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A Human Rights-Based Approach to Accessing Preimplantation Genetic Testing: The Case of Argentina

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Abstract

In 2013, Argentina enacted Law 26862, guaranteeing access to assisted reproductive technologies (ARTs) but it does not include preimplantation genetic testing (PGT). Judicial rulings have denied PGT coverage, citing legal protections for embryos and the absence of explicit regulatory approval. However, this paper argues that PGT should be included under Argentina's current ART framework, in alignment with human rights principles, scientific progress, and reproductive autonomy. Analyzing domestic legislation and the inter-American human rights system—particularly the case of *Artavia Murillo v. Costa Rica*—the paper demonstrates that restricting PGT disproportionately harms individuals with genetic risks, violating their rights to health, privacy, and family life. The judiciary's reliance on "life at conception" arguments is further undermined by Argentina's 2020 abortion law, which permits pregnancy termination. By comparing Argentina's approach to the UK's regulated PGT model, the paper advocates for the Ministry of Health to authorize PGT under strict criteria, ensuring equitable access while addressing ethical concerns. Recommendations include adopting evidence-based regulations to balance reproductive rights with embryo welfare, thereby advancing progressive health policies in line with international human rights standards.

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Introduction

In 2013, Argentina passed Law 26862, recognizing the right to comprehensive coverage of assisted reproductive techniques and procedures. The legislation recognizes the rights of every person to parentage and to form a family, which are closely connected with the right to health. In addition, the law is also based on the rights to dignity, freedom, and equality of every human being (according to the Constitution and the foundations and principles of international human rights law).[1]

In 2019, six years after the law's enactment, Argentina reported more than 21,000 cases of assisted fertilization per year, with a birth rate of approximately 24%.[2] The legislation covers different treatments, but preimplantation genetic testing (PGT) is not one of them. During the debates in Congress, PGT was not addressed; however, in 2023, a deputy presented a bill to include this treatment in the law. However, the bill was never discussed by the representatives.[3]

Some individuals have filed petitions with the courts to request coverage of these tests. However, several judicial decisions have pointed out that it is not the courts' place to include treatments not authorized by Congress or the Ministry of Health, which is the public authority responsible for updating treatments.[4] Moreover, the courts have said that if PGT were covered, embryos with anomalies would be discarded, which contradicts the notion that life begins at conception, as established by Argentina's legal framework.[5]

However, in other cases—namely, cases where medical treatments for HIV/AIDS, rare diseases, and chronic illnesses were not covered by individuals' health insurance and there was no legal obligation to do so—the judiciary has ruled that patients must have access to such treatments, taking into account the right to health and access to the benefits of scientific progress.[6]

In December 2020, the Law on Access to Voluntary Termination of Pregnancy (hereafter the abortion law) was passed, which allows abortion until 14 weeks. Since then, no new regulation on PGT has been approved, nor has the judicial branch issued any new rulings on the subject.[7]

Against this background, I offer a novel contribution to the field of reproductive rights and genetic testing by framing the discussion of PGT as a comprehensive human rights-based approach. The paper uniquely focuses on human rights principles, social justice, and reproductive autonomy. By situating PGT within the broader context of Argentina's legal landscape and the inter-American human rights system, I show how current judicial practices and health policies can be seen as outdated and misaligned with international human rights standards. This framing not only addresses the legal and ethical implications of PGT but also emphasizes the need for a paradigm shift in how reproductive technologies are regulated, advocating for policies that prioritize individual rights and access to health care.

In the first part of the paper, I provide a brief explanation of PGT. I then describe Argentina's legislation and case law of assisted reproductive technologies (ARTs) and PGT. In the third part, I comment on the Argentine and international human rights frameworks on ARTs, focusing especially on the inter-American human rights system, of which Argentina is a part. In part four, I use a human rights framing to show why PGT should be covered. Finally, I make recommendations for advancing regulations that cover PGT in Argentina.

Preimplantation genetic testing

According to the Human Fertilisation and Embryology Authority (HFEA), the UK fertility regulator, PGT-M, previously known as PGT, is a treatment that involves checking the genes or chromosomes of an embryo for a specific genetic condition before deciding whether to transfer the embryo to a person's uterus.[8] Additionally, PGT-SR is a treatment that involves examining the chromosome structure of an embryo to identify where segments may have been deleted, duplicated, or inverted. It can be used for individuals with a known chromosome structural rearrangement to increase the chances of a healthy pregnancy.

