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**The right of the child conceived by a donor to know his/her origin –  
Croatian legislation and trends in Europe\*\***

**ABSTRACT:** The Convention on the Rights of the Child under Art. 7 para. 1 provides the right of the child to know his or her origin as far as possible. It is not specifically designed for children conceived by donor gametes or embryos, but applies to them as well. The European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 8) guarantees protection of private and family life. The European Court of Human Rights interpreted that Art. 8 encompasses “the right to an identity and to personal development” and finally ruled in *Gauvin-Fournis and Silliau v. France* that it applies to donor-conceived people and that they have, in principle, a right to know each of their genetic parents. Historically, a donor had the right to privacy and, therefore, remained anonymous; a changed paradigm shifted the focus to persons conceived by the donor’s gametes or embryo.

This study analyses the development of representative national legislations that adopt different approaches: those that accept the anonymity of the donor principle, those that accept the non-anonymity principle, and those that accept multiple choices concerning donor’s anonymity.

The first has been slowly abandoned in national legislations, however, it continues in liberal and some Central European states. Some states attempt to provide protection, at least by providing choice of non-anonymity/anonymity to the donor.

At the European level, Recommendation 2156 (2019) – Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children of the Parliamentary Assembly of the Council of Europe pushes towards non-anonymity; however, it is not binding. This concept is questionable if the European Union has jurisdiction over such issues, therefore, the 2024 Regulation of the European Parliament and of the Council on standards of quality and safety for substances of human origin

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\*\* The research and preparation of this study was supported by the Central European Academy.

(SoHO) intended for human application did not intervene in this area, leaving its regulation to national states.

The concluding remarks offer arguments in favour of anonymity and non-anonymity and conclude that legislators should always consider the interests of children and persons conceived, as the state is responsible for the protection of their rights.

**KEYWORDS:** the right of the child to know his/her origin, identity, donor anonymity, donor non-anonymity, medically assisted reproduction, Recommendation 2156 (2019), SoHO Regulation.

## 1. Introduction

The right of the child to know his/her origin derives from the right to protection of private and family life and the right of the child to know his or her parents as far as possible. It is closely connected to the right to personal identity.

The first right is incorporated in different international global and regional treaties, and the second is contained in Art. 7 para. 1 of the United Nations Convention on the Rights of the Child of 20 November 1989 (hereinafter, CRC).<sup>1</sup>

As stated in the Handbook on the Convention on the Rights of the Child<sup>2</sup> several decades ago, the definition of “parent” was understood differently and was simpler than it is today. It was clear who were “biological” parents, and eventually “psychological” or “caring” parents, such as adoptive or foster parents.<sup>3</sup>

CRC applies solely to children; therefore, other international treaties apply to adults. For example, Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)<sup>4</sup>

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<sup>1</sup> Convention on the Rights of the Child, of 20 November 1989, United Nations Treaty Series, Vol. 1577, p. 3.

<sup>2</sup> Hodgkin and Newell, 2007, p. 105.

<sup>3</sup> ‘When Article 7 was drafted, it was pointed out that the laws of some countries – for example, the former German Democratic Republic, the United States of America and the former Union of Soviet Socialist Republics – upheld “secret” adoptions whereby adopted children did not have the right to know the identity of their biological parents (E/CN.4/1989/48, pp. 18 to 22; Detrick, p. 127)’. Ibid., p. 105.

<sup>4</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950, European Treaty Series, No. 5.

offers protection for the private and family life of children and adults. At the beginning of the XXI<sup>st</sup> century, the European Court of Human Rights interpreted that Art. 8 encompasses “the right to an identity and to personal development”, which includes the right to access information that would make it possible to trace “some (one’s) roots”, the right of a person to know their origins and circumstances of their birth and a right to have access to the certainty of paternal filiation.<sup>5</sup> So far, none of the Court’s decisions have specifically concerned the right of a person conceived by a donor’s gamete to know the identity of the donor.<sup>6</sup>

As medically assisted reproduction (MAR)<sup>7</sup> enables using donor gametes (eggs, sperms, and embryos), it is not clear who the biological parent is, as a parent may be a genetically related mother (from whom the egg stems) or a birth mother. Therefore, the old Roman principle *mater semper certa est* was jeopardised.<sup>8</sup> Parenthood confusion may influence the child’s perception of identity, therefore, different approaches exist regarding

<sup>5</sup> More about the European Court of Human Rights Mulligan, 2022, pp. 127-131, Explanatory Memorandum, 2019, Chapter 10.

