

# Egg Donation in Germany: The Legal System's Approach to Women's Reproductive Autonomy

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## Abstract

Currently, egg donation is banned in Germany and punishable by law. This criminal ban infringes on the autonomy of egg donors and egg recipients, particularly affecting women or other people who were assigned female at birth in their reproductive freedoms. Furthermore, this results in the regulation and control of female reproduction to a greater extent than male reproduction. In doing so, it manifests an outdated view of women and family that no longer reflects reality. When a woman offers up her body to fulfill someone else's desire for children, it raises fundamental questions about parenthood, child welfare, exploitation, and self-determination. While the commodification and abuse of women is criticized, there are also calls to respect women's freedom to decide about their own bodies. A feminist and intersectional discussion is necessary to examine all aspects from different perspectives. The focus should be on the importance of reproductive self-determination, which includes the right to freely decide whether and under what conditions to have children and the right to freely decide to support others in their desire to have children. However, this self-determination cannot be considered separately from social and economic inequalities, which must also be addressed. The article will focus on Germany and German legislation. It will conclude that criminal law is the ultima ratio, that the protection of the affected rights of the egg donor or the child does not require a criminal ban and that other regulations are conceivable and sufficient to prevent exploitation and abuse; there is no reason to deny a woman autonomy over her own body. The current regulations reduce the affected women to a state of vulnerability.

## Keywords

autonomy; best interests of the child; criminal ban; egg donation; German legalisation; infertility; medically assisted reproduction; perception of women; reproductive failure; split motherhood

## 1. Introduction

In Germany, about every tenth couple between 25 and 59 years is involuntary childless (German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth [BMFSFJ], 2023). Nevertheless, involuntary childlessness has long been a social and political taboo topic. This article deals with egg donation, whereby a person's unfertilized egg is transferred to another person, who carries the egg after fertilization. This primarily and significantly concerns women, although other individuals with a uterus and eggs are also affected.

The text begins by outlining the relevant statutory regulations in Germany, followed by an exploration of the underlying legislative rationale. It then compares this approach with other legal systems and analyzes the constitutional and international law context, showing that, in terms of comparative practices and fundamental rights frameworks, the strict ban on egg donation is not only unnecessary for the protection of individuals, but also conflicts with key principles such as proportionality and practical concordance—principles that ensure a fair balance between different rights and interests. Finally, a proposal for a reform is presented.

Medically assisted reproduction raises fundamental questions about parenthood, child welfare, social inequality, and self-determination, and is highly controversial both legally and ethically. Furthermore, the possibility of the selection of egg and sperm donors based on external traits and health factors (Heller & Salzman, 2021) engenders ethical concerns about the decisions being made (Perler, 2022, pp. 42–46). These challenges are part of a broader issue within a highly commercialized and globalized field of reproductive medicine; they are not limited to egg donation alone. Specifically, regarding egg donation, the argument that it promotes the objectification and abuse of women must be weighed against the counterargument that the autonomy of women over their own bodies must be respected as an aspect of reproductive freedom, and that framing women solely as vulnerable contributes to their oppression (Bujard & Thorn, 2018; Heyder, 2023, pp. 2–4, 204; Kieslinger & Schlögl-Flierl, 2023).

In Europe, egg donation is regulated in various ways across different countries. For instance, it is largely permitted in Spain and Belgium. It is completely banned, however, in Germany, Switzerland, Bosnia and Herzegovina, and Turkey.

Voluntary egg donation can take three forms: First, egg donation can facilitate another person or couple starting a family. Aside from a few cases where eggs are donated to friends or family members, questions arise regarding compensation and protection against potential exploitation. However, egg donation can also be part of a shared family-building project, for example, in the case of a lesbian couple (so-called reciprocal egg donation). In such a case, the person who donates her egg to her partner, who will carry the child, would like to share parental responsibility after the birth of the child. This option allows both partners to be biological parents of the child. Exploitation is unlikely. A third possibility involves a person who had her eggs cryopreserved for a future family-building project (so-called social freezing), but no longer needs them and wishes to make them available to others seeking to have children (so-called egg sharing). The reasons for this decision are multifaceted and may include the completion of family planning or a desire to avoid continued storage fees. In this case, egg donation poses no medical risks to the donor (anymore), and exploitation is not a concern. Instead, it can prevent the unnecessary disposal of unused eggs (Sanders et al., 2024, p. 266).