The technique is primarily used to detect severe heritable disorders, such as Tay-Sachs or cystic fibrosis, which the parents wish to avoid passing

on to their children. However, it can also be used for more controversial purposes such as selecting a child who can serve as a tissue donor for a sick sibling, choosing a child with a particular condition, such as deafness, or selecting a child of a specific sex. In nearly all countries with advanced fertility clinics carrying out PGT, the technique is limited by legal restrictions on its acceptable use.[9]

PGT-M treatment is very safe—there is no evidence that babies born following such treatments suffer from any more health or developmental problems than babies born using in vitro fertilization (IVF) alone. Although an embryo usually develops normally even when it has had some cells removed, there is a possibility that some embryos may be damaged by testing, which means they would need to be discarded and would not be used in IVF treatment.[10] Additionally, PGT-M and PGT-SR are not 100% accurate, so there is a slight chance that the tests provide incorrect information.[11]

In this paper, I have chosen to examine the HFEA regulations on PGT and see if they could apply to Argentina for the following reasons: (1) the UK has been regulating PGT for more than 20 years, so there is much experience to draw on; (2) the HFEA has been established specifically to operationalize the regulations; (3) it has detailed policy documents that describe the circumstances under which PGT can be used; and (4) all this information is accessible.[12]

In Argentina, the Ministry of Health is the central authority responsible for authorizing ART treatments, so it has a similar regulatory role to the HFEA. Countries such as the United States, Canada, and Australia have complex regulatory landscapes, where PGT regulations are decentralized to local state authorities.[13] Such an arrangement could also happen in Argentina, whose Constitution allows provinces some regulatory control, but that possibility is beyond the scope of this paper.

The HFEA authorizes the use of PGT-M and PGT-SR in five circumstances:

1. The person ended previous pregnancies because of a severe genetic condition.
2. The person already has a child with a severe genetic condition and wants to avoid this happening again.
3. The person has a family history of a severe genetic condition.
4. The person has a family history of chromosome problems.
5. The person has a history of recurrent miscarriage due to chromosomal abnormalities.

It is possible to use PGT-M to test for almost any genetic condition where a specific gene is known to cause that condition. However, the HFEA allows PGT-M testing only when the risk of transmission and the severity of symptoms in someone affected by the genetic abnormality meet certain legal criteria. That PGT-M is used only when embryo development might be seriously compromised, risking the embryo's survival, or the probability of a healthy life resulting, is important in my analysis in this paper.

Assisted reproductive technologies and preimplantation genetic testing in Argentina: Legal and judicial context

Law 26862 guarantees equal access to medically assisted reproduction procedures and medical assistance techniques. According to the Consideration of the Regulatory Decree, the law was drafted to promote a more inclusive, culturally diverse, democratic and fairer society.[14] Medically assisted reproduction is understood as any procedure or method, whether of low and high complexity, conducted with medical assistance to achieve a pregnancy.[15]

The law states that new methods and techniques developed through technical and scientific advances may be included in the definition, providing the National Ministry of Health authorizes them.[16] All authorized procedures, diagnostic tests, medicines, and support therapies are included in private insurers' policies and in the compulsory medical program of the free medical system (PMO, for its Spanish initials). A person cannot be excluded from medically assisted reproduction on the

basis of sexual orientation or marital status.[17]

Regulatory Decree 956/2013 recognizes two types of procedures: (1) low complexity and (2) high complexity. Low-complexity procedures are "those that aim at the union between ovum and spermatozoid inside the female reproductive system, achieved through ovulation induction, controlled ovarian stimulation, ovulation triggering and intrauterine, intracervical or intravaginal insemination, or intrauterine, with sperm from the partner or donor."[18] High-complexity procedures are "those where the union between ovum and spermatozoon takes place outside the female reproductive system, including in vitro fertilization; intracytoplasmic sperm injection; cryopreservation of oocytes and embryos; oocyte and embryo donation and vitrification of reproductive tissues."[19]

The Civil and Commercial Code of the Nation (CCCN) establishes in article 19 that "the protection of the non-implanted embryo shall be the subject of a special law." However, this remains unregulated as there is no applicable law. Article 57 states that "any practice intended to produce a genetic alteration in the embryo that is transmitted to its offspring is prohibited."[20] PGT is not used to alter genetics in an embryo.