<sup>6</sup> Explanatory Memorandum, 2019.

<sup>7</sup> Medically assisted reproduction is ‘reproduction brought about through various interventions, procedures, surgeries and technologies to treat different forms of fertility impairment and infertility. These include ovulation induction, ovarian stimulation, ovulation triggering, all ART procedures, uterine transplantation and intra-uterine, intracervical and intravaginal insemination with semen of husband/partner or donor’. Zegers-Hochschild and others, 2017, p. 1796.

<sup>8</sup> Different legislations offer different legal solutions. Family law legislations (for example Greece, the United Kingdom and Portugal) that enable surrogate motherhood changed this Roman rule completely.

In the case of medical fertility treatment, the situation is complex because the legislator may accept either the rule that the mother of a child is the woman who gave birth or the woman whose egg had been fertilised. In Croatian law, there is a general rule that the woman who gave birth to the child is his mother if both the woman whose cell was (possibly) used in the fertility treatment procedure and the woman who gave birth to the child had given their consent to the medical treatment. If the corresponding consent had not been given, it would have been possible to initiate the proceedings for challenging the maternity of the woman who gave birth to the child and subsequently establish the maternity of the woman from whom the child genetically originated. When a donor’s semen was used, if the child’s (genetic) father and the man who is the mother’s marital or extramarital partner had given their consent for medically assisted reproduction with another man’s semen, and the mother’s non-marital partner had given his consent to the acknowledgment of paternity ahead of time, then the child’s father is the mother’s marital or the non-marital partner.

Korać, 2022, pp. 48, 49; Margaletić, Preložnjak, and Šimović, 2019, pp. 778-802.

whether the child should be told the truth about the genetic origin, and if so, to what extent should the child be informed of the general description of the gamete's donor or the identity of the donor.

Similar to the history of adoption, it appears that trends are towards revealing the identity of the donor and enabling persons conceived by the donor's gamete to determine the personal identity of the donor.

This study presents the development of Croatian legislation concerning this topic and European tendencies (without the European Court of Human Rights jurisprudence) that gradually, but with more certainty, move towards the disclosure of the identity of a donor.

## 2. Croatian legislation

In 1978, Croatia regulated for the first time certain aspects of MAR through the Act Concerning Medical Measures for Exercising the Right to the Free Decision about Giving Birth to Children.<sup>9</sup> This type of medical help was regulated by only five provisions (29 – 34 of the Act), and medical techniques were described simply as homologous and heterologous fertilisation (insemination).

It was possible to use a donor's semen (donation of eggs was not regulated at that time, nor was embryo donation). The medical staff of the clinic that performed "artificial insemination" was obliged to keep secret the information from which the sperm donor, the "artificially inseminated" woman, and her husband could be determined. In the case of heterologous insemination, the sperm donor should not know for which woman his semen was used, and the "artificially inseminated" woman should not know who the sperm donor was.<sup>10</sup> Five years after legally regulating the medical aspects of medically assisted procreation, in 1983, the first baby conceived in vitro was born. It is difficult to obtain reliable data for past periods,

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<sup>9</sup> The Act Concerning Medical Measures for Exercising the Right to the Free Decision about Giving Birth to Children (*Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece*) Official Gazette, No. 18/78. This act has been changed later, Official Gazette, Nos. 31/86., 47/89., 88/09.)

<sup>10</sup> In the year 1993/1994, 318 children were born after assisted reproduction technologies: 98 children by "artificial insemination" by husband, 26 children by "artificial insemination" by donor, 190 children after in vitro fertilisation of the couples' gametes and 4 children by gamete intrafallopian transfer. Simonović, 1996, pp. 306-332.

however, some children were conceived by donors; for example, in 1993/1994, 26 out of 318.<sup>11</sup>

Provisions<sup>12</sup> that regulated assisted reproduction technologies were in force until 2009, when an Act completely dedicated to medically assisted reproduction was introduced.<sup>13</sup>

