

## Austria and Oviedo – Transformation without Ratification

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The Oviedo Convention was drafted in a time of economic prosperity. For this reason some parts of the Austrian population had strong concerns against progress in economy and in science, especially in biology and in medicine. They argued, that the draft international instrument was intended to simplify biomedical research on vulnerable people, for instance children and mentally handicapped people. In some public discussions no difference was made between donation of regenerative tissue and donation of whole organs by persons not able to consent on their own behalf.

At the level of the Council of Europe's Committee of Ministers Austria voted in favour of the adoption of the Oviedo Convention, but with a declaration stressing the importance of the Convention but also the lack of protection in relation to minors or mentally handicapped persons. Also hope was expressed to gain a higher level of protection in the envisaged Additional Protocols. But finally there was no higher level of protection foreseen by the Protocols compared with the Convention.

At the beginning of the 21<sup>st</sup> century in Austria the law of the child was amended. Minors got the legal capacity to consent to medical interventions on their own behalf if they have the necessary capacity of discernment. If the minor is older than 14 years the capacity of discernment is presumed. Only for interventions having regularly strong or permanent negative effects to the physic or psychic integrity parental consent is – additionally – needed<sup>1</sup>.

In 2004 there was an amendment on the Austrian Act on medicinal products. The provisions of the Additional Protocol on Biomedical Research regarding non-beneficial research in minors and research in emergency situations were transformed into the Austrian Act.<sup>2</sup>

In 2005 – on the occasion of the transformation of the European Directive on Biotechnology<sup>3</sup> – the Economic Chamber of Austrian Parliaments House of Representatives<sup>4</sup> proposed an amendment to the Civil Code<sup>5</sup>. The guardian of an adult should not be able to consent to a research with negative effects to the physic or psychic integrity unless the research is beneficiary to the person concerned.<sup>6</sup>

In 2008 the objections in the Austrian population against Council of Europe's international Instruments in the field of bioethics seemed to be diminished. Accession to the Convention of Oviedo is now a task mentioned in the 2008-2013 Working Program of the Austrian Federal Government.

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<sup>1</sup> § 146c Civil Code.

<sup>2</sup> §§ 42 (2), 43a Act on Medical Products (Arzneimittelgesetz)

<sup>3</sup> Directive 98/44/EC, OJ L 213

<sup>4</sup> „Wirtschaftsausschuss des Nationalrats“

<sup>5</sup> Allgemeines Bürgerliches Gesetzbuch (ABGB), JGS Nr. 946/1811

<sup>6</sup> § 284 Civil Code