Currently, PGT is not covered by Law 26862, the decree, or regulations passed by the Ministry of Health, which provides a detailed list of approved procedures. PGT is not prohibited at a national level which has led some people to request that their medical insurance covers these tests. However, the judiciary has ruled that this type of test is not covered.[21]

In the case of *L.E.H. y Otros C/C/O.S.E.P. S/ Amparo*, a couple in the province of Mendoza requested their medical insurer to provide complete coverage of IVF with PGT. The couple were unable to conceive naturally, and by the end of 2011 had experienced four fertilization attempt failures with the last one ending in a biochemical miscarriage. They then needed further treatment in 2012 and after another unsuccessful pregnancy, a genetic disease was detected in the male which meant embryos resulting from his sperm were not viable. The use of PGT was indicated. However, the couple's insurance did not cover PGT so they submitted a legal claim against the insurance company.

This claim was channeled through an amparo, a legal action used in court to protect constitutional rights. Amparos also protect the Constitution by ensuring its principles are not violated by statutes, state action, or, in this case, inaction. They are an important legal instrument for protecting economic, social, and cultural rights.[22] All the judicial reviews, including the Cámara de Apelaciones en lo Civil, Comercial, Minas, de Paz y Tributaria of the Primera Circunscripción Judicial (Appeals Court for Civil, Commercial, Mining, Peace, and Tax Matters of the First Judicial District), the Mendoza Supreme Court of Justice, and the Supreme Court of Justice of the Nation, denied the request.

The main argument used by the Mendoza Supreme Court of Justice to deny the use of PGT is related to the legal definition that life begins at conception, according to the CCCN.[23] The court considered that PGT would have involved discarding more than 12 embryos whose destination were not precisely established in the legal framework. The court interpreted that the claimers' right to reproductive health is not absolute, much less in the face of the protection of human life, in this case, of the embryos not transferred. At that time (2015), abortion was not allowed under any circumstances in Argentina.

Mendoza's Supreme Court of Justice determined that the social security system cannot be obliged to bear the costs of "the experimentation and discarding of embryos, which deserve legal protection as human life. This is not a position against progress but one of respect for life."[24] The court did not consider that PGT-M does not mean to discard embryos automatically (they could be frozen, for example), but to determine if there is a genetic problem and to select an embryo that would be viable. Only nonviable embryos would be discarded.[25]

The court also noted that the requested benefit was not covered by Law 26862, is exceptional and high-cost, and is not among the benefits that the social security system is required to cover. In addition, although flexible, the PMO needs to be

more adaptable to cover all the benefits without any limitations according to the court.[26]

After the Supreme Court of Mendoza's decision, the claimants went to the Supreme Court of Justice of the Nation, which decided that it could not allow treatments that the Ministry of Health had not approved. It ruled that the Ministry of Health, not the courts, have the authority to decide which treatments are covered.

In 2022, in the case *G.L.M. y otro c/ OSDE s/ leyes especiales*, the petitioners requested PGT so their embryos could be analyzed to enable them to have one implanted that did not have the genetic mutation suffered by both parents.[27]

The Federal Court of Appeals of San Martín (province of Buenos Aires) rejected the amparo action, following the previous Supreme Court decision, on the grounds that PGT is not included in the list of medically assisted reproduction procedures.[28]

It is essential to note that when the Federal Court of Appeals in San Martín issued its ruling denying the PGT, it did not use the argument that life begins at conception, even though this was the basis of the Supreme Court's decision. Although the Federal Court of Appeals does not state what the decision is based on, it is important to note that this decision was made after the abortion law was passed which allows abortions up to 14 weeks.[29]

To summarize, the two arguments used by the judiciary for not approving coverage of the costs of PGT in Argentina are as follows: First, life begins at the moment of conception, meaning that if PGT is covered, embryos with anomalies would be discarded (the possibility that they would not be viable with or without PGT, or they could remain frozen, or destined to scientific research were not analyzed). However, this argument was not used after the abortion law was approved. Second, PGT was not approved as a covered treatment by any resolution of the Ministry of Health in its capacity as enforcement authority of the law on reproductive assistance. The judiciary cannot replace the Ministry of Health. Therefore, it is not up to the courts to approve new treatments not included in the regulations.