This Act (2009) provided that not only a donor's semen, but also a donor's egg may be used for couples that need such medical help. The donor of gametes was prescribed to have no family law responsibilities or rights towards a child conceived with the use of their gametes in medical insemination procedures.<sup>14</sup> Interestingly, if a donor was married, consent from his or her spouse should be taken as well.<sup>15</sup> It was prohibited to provide or receive compensation or any other benefit for the donation of gametes; to conclude contracts, agreements, or other forms of written or oral agreements on gamete donation between a gamete donor and one or both spouses in the process of medical insemination; and such contracts or agreements should be null and void.<sup>16</sup>

The Act on Medically Assisted Procreation introduced the right of a person born after medical insemination with a donated sperm or a donated egg, after reaching the age of majority, to gain access to the register of data on conception and donors kept at the State Register of Medical Insemination of the Ministry of Health. Exceptionally, because of a medically justified reason and the welfare of the child, an authorised person in the State Register had to enable access to the register to the legal representative or doctor of the child. The last possibility may be important because of the health needs of the child to know some genetically important medical data. Finally, a court or administrative body may request data from the aforementioned Register.<sup>17</sup>

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<sup>11</sup> Predominant previous modest assisted reproduction technology was named 'artificial insemination'. That was the expression without elementary sensitivity for patients. Nowadays notion of 'artificial' has not been used anymore, as it is considered as non-sensitive, rude, and pejorative.

<sup>12</sup> Arts. 29-34.

<sup>13</sup> The Act on Medical Assisted Procreation (*Zakon o medicinskoj oplodnji*), Official Gazette No. 88/2009.

<sup>14</sup> Art. 12 para. 2.

<sup>15</sup> Art. 11 para. 2.

<sup>16</sup> Art. 14.

<sup>17</sup> Art. 10.

Legal theory points out that ‘this provision will discourage many potential donors, although the child cannot establish legal relation to his/her father. It is obvious that the interests of the child has prevailed’.<sup>18</sup> This is what occurred because after 2009 in Croatia, there was no donor program, no gamete bank, and no children conceived by male or female donor.

The Medically Assisted Reproduction Act (2012),<sup>19</sup> which continues to be in force, enables the donation of sperm, egg cells, and embryos. It preserved the non-anonymity of donor.

The Explanatory Report of the Draft on the Medically Assisted Reproduction Act explains this political decision:

The non-anonymity of gamete or embryo donors is prescribed in order to protect the child's right to know his or her own origin, as protected in Article 7 by the Convention on the Rights of the Child, ratified by the Republic of Croatia ("Official Gazette of the SFRY", no. 11/81, "Official Gazette", - International Treaties No. 12/93). In Article 7, paragraph 1. The Convention on the Rights of the Child states that a child has: "as far as possible, the right to know who his parents are". The Committee on the Rights of the Child, to which states submit regular reports on the application of the Convention, criticizes the non-application and endangerment of this right. In the case of medically assisted reproduction with a donated gamete, i.e. an embryo, it cannot be claimed that it is not possible to determine the origin of the child. In addition, the right of the child prescribed in this way is a reflection of modern understandings in developmental psychology and child psychiatry that clear knowledge of one's own origin forms a healthy mental identity of an individual and the possibility of building quality personal relationships with other people.<sup>20</sup>

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<sup>18</sup> Korać, 1999, p. 235.

<sup>19</sup> The Medically Assisted Reproduction Act (Zakon o medicinski pomognutoj oplodnji), Official Gazette No. 86/2012.

<sup>20</sup> Nacrt prijedloga zakona o medicinski pomognutoj oplodnji. [Online]. Available at: <https://vlada.gov.hr/UserDocsImages//2016/Sjednice/Arhiva//21.%20-%201.pdf> (Accessed 1 September 2024). The author's translation.

The provision of Art. 15 of the 2012 Act extended the right of the child who reached the age of majority to know his/her origin in a way that obliged parents to inform the child conceived by the donor's gamete that he or she was conceived by medically assisted reproduction (Art. 15 para. 2).<sup>21</sup> Parents may easily avoid this obligation, as there is no legal trace in personal documents or birth registrars of how the child was conceived. This means that a child may accidentally discover the circumstances of conception; however, although parents are obliged to convey this to the child, nobody checks whether they did so.