Reproductive justice has three primary values: (a) the right not to have a child; (b) the right to have a child; and (c) the right to parent children in safe and healthy environments (Bredler & Chiofalo, 2023, pp. 6–8; Lembke, 2024, p. 14; Ross & Solinger, 2017, p. 65). In addition, reproductive justice demands sexual autonomy and gender freedom for every human being (Ross & Solinger, 2017, p. 65). The problem lies not in defining reproductive justice, but in achieving it: The legal consideration of egg donation requires a nuanced and intersectional discussion (Ross & Solinger, 2017, pp. 12–17, 54–57, 73–78, 169), especially given the complex ethical dilemmas involved. Unsurprisingly, reproductive medicine has been a source of ongoing debate for many years. On one hand, there is a strong emphasis on a woman's right to make decisions regarding her body, which includes the possibility of donating eggs—whether it is done without remuneration, for reimbursement, or in exchange for financial compensation. As a form of reproductive medical assistance, comparable to sperm donation, which is a widely accepted option for infertile men, egg donation can enable women who cannot conceive with their own eggs to pursue parenthood. On the other hand, there are valid concerns about the commercialization of the female body and the exploitation of women's reproductive capacities.

## 2. German Legislation

The donation of eggs is prohibited in Germany and is punishable by up to three years of imprisonment or a fine: Article 1(1) no. 1 of the Embryo Protection Act (ESchG) forbids the transfer of an unfertilized egg to another woman. Article 1(1) no. 2 of the ESchG criminalizes the use of artificial insemination for any purpose other than achieving a pregnancy of the woman from whom the fertilized egg originates. However, neither the egg donor nor the recipient is criminally liable; it is the medical personnel involved who can be prosecuted. Even the preparatory consultation in a German fertility center can constitute aiding and abetting a criminal act abroad. The persons donating or receiving the eggs are excluded from liability under Article 1(3) of the ESchG.

According to the explanatory memorandum of the law, the German legislator prohibited egg donation in the Embryo Protection Act in order to avoid “split motherhood”—the child's genetic mother and birth mother being different people—which was considered a violation of the child's dignity (German Bundestag, 1989, p. 6). According to the legislative rationale, the provision also aims to prevent surrogacy (German Bundestag, 1996, pp. 7–9; Hillgruber, 2020, p. 14). The primary purpose of Article 1(1) no. 1 and 2 of the ESchG, introduced in 1990, was to avoid the “psychological harm and welfare risks associated with split motherhood” (German Bundestag, 1989, pp. 7–9). The interests of the donor and recipient were only considered insofar as their actions might impact the child's well-being. It was feared that the donor could seek involvement in the child's life in cases of her own infertility, potentially causing significant mental conflicts for the child (German Bundestag, 1989, p. 7). The concern was that a child whose existence results from the involvement of three distinct parental figures (genetic, gestational, social) would face significant challenges in forming their own identity. The legislator had no scientific evidence to support this thesis; indeed, it is referred to in the legislative rationale itself merely as an “assumption” (German Bundestag, 1989, p. 7). More recent studies on children conceived through egg donation and their parents completely refute this concern (German Federal Ministry of Health [BMG], 2024, p. 446; Leopoldina & Union of the German Academies of Sciences and Humanities, 2019, p. 70; Thorn, 2022, p. 135).

### 3. The German Legislation's Underlying Image of Women

The assumption that a child's identity formation is hindered when conceived using an egg from someone other than the gestational mother is not supported by empirical evidence. The existing psychological and social research does not support the legislator's assumption about a significant negative impact of "split motherhood" on child welfare. Studies on children conceived through egg donation have shown no direct harm to their well-being, and the first longitudinal study initiated in the 1990s (Golombok et al., 2023, p. 1061) found no negative impact on child development due to the lack of a genetic connection between the recipient (the social and legal mother) and the child (Golombok et al., 2023, p. 1069; Ilioi et al., 2017, p. 319; Kindler et al., 2017, p. 932; Söderström-Anttila et al., 2001, p. 195). The findings suggest that the socio-emotional situation of the children is largely unremarkable, as are the parent-child relationship and the psychological health of the parents. The children's psychological well-being and family relationships also appear to be unaffected. Additionally, recent psychological and social research has shown that early, informed, and transparent communication about conception using assisted reproductive technologies is crucial for family dynamics and child development (Kindler et al., 2017, pp. 932–934; Thorn, 2013, p. 22). Open communication about the method of conception can prevent psychological issues and even improve bonding between children and parents (Casey et al., 2013, p. 858).

