



F3 Can Parents Inherit the Sperm of the Deceased Son? Presentation of an Italian Case and Review of the European Legislation in the Field of Postmortem Fecundation

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After attending this presentation, attendees will better understand European legislation in the field of postmortem fertilization and how the legal framework regarding the use of sperm after a donor's death is still controversial.

This presentation will impact the forensic science community by providing the current legal status of sperm and its right to be inherited by relatives in the case of a donor's death.

Introduction: A recent Italian case provided the opportunity for many considerations regarding postmortem fertilization and the use of sperm after the donor's death. Numerous questions should be answered; in particular, the legal concept of sperm, if it can be inherited, and who has the right to determine the semen's destination. May the donor, by written consent, relatives of the deceased, and/or other institutions, such as the sperm bank, be involved?

The Case: Prior to undergoing chemotherapy, a 20-year-old man affected by a lymphoma decided to preserve his gametes for future fatherhood in the sperm bank of a Roman hospital. Unfortunately, the man died shortly after and his parents asked for the return of his seminal fluid from the sperm bank where it was stored. The request was denied because the hospital stated that only the interested party may have his gametes returned and the right to restitution is not transmissible to heirs because the ownership of gametes is a personal non-transferable right. The parents therefore decided to pursue litigation. In January of 2012, the Ordinance of the Court of Rome decreed that the only limitation, which may arise in the recognition of the applicant's right to succeed their son in collecting the sample, is that the parents cannot use the seminal fluid for procreative purposes. This limit is not an impediment as long as it is possible, before delivery, to make the semen unsuitable for fertilization. The Court then gave an injunction ordering the hospital to prolong the cryopreservation. The final judgment of the Court of Rome on June 2013 did not agree with the motivations reported in the previous ordinance, stating that the right of restitution has to be independent from a possible illegal use, which will be banned only if it will occur. Finally, the Court concluded affirming that the most important right, which has to be protected, is the interest of the parents to have a relic of their son and therefore it ordered the restitution of the seminal fluid to the family.

Discussion and Conclusions: This case is an example of how, in Italy, the use of biological material intended for the use of procreation is a problem which is still far from being solved. Even in countries where postmortem fertilization is strictly prohibited, such as Italy, the legislative vacuum often leads to different, very questionable interpretations that sometimes can be in conflict with current legislation. The use of sperm after a donor's death remains a very controversial issue; among European Union states, only a few countries allow this practice for purposes of procreation, with different degrees of freedom (Belgium, Greece, Spain, and United Kingdom), whereas in the majority of the remaining European Union members, this practice is either strictly prohibited or, alternatively, there is no specific regulation in this field.

Postmortem Fecundation, Donor's Death, European Legislation