Laws of Bioethics: which revision for 2009?

The laws of bioethics voted in 1994 and revised in 2004 will be subject to new discussion in 2009. What are the current thoughts and the foreseeable evolutions?

Framework law
During the day of public hearings, organised the 29th November 2007 in the French National Assembly to prepare this revision, some called for the adoption of a framework law laying down the great principles governing the bioethics issues and establishing independent agencies in charge of delivering or not the authorisations. As these organisations have a jurisprudential role, we may fear that the democratic debate on new biomedical practices is cancelled: the decisions on these major society challenges will be made by a confidential group of “experts”. The example of the Biomedicine Agency, which authorises researches on embryos, whereas the conditions established by the law are not gathered; which has just permitted, discreetly, in 5 hospitals, the non-heart beating organ donation (and not in case of brain death) – should be sufficient to call for a great prudence regarding the power given to this type of agency.

Research on embryo
The article L.2151-5 of the law of 2004 authorises, for five years, by way of derogation from the prohibition in principle set out in the law, the research on human embryo and human embryonic cells. This decree of 06/02/06 submits this research to two conditions: "to be susceptible to allow major therapeutic advances" and "not to be followed by an alternative method of comparable effectiveness". Assuming that the therapeutic benefit of the research on embryo – widely highlighted before obtaining the approval of public opinion – is not demonstrated or demonstrable, some people like Marc Peschanaski, prefer now to talk about fundamental research and call for the next law to authorise this research without “therapeutic condition”. How can we not underline the semantic shift which is occurring and which, like Claude Huriel, chairman of Curie Institute and member of the International Bioethics Committee, repeated it, is deeply changing the nature of the debate?

From another hand, the second provision should also be modified, regarding the last advances made with adult stem cells and cord blood cells (see Gènéthique No 96). Head of the medical genetic department of Necker Hospital (Paris) and advisor to the presidency, Pr. Arnold Munnich estimates that decriminalising more the research on embryo will not give any expansion as no therapeutic advance is fundamentally hoped.

Logically, two solutions exist: To expand the current moratorium, or to go backward, in other words to prohibit any research on embryo. For all that, a real pressure exerts in favour of a decriminalisation.

The challenge here is quite big because the fact to authorise research on embryo without condition could generate a triple injustice: Firstly, regarding the embryos themselves delivered to lap tables, secondly regarding mislead and abandoned patients and thirdly regarding the general public who, taken as hostage, will be a party to the transgression it allowed, thinking wrongly, it would accelerate patient recovery.

Preimplantation diagnosis (PGD)
A few months after Great Britain authorised the resort to PGD to select embryos which do not present predisposition to breast and ovarian cancer, the mission directed by Dr. Dominique Stoppa-Lyonnet (Curie Institute, Paris) published, on the 9th of last April, his report on the fields of use of PGD. Currently, in France, resorting to PGD is possible to diagnose on embryos “serious and incurable diseases at diagnosis”. This in effect concerns diseases about which we are certain they will affect children with defective genes. But, according to this report, "no modification of the law of bioethics is necessary" to expand the use of PGD to predispositions (colon, breast, ovarian cancers for instance), in other words to diseases which are likely to occur one day. The Biomedicine Agency expressed a “favourable opinion” when it read these conclusions, while specifying that they did not necessarily prefigured the choices that will be made for future laws of bioethics.

Surrogate mothers
Following the decision of the Court of Appeal of Paris admitting as parents a French couple who resorted to an American surrogate mother, a task force for surrogate mothers has been established, at the initiative of the Senate commission on laws and committee on social affairs.

