

Guanajuato Declaration about In Vitro Fertilization

20 april 2013

In Guanajuato City, Mexico, April 20th 2013, various experts in bioethics, medicine, philosophy, biology, law, academia and the general sciences, came together with the purpose of subscribing the Guanajuato Declaration, a set of interdisciplinary reflections in connection with the sentence brought about by the Inter-American Court of Human Rights of the case *Artavia Murillo and others ("in vitro Fertilization") vs. Costa Rica* from 28 of November 2012.

Objectives

In this Declaration we aim to show some deficiencies on the sentence of the Inter-American Court of Human Rights and to postulate several principles or relevant ideas that should be considered by any national or international institution that has the responsibility of interpreting, promoting and defending human rights. The persons whose signatures appear at the end of this Declaration ("subscribers"), accept and support each one of the points enlisted in the same, and submit them to the international scientific community so that those who agree with its content might express their acceptance of its terms ("adherents").

The subscribers of the Declaration regret the scientific and legal imprecisions of the sentence and consider those imprecisions a reason why the sentence should not be considered a relevant precedent in the ruling of further matters on in vitro Fertilization, and other topics related to it.

Principles

Human dignity is the foundation of human rights. There is no value that has the foundational ultimacy of dignity. Not even freedom, equality or justice are capable of supporting by themselves the full normative system that human rights suppose. In consequence, every organ with judicial functions at a national or international level, when deciding issues related to a possible violation or affectation of human rights, must turn before anything else to human dignity, since it is the only element of the juridical system that allows, on the one hand, to sustain correctly a resolution based on the respect owed in every moment to human beings and, on the other hand, to guide the hierarchy of rights, which supposes finding the best way to exercise them. A judiciary practice that undermines the importance of human dignity by substituting it with another value or norm, anticipates a partial resolution that will translate into the defenselessness of human beings and contradict the inherent vocation of human rights.

The life of the embryo is, since its beginning, human, because its nature is not modified or perfected by reason of its growth, development or sufficiency; in consequence, it deserves, from the beginning, the protection of human rights, in the same way in which the rights of children, women and disabled people, etcetera, are recognized. Today scientific developments in the area of embryology force us to pose and defend embryo's rights, especially the right to life by reason of its condition of vulnerability.

The term "conception" that has been used by the 41st article of the American Convention on Human Rights, must be understood in the same way in which it was considered when it was subscribed in 1969; this is, as the union of an ovum with a spermatozoon. The argument that argues that implantation is the element which defines conception is false; implantation closes the cycle of conception that, amongst other things, allows the diagnose of a pregnancy. The practice of ART (Assisted Reproductive Technologies) proves by itself that the development of the embryo begins with fecundation.

The main international instruments of human rights, such as the Universal Declaration of Human Rights, the American Convention on Human Rights and the International Covenant on Civil and Political Rights establish



clearly the right to non-discrimination, a right that also holds for the embryo; hence, there's no reason that justifies the distinction that, in the use of ART, is made between embryos whose implantation has been attempted and those that are discarded or cryopreserved. These actions are considered by us as morally reproachable and they need decisive intervention from the authorities.

Human rights are independent norms, which means that the legitimacy, existence, validity and belonging of each one inside the juridical system does not depend on the legitimacy, existence, validity and belonging of the other. Henceforth, we cannot and should not confuse correlation with independence. In this way, reproductive rights are related, amongst other rights, with the right to a private life, but this does not mean that the first is conditioned by the second. If we cannot accept the independence of human rights then we would have to forcibly admit a hierarchy between them; which is something that cannot be accepted on a truly free and democratic society.

The normative system of human rights does not admit that one of them, whichever it might be, overimposes or imposes itself a priori over the others, because each one of them has the same hierarchy and obligatory force. This does not preclude the possibility of a weighing between them in a case of conflict. Considering the right to a private life as foundation of other rights like, for example, reproductive rights cannot be admitted on the abovementioned logic.

The history of the contemporary world can be explained in terms of a frontal struggle between authority and freedom, giving birth to the irreconcilable division between public life and private life as if human rights could be located exclusively in one of these two spaces. Reality implies that human rights do not exclusively belong to the realms of private or public life. If human rights, and especially reproductive rights, were rooted only in the public sphere, these would not be anything else but concessions or prerogatives provided by the State to the people. On the contrary, if they were rooted only on the private sphere, these would be a set of norms or starting points emanating from social convention or consensus. Both positions are discredited today. In consequence, everything relative to human rights, and in particular to reproductive rights, has a public part and a private part. In their exercise there's undoubtedly an intervention from personal freedom, but the fact that the State worries about their recognition, protection and promotion, proves that in them there's an element of the public sphere; that is, of justice.

Society expects that any national or international institution in charge of the protection of human rights would gather the scientific data provided by scholars and researchers from universities and research centers necessary to build an adequate appreciation of facts and circumstances. In this sense, we notice several errors, scientific imprecisions and methodological deficiencies in the Court's sentence. Some of them are: a) Excessive weight of non-scientifically supported references for the definition of "conception"; b) It is affirmed, incorrectly, that: "Before the IVF (In Vitro Fertilization) there was no scientific possibility of accomplishing fertilizations outside the body of a woman" (No. 179), while since 1934, Dr. Gregory Pincus achieved this on rabbits; c) It is argued that all of the 2-week embryos' cells are identical (No. 184, footnote No. 280), when in reality there are hundreds of cells and different structures so different from each other such as placental membranes, and the embryo's complex structures like the ectoderm, endoderm and mesoderm; d) the fertilized egg is confused with the blastocyst (No. 180), because it is asserted that the fertilized egg is the one that gets implanted in the endometrium and; e) It is affirmed that the 8-cell embryo has identical cells (Pg. 59, quote 280, assessor Escalante), when it is well known that from the two-cell embryo there is a directionality the development of the embryo is defined primarily, yet not exclusively, by one cell, while the other one becomes the foundation for the development of the placenta and the placental membranes.

The minimal protection that a just society can offer to embryos since fertilization is the respect to its human



rights. Otherwise, or by doing it from the moment of implantation, reproachable actions could arise such as illegal embryo trafficking, trading or their disposition on behalf of laboratories without the permission from their biological or adoptive parents.

Subscribers and adherents to this Declaration are moved by their academic and scientific goal of searching for the truth and doing good in their work, and postulate these principles so that they can guide any reflection that is made in connection with human rights and, especially, reproductive rights.