As the right to know one's own origin is a personality right, the child would have the right to pecuniary compensation owing to non-pecuniary damage towards their parents,<sup>22</sup> however, in real life, it is not certain that the child would sue his or her parents. There was no such litigation in Croatian judicial practice.

It is important to emphasise that according to the Medically Assisted Reproduction Act, there are no mutual legal obligations among donors and children conceived by the donor's gamete.<sup>23</sup>

As the donor program in Croatia was neither established nor had gamete bank(s), many couples sought help abroad, financed by the Croatian

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<sup>21</sup> Art. 15 para. 2.

<sup>22</sup> Just Pecuniary Compensation Art. 1100

‘(1) In the event of violation of personality rights, the court shall, where it finds that this is justified by the seriousness of the violation and circumstances, award a just pecuniary compensation, irrespective of the compensation for material damage and in the absence of the latter.

(2) In deciding on the amount of just pecuniary compensation, the court shall take into account a degree and duration of the physical and mental pain and fear caused by the violation, the objective of this compensation, and the fact that it should not favour the aspirations that are not compatible with its nature and social purpose.

(3) In the event of compromised reputation and other personality rights of a legal person, the court shall, if it assesses that this is justified by the seriousness of the violation and the circumstances, award to that legal person a just pecuniary compensation, irrespective of the compensation for material damage and in the absence of the latter’.

The Civil Obligation Act (Zakon o obveznim odnosima), Official Gazette Nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, 126/2021, 114/2022, 156/2022, 145/2023, 155/2023.) Non-official translation published at the website of the Supreme Court of the Republic of Croatia.

<sup>23</sup> The donor and donor of gametes or embryos do not have any family or other obligations or rights towards the child conceived with the use of their gametes, that is, the embryo in medically assisted reproduction procedures (Art. 19 para. 5 of the Medically Assisted Reproduction Act).

Health Insurance Fund. If they wished to transfer their sex cells abroad, they required permission from the National Committee for Medically Assisted Reproduction. Recently, this high body has changed the practice of accepting the right of the child to know his or her origin, allowing the transfer of sex cells only to clinics where the legislation enables the child to determine the identity of the donor. This new practice was driven by the consciousness that the state may be found legally responsible, enabling transfer to a country where the rights of the child, ensured by national law, are not secured equally. This opens the possibility of the child suing the state for the breach of his or her right to know the origin as a personality right.

### **3. Overview of some national legislations**

The member states of the European Council have different approaches. Legal systems can be divided into three groups: those that support the principle of anonymity of a donor, those that support the principle of non-anonymity of a donor, and those that allow donors and prospective parents to choose what is acceptable (dual or even triple system).<sup>24</sup>

#### ***3.1. Anonymity of donor principle***

Similar to adoption, the fact that a child was conceived by a sperm donor and later by other donor gametes was considered important for protecting the privacy of donors, recipients, and children. It is understandable that struggling with infertility was a type of disability that brought about negative social connotations. Moreover, it reflected the legal status of organ donors for transplantation.

Initially, sperm donor anonymity was introduced to protect both donors and recipients. Donors, often motivated by altruism or financial incentives, were assured of privacy so that they could contribute without fear of future emotional or legal complications, such as claims for child support. Historically, medical doctors discouraged openness, as heterosexual couples prevailed as recipients. Arguments were needed to protect family dynamics, societal stigma, legal considerations, and the

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<sup>24</sup> As legislative changes are rapid, the reader should consider that this text was delivered in September 2024.

historical context surrounding the perceptions of biological versus social parenthood.<sup>25</sup>

A few European countries retained the anonymity rule: Spain, the Czech Republic, Ireland, and Greece (as examples of the liberal approach), and Hungary, Italy, Poland, and Serbia (as examples of balanced towards the conservative approach).

Sperm, egg, and embryo donation in Spain is governed by a series of laws and regulations: Law 14/2006, 26 May on Medically Assisted Reproduction Techniques<sup>26</sup> for sperm donation; Royal Decree 9/2014 for egg donation; and Order SCO/3260/2007 for embryo donation.

Law 14/2006 on assisted reproductive technology stipulates that gamete donation is anonymous and that gamete banks will guarantee the confidentiality of the personally identifiable data of the donor, as will any established donor registries and registries of the activity in associated facilities. Simultaneously, the same law dictates that all information must be documented in individual health records, guaranteeing confidentiality, as it concerns the identity of the donor, the data and health information of the users, and the circumstances surrounding the origin of donor-conceived individuals. Although donation is anonymous, both gamete recipients and offspring have the right to obtain general information about the donors, excluding their identity, and allowing, under extraordinary circumstances that pose a certain risk of death or to the health of the child, disclosure of the identity of the donor.