Although the existing studies involve only a few cohorts of limited size and further research is needed, the available findings clearly indicate that, from a psychosocial perspective, egg donation is largely unproblematic for a child's well-being. However, more research is needed on the long-term development of individuals conceived via egg donation, especially during adolescence and adulthood.

The legislator's assumption that the egg donor will later want to take on a mother role for the child born from her egg is also scientifically unsubstantiated. On the contrary, studies show that donors who help strangers fulfill their desire to have children do not regret this later (Jadva et al., 2015, p. 373). One of the largest quantitative surveys of egg donors on medical and psychological experiences and satisfaction, conducted on average 11.2 years after donation, found that 99% of respondents were satisfied with their decision to donate and 95% would recommend egg donation to others. Only four individuals regretted donating, although 7% reported wanting more support before the donation and 14% after the donation (BMG, 2024, p. 367; Söderström-Anttila et al., 2016, pp. 260–276). The insinuation in the explanatory memorandum constructs an image of women whose sole purpose in life is motherhood and the formation of a family. In addition, it supports a biological-naturalistic view (S. Klein, 2023, p. 179) of family and parenthood (Ross & Solinger, 2017, p. 184), which has already been challenged as one-sided and outdated in related disciplines (Pryor, 2008, pp. 345–368; Walper, 2018, p. 146). Finally, it is unclear why, according to the legislator, "split motherhood" should pose a problem for the child and the genetic mother, while "split fatherhood" for the child and the genetic father in the case of sperm donation is not attributed the same significance (von Scheliha, 2025, p. 65; Wapler, 2023, Art. 1 I, para. 137).

The German regulation of assisted reproductive technology aligns with an overarching trend in which the law, in its regulation of gender and gender roles, predominantly draws upon traditional conceptions of masculinity and femininity. In doing so, legal categorizations and, by extension, legal frameworks tend to reproduce structures of hierarchy and power rather than dismantling them (Holzleithner, 2014, pp. 104–108; Rössler, 2018, pp. 109–114; Valentiner, 2022, p. 1095; see also German Federal

Constitutional Court [BVerfG], 1992a). The problem of legislation reinforcing traditional gender roles by defining autonomy in a way that ignores social dependencies and gender inequalities arises from three key points: Autonomy is often conceptualized as “negative freedom,” allowing individuals to act independently without considering their relationships or dependencies, a view based on the ideal of an independent adult male. This narrow concept of autonomy marginalizes women’s dependencies and caregiving responsibilities, perpetuating a historical patriarchal continuity, assuming women’s subordination. This aforementioned concept is closely related to those of freedom and equality (Baer & Sacksofsky, 2018, p. 17). A new conceptualization of freedom, autonomy, and equality is needed—one that includes relational, material, and intersectional dimensions and promotes an emancipatory legal framework. If the law is concerned with acknowledging the equal freedom of all and establishing the appropriate conditions for its realization, it requires sensitivity to the actual conditions and circumstances. It is only when adequate life opportunities exist and are perceptible that autonomy can be realized effectively (Friedman, 2000, pp. 217–220; Rössler, 2002, p. 144; Ross & Solinger, 2017, pp. 16, 54). A fundamental responsibility of the law is to assess constellations and circumstances to ascertain the existence of a framework for the development of individual potential and the exercise of personal freedom. In this process, both structural and individual challenges arising from stereotypical demands must be taken seriously (Holzleithner, 2015, p. 480). If the objective of legal regulation is to guarantee freedom and self-determination, a gender-theory-informed analysis and a critical examination of affected interests are necessary in order to uncover and overcome the implicit notions of gender and gender roles (Friedman, 2000, p. 219, 2003, pp. 14–15, 19; Rössler, 2002, pp. 144, 146–149).