Human rights framework

In this section, I argue that access to ARTs and PGT is guaranteed through several human rights covenants. International human rights treaties, which enjoy constitutional hierarchy due to their incorporation in article 75(22) of the Constitution, bind Argentina to fulfill its obligations to respect, protect, and guarantee fulfill human rights, including the right to the highest attainable standard of health.[30]

International treaties ratified by Argentina are binding since they have a constitutional hierarchy "under the conditions of its validity."[31] Such a precept applies to the jurisprudence of the international tribunals that interpret and determine human rights rulings. According to the Supreme Court, the jurisprudence of the Inter-American Court of Human Rights (IACHR) should be considered a guide for interpreting the American Convention on Human Rights.[32]

According to article 2 of the American Convention, the obligation to fulfill requires Argentina to adopt appropriate legislative, administrative, and other measures to realize human rights fully.[33] This obligation entails the duty to eliminate rules and practices that contravene the guarantees provided for in the convention, as well as to issue regulations and develop practices aimed at the observance of such guarantees.[34] Similarly, the IACHR has indicated that the duty to adopt measures of regulatory adaptation also applies to the rights enshrined in the American Convention.[35]

Concerning health, duties to fulfill include, for example, providing immunization programs against major infectious diseases, providing sexual and reproductive health services, and promoting health education.[36]

Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica (2012) was the first case related to reproductive rights and ARTs decided by the IACHR. The main legal issue was determination of whether the prohibition against IVF arbitrarily affected the rights to personal integrity (article 5), personal liberty (article 7), a private life (article 11), and a family (article 17), as well as the prohibition against discrimination (article 1.1). The process was

first to assess whether there was an interference with exercising those rights and, if so, to establish whether such interference was arbitrary or disproportionate. In analyzing the first step, the IACHR had the opportunity to set several legal standards for the first time.

According to the IACHR, personal liberty (article 7) includes "a concept of liberty in a broad sense as the ability to do and not do all that is lawfully permitted. In other words, every person has the right to organize, in keeping with the law, his or her individual and social life according to his or her own choices and beliefs." In addition, the IACHR has also underscored the concept of liberty and the possibility of everyone's self-determination and freedom to choose the options and circumstances that give meaning to their life, according to their own choices and beliefs.[37]

Private life (article 11) encompasses aspects of physical and social identity, including the right to personal autonomy, personal development, and the right to establish and develop relationships with other persons and the outside world.[38] The right to a private life is crucial for exercising personal autonomy and shaping the future course of events that impact a person's quality of life. Private life includes how individuals view themselves and decide to project this view toward others, and is an essential condition for the free development of personality.

The right to a private life and the right to personal liberty are closely related to reproductive autonomy and access to reproductive services, which encompass the right to access the medical technology necessary to exercise these rights. For the first time, the IACHR mentioned the right to "reproductive autonomy" protected by the convention as a derivation of the right to a private life and personal liberty. Moreover, the IACHR mentioned (also for the first time) access to scientific progress as a means of realizing the right to reproductive autonomy.[39]

Access to the benefits of scientific progress is not expressly formulated in the American Convention on Human Rights. But it is recognized in the Universal Declaration of Human Rights (article 27) and the International Covenant on Economic, Social and Cultural Rights (article 15). Accordingly, states must maximize their available resources to fully realize the right to participate and enjoy the benefits of scientific progress and its applications. While full realization of the right may be achieved progressively, steps toward it must be taken immediately or within a reasonably short period by adopting legislative and budgetary measures.[40]

In addition, General Comment 25 states that access to scientific progress should have a gender-sensitive approach and that state parties should provide access to modern and safe forms of ARTs and other sexual and reproductive goods and services based on nondiscrimination and equality. Particular attention should be given to the protection of women's free, prior, and informed consent in treatments or scientific research on sexual and reproductive health.[41]

Reproductive autonomy and sexual and reproductive health are also related to health care. They require access to good-quality facilities, goods, information, and services, including access to family planning, which is evidence-based, scientifically sound, and medically appropriate, and up to date.[42] This requires trained, skilled health care personnel and scientifically approved and unexpired drugs and equipment. The failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as assisted reproductive technologies, jeopardizes the quality of care.[43]

The right to reproductive health entails the rights of women and men to be informed about, be free to choose, and have access to methods of fertility regulation that are safe, effective, easily accessible, and acceptable.[44] The right to health also entitles everyone to unhindered access to health facilities, goods, services, and information.[45]

More generally, the right to health contains both freedoms and entitlements.[46] The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment, and experimentation. By contrast,

the entitlements include the right to a system of health protection that provides equal opportunity for people to enjoy the highest attainable level of health.[47]

