, "fertilizing just three oocytes will cut the success rates by about two-thirds. This translates to unneeded treatments, expenses, and risks for women." (Fabio Turone, "Italy to pass new law on assisted reproduction," *British Medical Journal*, January 3, 2004)

A DANGEROUS PRECEDENT?

Despite Italy's Catholic traditions, there seems to be a recognition that the fertility law is too far out of step with other European countries like the United Kingdom, which recently relaxed its laws on the genetic screening of embryos. Some believe that the Italian fertility law has set a dangerous precedent that could encourage other European Catholic countries to add to existing restrictive legislation, such as in Poland. "We are afraid it will become a model for conservative Catholic countries," said Arne Sunde, the president of the European Society for Human Reproduction and Embryology.

But the contemporary concern to respect women's rights may mean that reform makes the fertility law less restrictive. "I think our utmost concern should be that of ensuring this country has a modern, accepted, ethically conscientious law on assisted fertilization in keeping with citizens' broader opinions and with

women's rights," stated the Italian Equal Opportunities Minister Stefania Prestigiacomo. (Agenzia Giornalistica Italia, August, 25, 2004)

Even among Italy's staunchly Catholic politicians who support the fertility law, there seems to be an acceptance that women's rights need to be taken into account. "This is a restrictive law, there's no doubt about it, but we don't want to harm women's rights," said Christian Democrat politician Bianchi. For Bianchi and many others, the problem was that fertility practices had previously become too out of control. "Italy's grandmothers became mothers and every uterus was for rent. This really wasn't a positive image and we needed to take back control," added Bianchi.

Following campaigns for various referenda on the assisted fertility law, reform now seems inevitable. Campaigners collected more than 3 million signatures in support of five referenda on the legislation. (Italian law requires that 500,000 signatures be collected over a three-month period for a referendum.) "This is extraordinary. I would say we are close to a historic number [of signatures]," said the leader of the Radical Party, Daniele Capezzone. The Radical Party, which has a well-established tradition of organizing referenda on civil liberty issues, led the campaign for a referendum to completely reject the Medically Assisted Reproduction Law. However, this referendum was denied by the Constitutional Court on January 13, 2005, following a government appeal to deny all five proposed referenda on the law. The court's decision represented a major victory for the government which feared that if the law was thrown out it would lead to a return to Italy's image as a lawless frontier, a fear articulated by Prestigiacomo, the Equal Opportunities Minister, who echoed earlier concerns when she expressed her fears "about the outcome of a referendum that may leave Italy in a Wild West without regulations." (Agenzia Giornalistica Italia, September 22, 2004)

Nevertheless, the Constitutional Court upheld the other four referenda on the

fertility law that propose reforms on banning embryo research, the denial of donors, the limits placed on fertility treatment (especially the requirement that three embryos be implanted) and the cancellation of Article One relating to the rights of the fetus.

Now the signatures are being verified by 120 investigators at the Supreme Court. The Court will deliver its decision on January 20, 2005 (just after *Conscience* goes to press). If the remaining four referenda are rejected, then it is likely that parliamentarians will be presented with options for reform of the law. But, if—as is widely expected—the referenda are given the go-ahead, the prolonged process of organizing it will begin.

Whether the law is reformed or not may well depend on which issues influence Italians as the debate progresses. An opinion poll by the Eurispes organization during the summer of 2004 showed that Italians are conflicted on the issue. The poll of 1,500 interviewees indicated that while 64.9 percent of Italians are in favor of artificial insemination, 55.7 percent are against sperm donation. This suggests that the dominance of one of these key issues could swing voters for or against reforming the law.

The final impetus for reforming the fertility law may come from the realization that it contradicts the government's policies to increase the birth rate. Italy has one of the lowest birth rates in Europe and cash incentives have even been introduced to encourage childbirth.

The contradictions in government policy and the tensions between Catholic traditions and respecting women's rights make Italy feel like a country without a sense of direction. The failure to establish new guiding principles means that policies regarding new developments with fertility services remain the subject of much conflict. Moreover, such confusion makes Italians uncertain about whether they will be able to get treatment in Italy or have to travel abroad for something that most consider to be basic healthcare. ■