The diagnosis of a genetic disorder in a child that could pose a serious threat to the health of the donor has been proposed as a potential exception to anonymity. In such cases, it would be possible for the healthcare team to contact the facility where the ART procedures were performed to inform the donor and prevent the use of the donated gametes or, if the latter had already been used, to inform any other offspring of the risk. These exchanges of information can be performed without breaking the anonymity of donors as they do not require the disclosure of their identity.

Therefore, when there is an important health issue, it may be necessary to share only health information without disclosing the donor's identity, with very rare exceptions. 'Therefore, the debate about anonymity

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<sup>25</sup> For Belgium, Casteels, Nekkebroeck and Tournaye, 2024.

<sup>26</sup> LEY 14/2006, de 26 de mayo, sobre técnicas de reproducción humana asistida.

does not arise from arguments related to health, as current law contemplates breaking anonymity when necessary'.<sup>27</sup>

In Greece the Art. 1460 of the Greek Civil Code establishes the principle of anonymity for the third persons who have offered gametes or fertilised eggs (donors). Medical information concerning the third donor is secret and in coded form in the cryopreservation bank and in the national file of donors and recipients of Art. 20 § 2 ed. c' Law 3305/2005.<sup>28</sup>

The Assisted Reproduction Authority maintains two files<sup>29</sup>: one with confidential medical data of the donors of fertilised material and fertilised eggs, whose data were registered in a coded form. Access to this file is allowed, only to the child, for reasons related to his health<sup>30</sup> after permission of the Assisted Reproduction Authority; and second, completely secret files containing the identity data of the donors of genetic material and fertilised eggs, as well as the corresponding code.<sup>31</sup> Anyone who discloses in any way the identity of donors and recipients of gametes or fertilised eggs in violation of the relevant legislation is punished with imprisonment of at least two years unless a heavier sentence is provided by another law.<sup>32</sup>

In Hungary, a child conceived and born as a result of donated reproductive cells and/or embryos has the right to learn about the circumstances of his/her conception and birth upon reaching the majority, which shall include making available all personal and special data learned by the health service provider or the research facility, except information on name and address.<sup>33</sup> This sensitive approach attempts to balance the rights of MAR participants.

In Slovenia, the Infertility Treatment and Procedures of Biomedically Assisted Procreation Act<sup>34</sup> preserves the anonymity of a donor, as does the MAR legislation, in Serbia.<sup>35</sup>

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<sup>27</sup> Riano-Galán, Martínez González and Gallego Riestra, 2021, p. 337e3.

<sup>28</sup> See also Art. 8§6 Law 3305/2005.

<sup>29</sup> Art. 20 § 2 ed. c & d Law 3305/2005

<sup>30</sup> Art. 20 § 3 Law 3305/2005.

<sup>31</sup> Art. 20 § 3 Law 3305/2005.

<sup>32</sup> Koukoulis, 2023.

<sup>33</sup> 1997. évi CLIV törvény az egészségügyről.

<sup>34</sup> The Act on Infertility Treatment and Biomedically Assisted Fertilization Procedures (Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo), Official Gazette, Nos. 70/00 in 15/17.

<sup>35</sup> Art. 37, The Act on Biomedical Assisted Reproduction (Zakon o biomedicinski potpomognutoj oplodnji, Official Gazette Rs, Nos. 40/2017 and 11372017.

It is interesting that the anonymity principle is driven by different goals. One tendency appears to be to protect legal families in countries such as Poland, Hungary, and Italy. In this context, older Serbian family law theory expressed the opinion that the anonymity of the donor should be preserved 'so that factual family would be able to successfully defend the principle of the welfare of the child in competition with the family by blood'.<sup>36</sup> Serbian academics warned that waving donor's anonymity would prevent donors from donating because of social circumstances.<sup>37</sup>

The other reason in the liberal regulation of MAR may be the wish to protect the freedom of reproductive clinics (and not to end the source of donated gametes and embryos) to provide medical services for national and foreign citizens, such as in Spain and Greece, as financial profit is a public and private interest as well.<sup>38</sup>

### **3.2. Non-anonymity of donor principle**

In 1985, Sweden became the first country to grant a child conceived by donor semen the right to obtain identifying information about the donor upon reaching an age of sufficient maturity.<sup>39</sup>

The law states that the sperm donor remains anonymous to the recipient couple and *vice versa*, and it does not oblige the parents to inform the child that she/he was conceived by a donor.