Discussion

Reproductive autonomy and proportionality test

To not allow the coverage of PGT, the judicial branch in Argentina interpreted that the right to reproductive health of the claimants was not absolute, much less in the face of the protection of human life, in this case, of the embryos not to be transferred. The discarding of embryos, a possible consequence of PGT, went against Argentina's definition of life, which "begins with conception."[48]

However, in 2012, in the case *FAL s/ medida autosatisfactiva*, the Supreme Court was asked to determine whether a woman's right to choose must yield under the absolute protection of the right to life of an embryo/fetus.[49] The court held that a balancing test should be applied, and that no absolute right to prenatal life exists. The court, rather than relying on case law, relied on international human rights conventions. In particular, the justices established that the right to life—recognized in article 1 of the American Declaration of the Rights and in articles 3 and 4 of the American Convention on Human Rights—was "expressly limited in their formulation so that the invalidity of an abortion like the one in this case could not be derived from them."[50] Therefore, the right to prenatal life is not absolute and must be interpreted together with the right to liberty, equality, and dignity.[51]

In *FAL*, the justices concluded that no absolute protection of the right to life was established in the international conventions on human rights, and explained that, under article 75 of the Constitution, legislators have the duty to promote positive measures to guarantee the protection of women's rights during and after pregnancy.[52]

On the other hand, in *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, the IACHR examined whether the state's interference with the exercise of rights was also arbitrary or disproportionate. The IACHR found that the ban on IVF did not meet the essential requirement of pursuing a legitimate aim and analyzed proportionality *strictu sensu* to perform a balancing exercise. For the limitation to be proportional *strictu sensu* in the specific case, it must satisfy to a significant degree the protection of prenatal life without nullifying the rights involved. The balancing was achieved according to three issues: (1) the degree of impact on the rights at stake (grave, intermediate, or moderate); (2) the importance of the satisfaction of the interest pursued by the limitation; and (3) whether the satisfaction of the latter justifies the limitation of the former. Concerning the degree of interference in the exercise of the rights involved, the IACHR affirmed that it was grave particularly relating to the couples whose only option to have a biological child was through IVF. It mentioned, among other aspects, the psychological impact derived from the lack of access to an existing procedure that enabled their reproductive liberty.

Regarding the importance of the satisfaction of the interest to protect embryonic life, the IACHR indicated that the evidence suggests that embryonic loss takes place in the context of both natural and IVF-assisted pregnancies, and was disproportionate to claim absolute protection of the embryo concerning a risk that is not only common but inherent to the natural process of conception.[53] Based on those findings, the IACHR concluded that the prohibition against IVF created a severe limitation to the rights to personal integrity, personal liberty, privacy, reproductive autonomy, access to reproductive health services, and starting a family. In contrast, the impact on the protection of the embryo is meager, given that embryonic loss occurs in IVF and natural pregnancy. Therefore, the IACHR affirmed that the protection of embryonic life had no basis under the American Convention, and the limitation of the rights at stake was disproportionate.

Taking these precedents into account, I now consider whether the decisions regarding PGT in Argentina are proportionate. Concerning the idea that life begins at conception, since 1921 in Argentina, abortion was not punishable in three

circumstances: if the pregnancy was the consequence of rape, the life of the mother was in danger, or the pregnancy was inviable (the Supreme Court in *FAL* also pointed out these exceptions).[54] Moreover, at the end of 2020, the abortion law was approved by the Congress, allowing abortions until 14 weeks. In this sense, the limitation on PGT on couples or persons in Argentina nullifies numerous rights to protect the embryo's life. Concerning the degree of interference in the exercise of the rights involved, it was grave; couples who asked for access to PGT had a history of serious genetic problems, and it was their only option to have a child.

In addition, while the CCCN establishes in article 19 that "the protection of the non-implanted embryo shall be the subject of a special law," this remains unregulated. Given that the legal permissibility of PGT is tied to the legal status of non-implanted embryos, and this legal status remains unregulated, the current Argentinian framework presents a legal vacuum. Additionally, PGT does not violate article 57 of the CCCN, as it does not produce a genetic alteration in the embryo. In this sense, in the PGT cases, it is disproportionate to claim absolute protection of the embryo concerning a risk that is not only common but inherent to the natural process of conception; embryos that would not survive are being deselected, not all embryos. In this type of case, PGT does not harm the embryos; it is intended to protect the development of the embryos themselves—in other words, to prevent the transmission of a hereditary disease.