#### 4. Comparison of Legal Systems

The legal situation regarding egg donation in Europe is multifaceted (BMG, 2024, pp. 349–350, 388–397; Deutscher Juristinnenbund [djb], 2024, p. 10). The most recent available data on egg donation in Europe comes from the European Society of Human Reproduction and Embryology’s (ESHRE) 25th annual report, which analyzed treatment cycles for the year 2021 (Smeenk et al., 2024). According to this report, a total of 79,510 egg donation cycles were carried out in 37 European countries. This represents an increase compared to previous years and reflects the growing importance and widespread use of this method in assisted reproduction across Europe.

While egg donation holds promise for women and others seeking to have children, it often occurs within a context marked by social and economic inequality. Typically, wealthier, older individuals benefit from the eggs of younger women, many of whom are in financially unstable situations. Reproductive medicine is increasingly operating within a global market (Herb & Wenner, 2023; Perler, 2022, pp. 37–39), with fertility clinics marketing their services not only online but also at fertility centers in countries where egg donations are prohibited. People with a desire to have children in these countries therefore travel abroad to undergo fertility treatments or to gain easier access to such procedures. This phenomenon, which is also derogatorily referred to as “reproductive tourism,” is highly problematic because it creates legal and ethical gray areas and exacerbates inequalities due to the differences in legal systems. However, the primary focus of this section is not to explore these issues in depth; rather, the aim is to examine foreign legal frameworks as sources of inspiration for the development of a legal regulation in Germany. The overarching objective of this transnational examination is to eliminate the aforementioned gray areas and inequalities that emerge from the interplay of divergent national regulations and the realities of free movement and increasing

cross-border mobility. Comparative law is an essential tool for developing one's own reform ideas, as it helps understand different legal approaches and their impacts. The comparison of national regulation with other systems can lead to the discovery of innovative solutions and valuable insights from the mistakes and challenges faced by other countries. This not only enhances the understanding of the domestic legal system but also reveals what changes are possible within domestic legislation and what potential societal impacts they may have. Such comparisons allow for informed decision-making and help identify potential risks as well as opportunities before making profound changes to the law.

In many countries, including nearly all EU member states, egg donation is legal under certain conditions—see the map of accessibility of infertility treatment across Europe provided by the ESHRE and Fertility Europe (2022). In all of these countries, comprehensive medical counseling is provided to all parties involved regarding the risks, success rates, and legal conditions of egg donation. The practice is banned in only a few places, such as Switzerland and Germany. However, the Swiss Federal Council decided on January 29, 2025, to revise the Reproductive Medicine Law and allow egg donation (Federal Council of Switzerland, 2025).

In some countries, such as Ukraine (Ministry of Health of Ukraine, 1992, 2002, 2013), Russia (kinderwunsch-im-ausland.de, n.d.), and Greece (see the Greek Civil Code and Nómoos 3305/2005: Government of Greece, 1940, 2005, respectively), only heterosexual couples are allowed to access egg donation services, while in others, such as Denmark, single women or even queer couples may also be eligible (Danish Ministry of the Interior and Health, 2024). In Slovenia (Doljak, 2022) and Greece, a medical indication, such as infertility, is a requirement for access to egg donation. In Norway, the child must have a genetic connection to at least one parent; simultaneous egg and sperm donation or the donation of fertilized eggs is not permitted (Government of Norway, 2003).

In most countries, the age limit for egg donors is 35 years (Denmark, Norway, UK, Greece, Russia; see Government of Greece, 2005; Government of Norway, 2003; Government UK, 1990, 2008; Human Fertilisation and Embryology Authority, 2023; Ministry of the Interior and Health, 2024; kinderwunsch-im-ausland.de, n.d.) or 34 years (Czech Republic), while in Austria, it is capped at 30 (Fortpflanzungsmedizingesetz, 2002), and in France at 37 (Government of France, 1953). When it comes to the recipient, some countries impose no age limit at all (UK, Russia, Spain; see, e.g., Government of Spain, 2006, 2014), while others set varying thresholds. In Denmark and Austria, the limit is 45, in Norway, it is 46, in the Czech Republic, it is 48, and in Greece, it is as high as 49.