Legal-political discussions before introducing the right of a person conceived by donor's gamete provoked the Haparanda case in 1981.<sup>40</sup> In a later legislation of 2006, the Genetic Integrity Act prescribed the following:

a person conceived through insemination with sperm from a man to whom the woman is not married or with whom the woman does not cohabit has the right to access the data on the donor recorded in the hospital's special journal, if he or she has

<sup>36</sup> Draškić, 192, p. 243.

<sup>37</sup> Kovaček and Stanić, 2008, p. 23.

<sup>38</sup> Similar view is expressed by some Spanish authors: 'We cannot neglect to mention that in a field in which economic aspects are very important, potential conflicts of interest surrounding ART may result in the silencing of ethical arguments concerning the protection of the best interests of the child'.

Sandel, 2013, *Lo que el dinero no puede comprar: los limites morales del mercado*. Barcelona Debate, cited by Riano-Galan, Gonzalez and Gallego Riestra, 2021.

<sup>39</sup> The Act on Insemination (Lag om insemination) 1984:1140, SFS 1984:1140.

<sup>40</sup> Amplus Preložnjak, 2020, p. 1189.

reached sufficient maturity. If a person has reason to assume that he or she was conceived through such insemination, the social welfare committee is obliged, on request, to help this person find out if there are any data recorded in a special journal.<sup>41</sup>

The same right is secured to ‘a person conceived through fertilisation outside the body using an egg other than the woman’s own or sperm from a man who is not the woman’s spouse or with whom the woman does not cohabit’.<sup>42</sup>

The United Kingdom has developed a donor non-anonymity policy step-by-step. The first legislation was the Human Fertilisation and Embryology Act of 1990, which was amended in 2005 and 2008.

No information about donors who donated before 1 August 1991 may be revealed through official channels. A person born because of a donation could only access non-identifying information about the donor at age 18 via the Human Fertilisation and Embryology Authority (HFEA)<sup>43</sup> as the authorised provider of this information.

The government decided to remove donor anonymity in the UK via the Disclosure of Donor Information Regulations 2004.<sup>44</sup> The result of this approach was that donor-conceived people should be able to obtain information about their genetic origins if they wished. This legislation came into effect in 2005 for applicants when they reached the age of majority,

<sup>41</sup> Chapter 6, Insemination, Section 5.

<sup>42</sup> The Genetic Integrity Act (2006:351).

<sup>43</sup> The Human Fertilisation and Embryology Authority (HEFA) oversees the use of gametes and embryos in fertility treatment and research. It licenses fertility clinics and centres carrying out in vitro fertilisation (IVF), other assisted conception procedures, and human embryo research.

HFEA is an executive non-departmental public body, sponsored by the Department of Health and Social Care. [Online]. Available at: <https://www.gov.uk/government/organisations/human-fertilisation-and-embryology-authority> (Accessed: 17 September 2024).

<sup>44</sup> This decision was brought after *Rose v Secretary of State for Health and the HFEA* [2002] EWHC 1593, (a test case brought by Joanna Rose, born via donor conception before the 2005 Act was passed. [Online]. Available at: <https://www.hfea.gov.uk/media/nacb35fx/lrag-discussion-paper-donor-anonymity-and-information-provision-2022-05-27.pdf> (Accessed: 17 September 2024).

meaning that the first applicants were able to apply to the HFEA for identifiable donor information in 2023.<sup>45</sup>

Donors who had donated before these changes could also voluntarily register with the HFEA to become identifiable.<sup>46</sup> Donors who did not re-register and those who donated before 2005 were kept anonymous. In 2008, the legislation was changed to allow donor-conceived people aged 16 years and older to apply for non-identifying information about their donors. The HFEA established the Donor Sibling Link to facilitate donor-conceived adults, born post-1991, to share their contact details with others who share the same donor.<sup>47</sup>

