

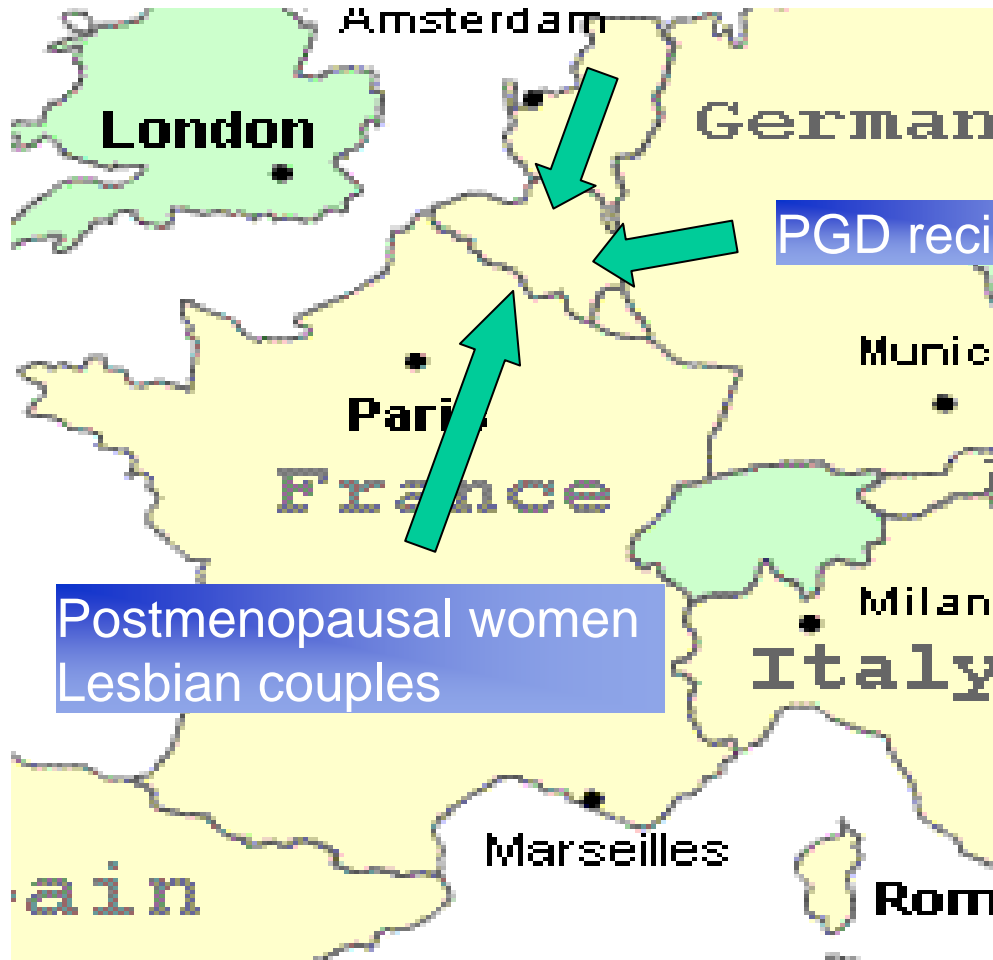
# Ethical issues of cross-border reproductive care

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ICSI  
Women > 40  
Donor sperm recipients



PGD recipients

Postmenopausal women  
Lesbian couples



# Cross-border reproductive care

## Main causes:

- A type of treatment is forbidden by law (i.e., sex selection)
- Certain categories of patients are not eligible (i.e., lesbian couples)
- The waiting lists are too long (i.e., donor oocytes)
- The out-of-pocket costs for the patient are too high
- The technique is not available because of a lack of expertise (i.e., PGD)
- A treatment or technique is considered not safe enough (i.e. ICSI with non-ejaculated sperm)
- People expect better service and/or success rate abroad

# Semantics

Different analogies and definitions are possible:

- Reproductive tourism: definitely out
- Reproductive exile (Matorras, Inhorn)
- Safety valve
- Conscientious objection: morally motivated breach of law to contribute to a change of law
- Law evasion
- Cross-border reproductive care

# General ethical principles

- Reproductive autonomy
- Justice
- Non-maleficence: do no harm

# I. Reproductive autonomy

- Reproductive autonomy refers to the right of people to decide when, how, with whom and how many children they want.
- When treatment is not available at home, it increases patients' autonomy when they can obtain treatment abroad.
- Special point for ART: some treatments are forbidden by law. Position of the ESHRE Task Force on Ethics and Law: reproductive autonomy justifies law evasion.

# Autonomy

- **No or insufficient counselling: no informed consent**
- Solution: counselling is performed by the referring doctor
- Solution: information leaflets, patients organisations ...
  
- **Danger: no reliable information is available; exaggerated success rates, lack of transparency**
- Solution: information should be actively collected by the local fertility specialist and by professional organisations

## II. Justice

- Equal access without excessive burden
- Justice should be respected on 1 condition: infertility care is part of basic health care
- ART treatment should be available and affordable for everyone in one's home country.

“Only rich people can go abroad”

- Avoid a ‘morality of envy’: if I cannot have it, no one should
- The costs of treatment may be much higher in one's own country than in another country

# Justice

Justice has two dimensions: **equality** and **access**

Group 1: focus on **equality**: justice is improved when either everyone has access or no one has access.

Consequence: one should prevent the rich from getting treatment abroad

Group 2: focus on **access**: justice is improved when more people have access.

Consequence: justice is improved by all legal, social etc. measures that increase the number of patients that has access to ART

# Justice in the host country

- **Exploitation of oocyte donors**
- Solution: adapt the amount for compensation, restrictions (minimal age, educational level ...), counselling
- **Raising the prices for treatment and donor gametes + shortage of donor gametes**
- Solution: reimbursement of treatment + fixed prices for locals
- Solution: recruitment campaigns in the home countries
- **Brain drain of medical personnel: moving to private centres**
- **Skimming of resources: rich patients to private centres and poor patients to public centres**



### III. Non-maleficence: do no harm

- **Protection of the patient**

All patients have a right to safe and effective treatment wherever they go

- **Danger: violation of safety standards**

- multiple pregnancy rate
- donor screening for diseases

- **Solution: independent control organisation, certification system**



# How can CBRC be avoided?

Should CBRC be avoided?

- It holds a number of dangers and risks that can be avoided by providing treatment at home +
- Everyone has a right to basic health care at home

*A. Internal moral pluralism expressed in law*

- recognition of the multitude of views on family building
- high value on reproductive autonomy

# How can CBRC be avoided?

## B. *Coerced conformity*

Three types of restrictions:

### 1. Citizenship or permanent residence

i.e. surrogacy in UK

### 2. Limitation of freedom of movement

i.e. abortion in Ireland

art. 59 & 60 European Treaty

### 3. Control and criminal charges

i.e. abortion in Germany

# How can CBRC be avoided?

## *C. International harmonisation*

- harmonisation = others should do like us
- consensus only on general principles
- European Convention on Human Rights and Biomedicine: attack on legal diversity based on illusory consensus

# The problem: conflict between politics and ethics

LAW



POLITICAL SYSTEM

DEMOCRACY



MAJORITY RULE

The majority opinion is not necessarily ethically good or right but democracy is the best political system we have

# Tolerance and respect

The political majority has the right to express its views in law and regulations.

Nevertheless, within a pluralistic society, tolerance and respect for the moral convictions of others are important values to avoid moral conflict, anger and frustration.

- compromise, 'soft' law, including views of opposition
- leave escape routes for opponents
- not prevent or stop people from going abroad nor punish them when they come back



# General solutions

- Prevent a number of movements by adopting a less restrictive legislation
- Adopt measures to reduce the out-of-pocket costs for patients
- Certification of clinics by national and international organisations
- Education of patients about what information to seek and how to evaluate this information