In Spain, the Czech Republic, Russia, Ukraine, France, and Slovenia, egg donors are required to remain anonymous, with the disclosure of their identity carrying legal consequences in Spain and Greece. However, in countries like the UK and Austria, the donor's information must be recorded, and the child conceived through donation is entitled to access information about the donor once they reach a certain age.

Most countries only allow altruistic egg donation, where compensation is provided to cover expenses incurred during the donation process. In Denmark, donors can receive up to 4,400 DKK (approximately 589 EUR), with the potential for additional reimbursement in cases of extraordinary transport costs or lost income. In the UK, the maximum compensation for egg donors is set at £985 (approximately 820 EUR) per cycle, and higher costs can only be reimbursed if they are deemed reasonable, exclude lost income, and are directly related to the donation process within the UK. In Greece, compensation is determined on a case-by-case basis by the

relevant authorities. In the Czech Republic, Russia, and Ukraine, commercial egg donation, including the sale of eggs, is permitted. However, in Austria, any compensation for egg donation is strictly prohibited.

## 5. Rights and Legal Interests at Stake

The criticism presented against the explanatory memorandum (see Section 3) does not, in itself, automatically necessitate a repeal of the ban or the associated criminal penalties. Egg donation affects a wide range of rights and protected interests, all of which must be carefully considered when assessing whether and to what extent egg donation should be permitted.

### 5.1. The Egg Recipient

The right to reproductive self-determination is protected by the general right to personality under Art. 2(1) in conjunction with Article 1(1) of the German Basic Law (GG). This right ensures individuals can make decisions about having children without discrimination, coercion, or violence. Reproductive rights (Bredler & Chiofalo, 2023, pp. 5–8; International Conference on Population and Development [ICPD], 1994, para. 7.3) were formally recognized as human rights (European Parliament, 2021, paras. C, F, K; Wapler, 2018, pp. 186–187) during the UN International Conference on Population and Development in Cairo in 1994. They include the freedom to choose whether and how to have children, along with access to necessary information, resources, and services. Consequently, individuals are afforded the freedom to decide not only whether to have children, but also the conditions under which reproduction occurs and how the desire for parenthood is pursued (Gassner et al., 2013, pp. 31–33; S. Klein, 2023, pp. 61, 396; Sanders, 2018, pp. 321–324; Wapler, 2018, pp. 197–198). This right also encompasses the use of medically assisted reproduction with the help of willing third parties (Krönke & Lorenz, 2024, para. 313; Sanders, 2018, pp. 321–324), so the use of external, same-sex reproductive potential is protected, provided that third-party rights are not violated (M. Klein, 2019, pp. 76–84).

Therefore, the use of an egg voluntarily given by another person to fulfill one's own desire for children falls within the scope of the protection of reproductive self-determination. However, this fundamental right does not give rise to a subjective legal claim against the egg donor (Dorneck, 2018, p. 71; Hieb, 2005, p. 35). Nor does it entail a state obligation to provide access to donor eggs as part of a social benefits framework (M. Klein, 2019, p. 71). However, the fundamental right to reproductive self-determination is infringed upon if state measures prevent access to medically available methods of assisted reproduction (Brosius-Gersdorf, 2021, para. 450; BVerfG, 1999, p. 3401).

The right to bodily integrity under Article 2(2)(1) GG is also relevant for the egg recipient, especially concerning the medical procedure involved. This right obliges the state to protect individuals from harm and prevent infringements of their bodily integrity (BVerfG, 1981, p. 78, 2008b, p. 356). However, once the egg recipient has been properly informed (see Section 6) about the medical risks associated with egg donation, their decision to undergo the procedure must be respected.

Finally, the principle of equality under Article 3 of the GG should be considered. While sperm donation is currently legal in Germany, egg donation remains prohibited under the ESchG. There is no justifiable reason for the differential treatment of women and men in the context of gamete donation (Coester-Waltjen, 2014,

pp. 193–195; Dethloff, 2018, p. 231; Kersten, 2018, p. 1253). The argument that the bond between mother and child is inherently different from that between father and child is not universally applicable (Leopoldina & Union of the German Academies of Sciences and Humanities, 2019, p. 41). A simple equalization of egg and sperm donation is inappropriate, as egg donation requires a significantly more intensive medical intervention. However, the differing medical risks alone do not justify unequal treatment (Beier et al., 2018, p. 156; djb, 2024, pp. 7, 18). Instead, they can be addressed through legal safeguards (see Section 6). A complete prohibition is not necessary (Dorneck, 2018, p. 138; Heun, 2008, p. 59).