The newest legislation proposal intends that parents of donor-conceived children should be able to apply to the HFEA shortly after the birth of their child or anytime from that point for identifiable information about the donor. Julia Chain, the head of HFEA, emphasised:

We recommend the law is changed so that parents can find out who a donor is from the birth of a child. Our proposal reflects the fact that the current system, where identifiable information about a donor is disclosed to the donor-conceived person at 18 and only upon request, can no longer effectively keep up.<sup>48</sup>

The Law Commission of England and Wales and the Scottish Law Commission (the Law Commissions) have proposed the establishment of a national register of surrogacy arrangements as well, that should maintain records of the identity of the intending parents, the surrogate, and any donors if donor gametes were used. Moreover, the Law Commissions have proposed replicating the provisions set out in regulations in respect of donor-conceived children and extending the availability of “non-identifying” donor information to surrogate-born children.

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<sup>45</sup> HFEA, Donor anonymity and information provision, 2022. [Online]. Available at: <https://www.hfea.gov.uk/media/nacb35fx/lrag-discussion-paper-donor-anonymity-and-information-provision-2022-05-27.pdf>. (Accessed: 17 September 2024).

<sup>46</sup> Some 220 donors who donated anonymously between 1991 and 2005 have re-registered with the HFEA to be identifiable until 2022.

<sup>47</sup> Ibid.

<sup>48</sup> Modernising the regulation of fertility treatment and research involving human embryos, HFEA. [Online]. Available at: <https://www.hfea.gov.uk/about-us/modernising-the-regulation-of-fertility-treatment-and-research-involving-human-embryos/> (Accessed: 17 September 2024).

In Germany, any child older than 16 years, who suspects that he or she has been conceived through artificial insemination, has the right to seek relevant information from the German Institute for Medical Documentation and Information<sup>49</sup>. Persons younger than 16 years may only enforce this right through their legal guardians.<sup>50</sup> In Germany, the donation of oocytes or embryos is not allowed.<sup>51</sup>

In Austria, since the passing of legislation in 2015, a donor-conceived person has the right to access the gamete donor's identity from the age of 14 years.<sup>52</sup> The information is maintained by the clinic, which the child can contact directly. The right is exercised personally by the child, and his/her parents cannot access this information, except in limited circumstances. The donor is required to provide the healthcare facility or practitioner all information about himself or herself and agree to this being provided on request to the child conceived with his or her gametes. This consent can be withdrawn by the donor at any time, which prohibits any further use of his or her gametes.<sup>53</sup>

France lifted the anonymity of donors for all those who donated gametes after the 1 September 2022, although gametes donated anonymously before 1 September 2022 can be used until 31 March 2025.<sup>54</sup>

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<sup>49</sup> Deutsches Institut für Medizinische Dokumentation und Information – DIMDI.

<sup>50</sup> Gesley, 2017, Germany: Right to Know Biological Father for Children Conceived Through Sperm Donation. [Web Page] Retrieved from the Library of Congress. [Online]. Available at: <https://www.loc.gov/item/global-legal-monitor/2017-07-27/germany-right-to-know-biological-father-for-children-conceived-through-sperm-donation/>. (Accessed: 17 September 2024).

<sup>51</sup> The Act to Regulate the Right to Know One's Heritage in Cases of Heterological Use of Sperm (Gesetz zur Regelung des Rechts auf Kenntnis der Abstammung bei heterologer Verwendung von Samen), July 17, 2017, Federal Law Gazette I at 2513, BGBl website.)

<sup>52</sup> Art. 20 para. 2 of the Reforming Reproductive Medicine Act (Fortpflanzungsmedizinrechts-Änderungsgesetz) 2015.

<sup>53</sup> Griessler and Hager, 2016.

<sup>54</sup> Decree No. 2022-1187 of 25 August 2022 on access to non-identifying data and the identity of the third-party donor issued pursuant to Art. 5 of Law No. 2021-1017 of 2 August 2021 on bioethics and amending the provisions relating to medically assisted procreation (Décret n° 2022-1187 du 25 août 2022 relatif à l'accès aux données non identifiantes et à l'identité du tiers donneur pris en application de l'article 5 de la loi 2021-1017 du 2 août 2021 relative à la bioéthique et portant modification des dispositions relatives à l'assistance médicale à la procreation).