Disability, right to health, and preimplantation genetic testing

The IACHR also considered (in establishing the severity of the limitation) the fact that infertility can be viewed as a disability. The IACHR noted that individuals with disabilities are entitled to special protection due to the specific duties that the state must fulfill to comply with its general obligation to respect and guarantee human rights. In addition, the IACHR adopted a social model approach: disability is not defined exclusively by the presence of a physical, mental, intellectual, or sensory impairment, but rather by the interrelation of the barriers or limitations that exist in society, preventing the individual from exercising their rights effectively. The types of limits or barriers commonly encountered by individuals with functional diversity in society include those that are attitudinal or socioeconomic.[55]

In this sense, article 18 of the American Convention on Human Rights states that "everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality."[56] Both the Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities and the Convention on the Rights of Persons with Disabilities emphasize that disability results from the interaction between an individual's functional limitations and environmental barriers that prevent the full exercise of their rights and freedoms.[57]

The IACHR recalls that it is not sufficient that the states abstain from violating rights; instead, they must adopt positive measures.[58] In this regard, states are obliged to facilitate the inclusion of people with disabilities by ensuring equality of conditions, opportunities, and participation in all spheres of society, thereby guaranteeing that these limitations are dismantled.[59] People with disabilities have the right to access the necessary techniques to resolve reproductive health problems, which can be inferred from article 25 of the Convention on the Rights of Persons with Disabilities.

Therefore, not providing access to PGT affects not only people's desired reproductive liberty but also their right to access the benefits of scientific progress and disproportionately affects people with disabilities, who, without it, cannot become parents. Furthermore, given that PGT is a recommended medical treatment for people who already suffer from infertility, a type of disability, and that it is only recommended in cases where people could suffer from a different kind of serious illness, denying them access to PGT through medical coverage disproportionately affects their right to health.[60]

Class, gender, and preimplantation genetic testing coverage

The IACHR also made an interesting point about gender and class, stating that not all infertile couples have the economic resources to travel to another country where IVF is permitted. Regarding PGT in Argentina, the tests are available; however, the discussion centers on whether they would be covered by health insurance. This fact may not affect wealthy individuals, but it does impact those who cannot afford to pay for PGT, which is a violation of the right not to be discriminated against. In addition, not allowing the coverage of PGT denies access to scientific progress, lacks a gender-sensitive approach and, as a result, state parties are failing to provide access to modern and safe forms of ARTs and other sexual and reproductive goods and services based on nondiscrimination and equality.[61]

The possibility of motherhood is a part of the free development of a woman's personality, and the right to a family is recognized in article 17 of the American Declaration.[62] In *Artavia Murillo v. Costa Rica*, the IACHR considered whether the decision to become a parent is part of the right to private life and includes, in this case, whether to become a mother or father in a genetic or biological sense.[63] In addition, while the role and status of women in society should not be defined solely by their reproductive capacity, femininity is often defined by motherhood.[64] Even when men can suffer discrimination for their infertility, the personal suffering of the infertile woman is exacerbated, and it can lead to stigmatization, especially in Latin American societies, in which motherhood is considered an aim of every woman.[65] This is especially relevant in the PGT case.

Courts in Argentina have supported petitioners' claims to various medical treatments, based on the right to health, even when this could have significant resource implications.[66] The Argentine government raised the public resource argument in a case where plaintiffs asked that the state ensure access to HIV/AIDS treatment in public hospitals. The state claimed that a finding in favor of petitioners would affect the distribution of resources for public health and that allocating resources for HIV treatment was a policy determination not subject to judicial review. The Supreme Court ruled in favor of the petitioners, stating that the court was not illegally affecting public resource distribution, considering that disease care is already a state obligation.[67] The Supreme Court took it upon itself to enforce a legal duty established in the Constitution and national law on HIV/AIDS.[68]

Furthermore, in a case concerning coverage for asthma medications, the justice pointed out that it is practically impossible for regulations to cover all medical situations that, from a constitutional point of view, should be included. There is a time lag between the enactment of such regulations and the emergence of new medical conditions that need to be addressed. The regulatory vacuum resulting from this situation can be interpreted in two ways: either the regulatory omission reflects the reluctance of the authorities to protect the right to health in all cases not expressly covered, or it represents an approximate level of protection that can be extended in certain circumstances by the courts. I consider the second interpretation as the plausible one. Under these principles, the fact that the drug or a treatment in question is not included in the norms is not sufficient in itself to exempt the obligation to assist when, as in this case, treatment is available.[69]