## 5.2. The Egg Donor

For the egg donor, the criminal ban on egg donation constitutes an infringement of their right to reproductive self-determination (Article 2(1) in conjunction with Article 1(1) of the GG) only when the donation is motivated by the desire to take on parental responsibility. This is not the case if the egg donation is meant to support someone else's family planning (M. Klein, 2019, pp. 69–70). In this case, however, the ban interferes with the general freedom of action of the egg donor as stipulated in Article 2(1) of the GG. If the donation is part of a shared family-building project (e.g., reciprocal egg donation within a homosexual couple), then both the desire for children and the assumption of parental responsibility apply to both parties. In this case, the ban on egg donation constitutes an interference with the egg donor's right to reproductive self-determination.

Central to the debate is the protection of the egg donor from the risks of exploitation, discrimination, abuse, and physical as well as psychological harm (Wiesemann, 2023). For the egg donor, the primary medical risks arise from the procedure itself, which is typically carried out without pay. The state has an obligation to protect the physical integrity of the egg donor. The legislator has considerable discretion in determining how to provide this protection (BVerfG, 1977, pp. 164–165), but criminal law should only be considered as a last resort in cases where there is a clear and specific threat to the egg donor's health (djb, 2024, p. 15). Individuals are generally free to consent to various medical procedures or engage in lifestyle choices that could pose risks to their health, and the state cannot prohibit such self-harming behaviour (Di Fabio, 2021, para. 82–85). However, legal intervention may be justified in cases where coercion or undue pressure compel someone to donate eggs. A criminal ban would be appropriate only in cases of exploitation or abuse, such as in scenarios where an egg donor is forced to undergo the procedure. It is important to note that there are already existing provisions in German criminal law addressing (serious) bodily harm, coercion, unlawful organ removal, and human trafficking, as laid down in paras. 226, 232, and 240 of the German Criminal Code (*Strafgesetzbuch*), and paras. 17 and 18 of the Transplantation Act (*Transplantationsgesetz*). These could be further refined to address exploitative egg donation more specifically (djb, 2024, pp. 15, 19–21). In cases where exploitation is less clear, the state could address the remaining potential for exploitation if egg donation is driven by financial hardship or compulsion by adopting less intrusive measures. For instance, regulations ensuring adequate information, informed consent (Bals-Pratsch & du Bois, 2022, pp. 331–333), and protection against undue influence could be implemented, prioritizing transparency and procedural safeguards.

The issue of human dignity (Article 1(1) of the GG) is also frequently discussed in relation to egg donors in constitutional and ethical debates, as there is a concern that donors could be objectified and stripped of their subjectivity. However, there is no evidence of any harm that would warrant the severe measure of a criminal prohibition as a response (Gassner et al., 2013, p. 36; Rosenau, 2022, para. 85). Human dignity is violated when a person is reduced to an object and deprived of their autonomy (BVerfG, 1992b, p. 228; Herdegen,



2023, para. 36). In its 2020 ruling on assisted suicide, the German Federal Constitutional Court emphasized that human dignity is fundamentally tied to respect for individual self-determination (BVerfG, 2020, p. 261). In this sense, the decision of a person to donate their eggs should also be respected, as it falls within their autonomy. It would be unjust to universally deny egg donors the ability to make a self-determined decision. The state's responsibility should not extend to paternalistic overregulation or the unnecessary protection of individuals from their own decisions (Kersten, 2018, p. 1249).

### 5.3. The Child

With regard to the child, the central concern is the right to know one's origins, which is part of the broader right to personal identity (Article 2(1) in conjunction with Article 1(1) of GG), as recognized by the German Federal Constitutional Court (BVerfG, 1989, p. 269, 2016, pp. 186, 202–204). Although there is no automatic entitlement to this information from third parties or the state, there is a constitutional duty to prevent the withholding of available ancestry information (BVerfG, 1994, p. 271, 1997, p. 63, 2016, p. 204).