Considering that "the biological issue is out of date", Michèle André (PS), task force chairwoman, expressed a favourable opinion on the decriminalisation of this practice. Geneviève Delaisi de Parseval, psychoanalyst, also thinks that it is urgent to authorise this practice. But Catherine Labrousse-Riou, professor of law (University Paris I), highlights the contradiction which exists between, from one hand, the fact to develop the paternity tests and thus to valorise the biological factor and from another hand, to deny it by introducing the practice of surrogate mothers with the motive that the principle
of biological affiliation is not important. At the time of child rights, she shows that the process of surrogate mothers restores, in an archaic manner, a terrible parental pressure, stronger than ever, because it exerts in utero. Except the affiliation problems (in case of resort to an oocyte donor, the child is derived from four interveners: the father, the adopting mother, the genetic mother and the surrogate mother), the “surrogacy” questions the entire legal framework based on the principles of unavailability of the human body and of distinction between goods and people. It would follow an instrumentalisation and a marketing of the woman body as well as a reification of the child treated as a debt object or as a thing due under the contract, without forgetting the possible commercial shift. Besides this, the pressure of some militants is strong to decriminalise the resort to surrogate mothers, to better supervise an already existing practice or to be in line with other countries which authorise it. Like Germany whose history made it prudent, will France know to remain an ethical exception and deny satisfying the desire of a child at all cost from some parents who justifies their demand by the pain of not being able to give birth?

Gamete donation
Faced with the “lack” of gametes (today, 2 years and a half are necessary to have oocytes and a few months to have sperm), the Biomedicine Agency regularly launches campaigns to recruit donors. In order to remedy this “lack”, some (including René Frydman) call for the remuneration of the donors, like in Belgium and Spain.

Today, the law warranties the donors an absolute anonymity, but a movement was created to relieve this anonymity, like in Great Britain, Sweden, Austria or Norway. Another system which could be adopted, the one called the “double scheme”, established by Belgium and Switzerland: The donor chooses to be or not anonymous, the parents choose an anonymous or not donor.

Status of the fetus
The question of the status of the fetus will be also discussed. However, seeking a status for the fetus is to estimate that the one inherent to any human being does not correspond to it, it is depriving it of what it is by fact and to confer it an infrahuman status (see Claude Sureau). To defend it, it would be sufficient the society has the willing to respect the principles which protect it, without establishing exceptions. Moreover, no law, nor the one on abortion, nor the one on research on embryo, denies the humanity of the embryo. On the contrary, they affirm it only by its sole existence: If the embryo was not a man, these laws would not have been necessary.

Other points should be also treated during these revision debates like the access to medically assisted procreation (MAP) for single people and homosexual couples; the advances of neurosciences...

The Council of Europe and the “right” to abortion

The parliamentary assembly of the Council of Europe (PACE) adopted, on the 16th of last April, with 102 votes against 69 and 14 abstentions, a resolution project called “access to safe and legal abortion”.

This project is derived from an established report – from hearings of pro-abortion militant NGO, in large majority – and approved on the 11th of March 2008, by the commission of the PACE on equality of chances for women and men. While admitting that abortion should be avoided as far as possible and in any case cannot be considered as a mean of family planning, this report gives three objectives to the member countries of the Council of Europe:

- decriminalising abortion if it is not already done (Monaco, Andorra, Malta, Ireland and Poland are thus affected);
- guaranteeing the effective exercise and lifting the restrictions which block the access to safe abortion;
- promoting the access to contraception and making the sexual education of young people obligatory.

Abortion and “right” for women
The resolution project foresees to consider abortion as a “right” included in the reproduction rights; however this right has never been recognised by international authorities, like the UNO or the European Union. Today, under the principle of subsidiarity, each member state is sovereign over the abortion issue. Such an action aims at extracting it from the States’ competence.

Lifting the restrictions
In countries where abortion is decriminalised, the report reveals the obstacles to access to it. This way it denounces a “lack” of proximity care structures, the obligatory medical consultations, the cooling off period and the fact that physicians can resort to consciousness objection. Thus it invites the States to “make the necessary decisions to create the sanitary, medical and psychological conditions appropriated to an “informed and free choice”.

Medical abortions
As a conclusion, the resolution proposes to favour a quick decision of the woman (free from medical and moral restrictions) so that the medical abortions can be proposed.

Amnesty International
The report is finally based on the position of Amnesty International which, during its International Conference on 17th August 2007, declared “supporting the decriminalisation of the abortion” and “defending the possibility for women to resort to voluntary pregnancy termination when their health or their life are in danger”.

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