Similarly, according to the IACHR, the obligation to fulfill "is not limited to the constitutional or legislative text, but must extend to all legal provisions of a regulatory nature and be translated into the effective practical application of human rights protection standards."[70] In this case, access to PGT should be made available and considered a right to reproductive health service and autonomy. Since the list of ART treatments were last approved in 2018, and social rights should be progressively realized, it is time that Argentina adds PGT to the list.[71] In addition, in *SC and GP v. Italy*, the Committee on Economic, Social and Cultural Rights, regarding regulation of IVF and possible research on embryos and stem cells, the views of society have evolved significantly, and science and technologies are in a constant state of development. For these reasons, states should regularly update their regulations to

align them with human rights obligations and the evolving needs of society and scientific progress.[72]

Conclusion

The coverage of PGT is essential for safeguarding several fundamental human rights, including reproductive freedom, the right to health, the right to form a family, and access to scientific advancements. The absence of coverage for PGT disproportionately impacts marginalized groups, particularly individuals with disabilities, women, and those from economically disadvantaged backgrounds. This lack of access not only undermines the principles of progressiveness and social justice but also exacerbates existing inequalities in reproductive health care.

Furthermore, the arguments posited by the judiciary regarding the definition of the beginning of life stand in stark contrast to the proportionality test established by the IACHR and the jurisprudence of the Argentine Supreme Court, particularly as highlighted in the landmark case known as *FAL*. These contradictions raise significant concerns about the coherence and fairness of legal interpretations regarding reproductive rights.

This situation necessitates an urgent and thorough reassessment of current regulations governing reproductive health to foster health equity and recognize the inherent rights of all individuals to make informed choices regarding reproduction. The Ministry of Health, endowed with the authority to approve new ART treatments, is in a pivotal position to drive this change. By formally incorporating PGT into Argentina's health care coverage, the country stands to benefit from advances in genetic science while simultaneously ensuring that reproductive health rights are upheld in accordance with global best practices. Regarding cost, Argentina could follow the HFEA's regulations, which authorize the use of PGT-M and PGT-SR in only five exclusive circumstances. This alignment would not only promote social justice but also enhance reproductive health outcomes for all, paving the way for a more inclusive and equitable health system.

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6. *Benghalensis Aseociation y and otros c/v. Ministry of Health – National State Ministerio de Salud y Action Social-Estado national s/amparo ley law 16.986 (A. 186. XXXIV)*, Supreme Court of Justice of Argentina, judgment of June 1, 2000; *"O.,J.J. c/ OSDE s/amparo de salud"*, Civil and Commercial Court, Chamber III, Court 8, Clerk's Office 15, 5809/2021/A2, judgment of March 9, 2023; Incidente Nº 1 - Actor: Tolaba, Luis Normando Demandado: Swiss Medical s/inc Apelacion, Federal Court of Salta, Chamber II, 9699/2023, judgment of January 12, 2024.
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14. Argentina, Decree 956/2013 (2013), https://servicios.infoleg.gob.ar/infolegInternet/anexos/215000-219999/217628/norma.htm.

15. Argentina, Law 26.862 - Medically Assisted Reproduction (2013), https://www.argentina.gob.ar/, arts. 1 and 2.

16. Decree 956/2013 (see note 15), arts. 2, 8.

17. Ibid, art. 8.

18. Ibid.

19. Ibid, art. 2.

20. Argentina, Código Civil y Comercial de La Nación (see note 5).

21. *L.E.H. y Otros C/O.S.E.P. s/amparo*, *F.R.V. y otro c/ OSDE s/amparo* and *G.L.M. y otro c/ OSDE s/ leyes especiales* (see note 4).

22. O. A. Cabrera and J. Carballo, "Tobacco Control in Latin America," in *The Global Tobacco Epidemic and the Law* (Edward Elgar Publishing, 2014).

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25. Argentina has no formal legislation indicating what to do with supernumerary embryos. The rate of abandoned frozen embryos has increased as a consequence of the greater access to reproductive treatments by a more significant number of people. N. S. Lima et al., "Abandoned Frozen Embryos in Argentina: A Committee Opinion," *JBRA Assisted Reproduction* 23 (2019).

26. Similarly, it was decided in the *F.R.V. y otro c/OSDE s/ amparo*, Federal Appeals Court of Mar del Plata, 2018.

27. *G.L.M. y otro c/ OSDE s/ leyes especiales* (see note 4).