Furthermore, Article 6(2) of the GG grants parents the right and duty to care for and raise their children. This duty is closely linked to the child's right to care and protection within a family (Article 6(2) in conjunction with Article 2(1) of the GG), which is crucial for the child's development (Britz, 2014, p. 1070; BVerfG, 2008a, p. 93). The state is tasked with ensuring that parental responsibilities are fulfilled in a way that supports the child's well-being (BVerfG, 2013, p. 74). In the case of egg donation, this responsibility extends to recognizing the legal relationship between the intended parents and the child, which is necessary to safeguard the child's constitutional rights (Sanders, 2018, p. 343).

## 6. Legal Reform Proposals

Invoking the child's best interests as a justification for the prohibition of egg donation is no longer convincing from both a constitutional and international legal perspective. While protecting the best interests of the child is a legitimate aim (BVerfG, 1982, p. 382, 1986, p. 137, 1990, p. 140; Wapler, 2015, p. 100; see also United Nations, 1989, Article 3(1)), the criminalization of egg donation is not an effective way to achieve this goal.

It is evident that the statutory regulations, based on penal sanctions and nullity provisions, do not adequately reflect the complexity of the constitutional foundations previously outlined. These regulations are concerned nearly exclusively with hypothetical and unscientific risks for the best interests of the child, as discussed in Section 3. The multifaceted positions and interests of the donor and the recipient are completely disregarded. In light of findings from recent empirical studies (Golombok et al., 2023, p. 1069; Ilioi et al., 2017, p. 319), however, this one-sided emphasis on the presumed best interests of the child no longer appears justified (BMG, 2024, pp. 368–370). The focus should move away from categorical bans on egg donation and toward ensuring that the conditions under which such decisions are made are ethically and legally sound. This would include ensuring proper counseling about the health risks of egg donation and implementing measures to prevent exploitative practices. Consequently, maintaining a criminal ban on egg donation is not justified on the grounds of protecting the rights or well-being of the child, the egg donor, or the recipient (Thorn, 2022, p. 135).

The obligation to protect the physical integrity and mental health of the egg donor must serve as the foundation of an alternative regulatory model, as the medical procedure is associated with risks and there is

an undeniable potential peril of exploitation. The medical risks are generally not life-threatening, and any potential long-term effects are rare. Proper regulations, including informed consent, insurance requirements, and limits on the number of egg donations, could mitigate these risks (Dethloff, 2018, pp. 231–232). If an egg donor makes an informed, voluntary decision after being properly counselled, their decision should be respected without the need for further paternalistic intervention by the law (Hieb, 2005, pp. 192, 195; Kersten, 2018, p. 1253; Thorn, 2022, p. 136; Wellenhofer, 2024, para. 50).

A publicly determined compensation for the egg donor in combination with a limit on the number of egg donation cycles could help prevent exploitation while respecting the donor's autonomy. Such compensation is common in many countries, where financial remuneration is provided in recognition of the significant physical interventions involved, such as hormonal stimulation and egg retrieval (Civio, 2022). While an uncompensated egg donation would prevent donations motivated by economic distress, it would also constitute a significant difference from the treatment of sperm or blood donors and participants in clinical trials, who are compensated. At the same time, however, a compensation may incentivize individuals in economically precarious situations to subject themselves to frequent, health-compromising egg donations out of financial necessity. To prevent this, a maximum number of donations for which compensation is provided could be established based on independent medical expertise. Additional donations beyond this limit should occur without compensation. As a result, further donations would likely be restricted to close friends and family members or reciprocal egg donations (djb, 2024, p. 21).

Concerning the child, the right to know one's origins is crucial. Even if there were concerns about potential harm to a child's welfare, it remains highly doubtful whether this constitutes a significant enough issue to justify preventing the child's existence altogether. Preventing the child's birth is not an appropriate means of protecting the child. Ensuring the child's right to know their biological origins would be a much less intrusive alternative to the ban on egg donation. Research in social and developmental psychology highlights the importance of open communication and transparency about the circumstances of conception, as discussed in Section 3. In this context, the UN Committee on the Rights of the Child [CRC] does not suggest that a lack of genetic connection between the child and the gestational mother is inherently detrimental to the child's welfare, but stresses that children should have the opportunity to access information about their biological origins (CRC, 2013, para. 56). This could be addressed by state measures that protect the child's right to information, such as the right to know the identity of the egg donor, achieved through legal rights of the child to obtain information from their legal parents about their biological origin. While challenges may arise in practice if such information is poorly documented, the introduction of similar frameworks to the sperm donor registry (established by the Sperm Donor Registry Act of 2017) could serve as a basis. This act gives children the right to access donor information from the Federal Institute for Drugs and Medical Devices and ensures that the donor is not legally recognized as the child's parent. Furthermore, providing counselling for prospective parents, which emphasizes the importance of transparency regarding the child's conception and early discussions with the child, could also be an effective approach. These measures would be significantly less restrictive than the criminal prohibition of egg donation.

