



Written by [Michael Tennant](#) on January 30, 2024

Austrian Doctor Forced to Pay Parents of Child They Would Have Aborted Had He Spotted Disability in Ultrasound

Austria's Supreme Court (OGH) last week ordered a gynecologist to pay \$83,000 — with many more payments to follow — because his failure to detect a disability in an unborn child led the child's parents to bring her into the world instead of aborting her.

According to the Austrian newspaper [Kleine Zeitung](#), “The girl was born without her left arm. The left chest and shoulder area is also malformed and the collarbone is shortened. The desperate parents asked themselves: How could the gynecologist miss this malformation during the ultrasound scans? He even noted twice that the fetus had both arms and legs.”



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“The doctor overlooked the child's severe disability. If the diagnosis was correct, the parents would have decided to terminate the pregnancy,” the parents' attorney, Karin Prutsch-Lang, told the paper.

The parents sued the doctor, demanding that he pay child support, including the costs of the girl's treatment and therapy. They also asked the court to determine his liability for future claims.

The first court, in Klaegenfurt, sided with the parents and ordered the doctor to pay €76,500 (about \$83,000). The doctor appealed, arguing that, at most, he was liable for the girl's disability-related costs. A regional court upheld the ruling, as did OGH, which said the doctor must pay *all* the girl's costs. And, said Prutsch-Lang, “In the future, further claims amounting to several hundred thousand euros will be made for the parents of the disabled child.”

The high court agreed that the doctor's mistake caused the parents to have a child that they would have chosen to abort had they known the truth. The court “emphasize[d] that this is about the parents' right to decide autonomously whether, firstly, they want a child and, secondly, whether, given their life situation, they are prepared and ready to raise a disabled child according to their needs,” reported *Kleine Zeitung*.

Conspicuously absent from the discussion, of course, were the rights of one person: the child.

In an interview with the Catholic news agency [Kathpress](#), Susanne Kummer, director of the Vienna-based bioethics institute IMABE, argued that this mindset is the direct result of Austria's half-century embrace of abortion. “The approval of abortion in Austria 50 years ago, which also allowed the abortion of a child due to a disability, contributed to society as a whole defining a child as damage and denying it the right to life under certain conditions,” the agency paraphrased Kummer's remarks.

“What remains is the perception that the disabled or unwanted child represents a harm, while its non-



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existence would obviously be a benefit,” said Kummer.

According to [Kathpress](#), the court attempted to head off this perception by stating that “the life and personality of a child are undoubtedly inviolable legal interests ... neglected in the public debate,” and “the birth and existence of a child cannot, of course, be viewed as damage.”

But there simply is no way of avoiding the implications of the ruling, which *Kleine Zeitung* called “groundbreaking”:

The court departed from previous judicature and made a groundbreaking decision: There should no longer be a distinction between the unwanted birth of healthy and disabled children. From a damages law perspective, both situations are to be assessed in the same way. “The OGH confirms that doctors are liable for the full maintenance costs of the child, regardless of the child’s state, if the birth could have been prevented through professional information or treatment,” says Prutsch-Lang.

As [Kathpress](#) observed, “In the future, parents who have had a child as a result of a failed sterilization, for example, could ask the doctor to cover maintenance costs — even if the child is born without any impairment.”

This is not mere speculation. In 2007, a court in neighboring Germany [ordered](#) a doctor to pay child support for a boy born to a woman in whom he had implanted a contraceptive device that failed.

The perverse results of the OGH ruling are difficult to overstate.

[Kathpress](#) wrote that the Vienna-based pro-life group *Aktion Leben* (Action Life)

saw the current judgments as reinforcing the idea of children as “cases of harm” — at least “through the back door.” The illusion that every child has to be a dream child and that pregnancies can be completely planned is being nurtured, warned the president of the non-denominational association, Johann Hager, in a broadcast on Tuesday. By encouraging parents to sue in the event of unwanted births after failed contraceptive procedures, the children are also given the “devastating signal: you were not welcome.”

“Eugenic ideas — as in the case of wrongful birth — must have no place in our society,” said Hager. “If children come into their parents’ lives unplanned, this is a big challenge, but one that can be overcome.”

Kummer pointed out that, given the OGH decision, “parents who [have a] disabled child without considering an abortion are now in a much worse position when it comes to the right to financial compensation than those who say from the outset: ‘We would have aborted the child if it were disabled.’ It should not be the case that one is ‘disadvantaged for affirming life.’”

Prutsch-Lang was correct when she stated that the “ruling could have far-reaching implications.” Unfortunately, those implications are purely evil. As Wolfgang Mazel, president of the Catholic Lay Council of Austria, told [Kathpress](#), “A society in which the abortion of disabled people is explicitly qualified as legal is clearly accepting a lasting threat to humanity.”



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