28. Ibid.

29. Argentina, Law of Access to Voluntary Termination of Pregnancy (2020), https://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/346231/norma.htm.

30. Constitution of Argentina (see note 1), art. 75(22). Such international agreements include the Universal Declaration of Human Rights; the American Declaration of the Rights and Duties of Man; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women); the Convention on the Rights of the Child; and the American Convention on Human Rights.

31. Ibid.

32. Appeal filed by Osvaldo Iuspa (official defense counsel) in the case of Giroldi, Horacio David and another on cassation appeal - case No. 32/93, 1995, considering 11, confr. 75 of the National Constitution, 62 and 64 American Convention and article 2 of Law 23054.

33. American Convention on Human Rights (1969).

34. *Mendoza y otros vs. Argentina*, Preliminary Objections, Merits, and Remedies InterAmerican Court of Human Rights, No. Serie C No. 260, judgment of May 14, 2013, p. 323.

35. *Business and Human Rights Report: Inter-American Standards* (REDESCA-InterAmerican Comission of Human Rights, 2019), para. 104.

36. Y. Donders, "The Right to Enjoy the Benefits of Scientific Progress: In Search of State Obligations in Relation to Health," Medicine, Health Care and Philosophy 14 (2011).

37. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, InterAmerican Court of Human Rights, judgment of November 28, 2012.

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39. S. Serrano Guzmán, "The Transformative Impact of the Artavia Murillo Case on In Vitro Fertilization," in *The Impact of the Inter-American Human Rights System: Transformations on the Ground* (Oxford University Press, 2024).

40. Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020).

41. Ibid.

42. Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000).

43. Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016).

44. Serrano Guzmán (see note 39).

45. General Comment No. 25 (see note 40), para. 3.

46. The right to health is recognized in several human rights instruments, such as the Universal Declaration of Human Rights (art. 25), the American Declaration of the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights (art. 12), and the Con-

vention on the Elimination of All Forms of Discrimination Against Women) (articles 11(1)(f) and 12).

47. General Comment No. 14 (see note 41), para. 8.

48. Código Civil y Comercial de la Nación, art. 19 (see note 5).

49. *F., A.L. s/ medida autosatisfactiva*, Supreme Court of Justice of Argentina 2012, https://www.csjn.gov.ar/archivo-cij/nota-8754-La-Corte-Suprema-preciso-el-alcance-del-aborto-no-punible-y-dijo-que-estos-casos-no-deben-ser-judicializados.html.

50. Supreme Court of Justice of Argentina (see note 49).

51. A. F. Noguera, "Argentina's Path to Legalizing Abortion: A Comparative Analysis of Ireland, the United States, and Argentina," *Southwestern Journal of International Law* 25/2 (2019).

52. Constitution of Argentina (see note 1).

53. Serrano Guzmán (see note 39).

54. Argentina, Criminal Code (2020) https://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/norma.htm.

55. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica* (see note 37).

56. American Convention on Human Rights (see note 33).

57. *Furlan and Family v. Argentina*, Inter-American Court of Human Rights, judgment of March 19, 2018, https://defensoria.org.ar/normativas-cdh/caso-furlan-y-familiares-c-argentina/.

58. *Ximenes Lopes v. Brasil*, Inter-American Court of Human Rights, judgment of July 4, 2006, https://repositorio.mpd.gov.ar/jspui/handle/123456789/2167; *Furlan and Family v. Argentina* (see note 57).

59. *Furlan and Family v. Argentina* (see note 57).

60. Human Fertilisation and Embryology Authority (see note 11).

61. General Comment No. 25 (see note 40).

62. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica* (see note 37).

63. Ibid.

64. Ibid., para. 298; and oral expert testimony of Dr. Paola Bergallo in the case *Artavia Murillo et al. v. Costa Rica* before the Inter-American Court of Human Rights (2012): https://vimeopro.com/corteidh/caso-artavia-murillo-y-otros-fecundacion-in-vitro-vs-costa-rica/video/48973738.

65. Ibid.

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67. *Benghalensis Aseociation y and otros c/v. Ministry of Health – National State Ministerio de Salud y Action Social-Estado national s/amparo ley law 16.986* (see note 6).

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69. Incidente Nº 1 - Actor: Tolaba, Luis Normando Demandado: Swiss Medical s/inc Apelacion (see note 6).

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