Legalizing egg donation in Germany with appropriate regulations could also promote the child's right to know their origins and help reduce the exploitation of women in other countries where such practices are less regulated. Today, reproductive medicine is practiced in a globalized market, with fertility clinics worldwide advertising their services online and at fertility expos, and people being able to travel abroad to fulfill their

wish for a child. In some of these countries, the rights of egg donors are endangered as there are insufficient protective measures (Cattapan, 2016; Perler, 2022, pp. 90–91). The right of the child to know their origins is not respected, especially in countries where only anonymous donation is allowed, as discussed in Section 4. If individuals wishing to have children could access egg donation in Germany, they would no longer need to incur the risks and potential harms for both donors and children associated with seeking treatment abroad (Pennings et al., 2008; Storrow, 2005, 2011). However, this argument should be approached with caution, as even after legalization in Germany, individuals may still choose to travel abroad due to lower costs, shorter wait times, or the possibility of anonymity.

## 7. Conclusion

Egg donation engenders complex questions related to equality, law, medicine, and ethics, with profound implications for women and children. Consequently, it has been a topic of debate for decades. It involves concerns about the physical integrity and reproductive autonomy of both the egg donor and the recipient, as well as the protection against exploitation, the well-being of the child, and the child's right to know their biological origin. A nuanced, feminist, and intersectional approach is essential in addressing this topic that defies simple solutions.

The current criminal ban in Germany is disproportionate, as it excessively infringes upon the rights of both the egg donor and the recipient. Those seeking to fulfill their desire for children through egg donation are currently unable to do so in Germany. This criminal penalty is an intense intervention that, even if there were concerns for the child's welfare, lacks sufficient justification. Any potential risks for the child could be addressed through other, less restrictive measures, such as the provision of accessible counselling services for intended parents to ensure they are realistically informed about the success rates of reproductive treatments and, later, the necessity of providing children with early and age-appropriate information about the nature of their conception.

Protecting the interests of the egg donor does not justify a criminal prohibition on the transfer of eggs either. One key presupposition and implication of respecting women's actual choices and perspectives is a minimal level of confidence in women's decision-making capacities. Were a woman's ability to make informed decisions deemed inadequate to safeguard her well-being, there would be scant justification for legal or policy frameworks to respect her preferences. However, the argument becomes more contentious when it asserts that women can only make generally reliable choices if two conditions are met. First, such decisions must be made under circumstances that ensure their reliability, meaning they must have access to a sufficiently broad and morally acceptable range of alternatives, and must be able to make decisions free from coercion, manipulation, or deception. Additionally, women must have developed the necessary capacities to reflect upon their situations and make informed decisions earlier in life, which presupposes adequate opportunities and guidance to cultivate these skills (Friedman, 2003, pp. 188–190, in the context of female genital surgery). But most of the punishable acts related to egg donation are already criminalized under current German criminal law provisions. The interests of egg donors can be safeguarded through independent medical counselling that informs them of the medical risks involved and a state-defined compensation in combination with a medically informed limit on the number of donations.

Finally, the increasing demand for reproductive medical treatments should be seen in the context of a society where younger people still do not have sufficient support in balancing work and family life. From the perspective of reproductive justice (Bredler & Chiofalo, 2023, pp. 6–8; Lembke, 2024, p. 11; Ross & Solinger, 2017, p. 65) as an aspect of social justice, the legalization of reproductive medical procedures should be accompanied by initiatives that include education about risks, adequate social security, psychosocial support, and measures to address women’s poverty and improve the compatibility of parenthood with professional life, especially for younger individuals.

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### Conflict of Interests

The author declares no conflict of interests.

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