This legal-political decision was brought after several pending applications before the European Court for Human Rights.

Donors who wish to donate their gametes (sperm and oocytes) or frozen embryos must consent to reveal their surname, first name, date, and place of birth, as well as other non-identifying data, such as their general condition and age at the time of donation, family and professional situation, physical characteristics, and motivation to donate. Upon request, this information can be made available to the children resulting from these donations, when they reach the age of majority. Lifting anonymity does not mean that adult children will be able to contact their biological father or mother, who retain the decision on whether to have such interactions. Filiation to their legal parents remains intact.<sup>55</sup>

Since 2006, Portugal has regulated donations as anonymous.<sup>56</sup> In 2018, gamete donations became non-anonymous. In Portugal, identity release donations allow the donor to remain anonymous to the intended parents during treatment (although they may have access to non-identifying information about the donor). The child can request access to the donor's personal information (full name) from the National Council for Medically Assisted Reproduction, after reaching the age of majority. Interestingly, the identity release framework did not appear to affect the number of donations.<sup>57</sup> Before the changes in 2018, the Constitutional Court of Portugal ruled:

The right to know one's genetic identity forms part of the right to identity of the person born as a result of these techniques, of

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<sup>55</sup> Before legislative changes, the European Court for Human Rights in the case *Gauvin-Fournis and Silliau v. France*, Applications Nos. 21424/16 and 45728/17, in Judgement 7.9.2023, stated that France 'did not overstep the margin of appreciation enjoyed by it in choosing to grant access to information about one's origins solely subject to the condition that the third-party donor gave his or her consent'.

It was the first ruling of the Court on the rights of donor conceived persons. The Court emphasised that Art. 8 of the Convention applies to donor-conceived people and that they have, in principle, a right to know each of their genetic parents.

<sup>56</sup> In 2016, Portugal's legal framework for medically assisted reproduction changed, and was broadened to all women, independent of their marital status and sexual orientation. Therefore, treatment with donor sperm, oocytes, and embryos became available to recipients, including heterosexual couples, lesbian couples, and single women.

<sup>57</sup> Galhardo, 2024: From secrecy to transparency: The journey of donor identity in reproductive medicine in Portugal, *Human Reproduction*, Volume 39, Issue Supplement\_1, July 2024, deae108.208. [Online]. Available at: <https://doi.org/10.1093/humrep/deae108.208>. (Accessed: 18 September 2024).

his/her personality and of his/her personal historicity, regardless of the absence of a loving relationship.

According to Stela Barbas, human beings have ‘.... the right to genomic identity. There cannot be two types of people: those who can know their genomic roots and those who can’t. Allowing – or allowing as a priority – the child the right to know his/her true genetic and biological identity does not constitute a reduction in or discrimination against legal filiation or any other rights inherent therein: the recognition of one’s genetic or biological origin does not contend with the legally established filiation, in the sense that recognition does not imply any paternal or maternal duty towards the person whose origins are being investigated. The various conflicting fundamental rights are, in fact, respected and safeguarded in a balanced manner, in strict compliance with the constitutional directives. We are talking about mere knowledge, but a knowledge that is fundamental if no one is to be barred from the possibility of knowing their own history and reaffirming their individuality.’<sup>58</sup>

Identifying information about donors is provided to children in countries such as Iceland, Finland, the Netherlands, Norway, and Switzerland.

### ***3.3. Multiple choices concerning anonymity***

Some states have dual systems depending on the donor’s option (Belgium, Denmark, Iceland, and the Russian Federation). Thus, some children conceived by the donor’s gamete will be able to identify identity information, whereas others will not.

In Denmark, the law enabling the use of medically assisted reproduction techniques is Act No. 460/1997, and after several amendments (last in 2012), parents have been able to choose from a permanently anonymous donor, one who is anonymous at the time of donation but agrees that his or her identity may be revealed later to the children conceived by his or her donation, or a donor who is known at the time of donation. Until

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<sup>58</sup> Ruling No. 225/2018, [Online]. Available at: <https://www.tribunalconstitucional.pt/tc/en/acordaos/20180225.html>, (Accessed: 17 September 2024).

2012, only the child had the right to request access to the donor's identity and only if his or her parents had access to a non-anonymous donor.<sup>59</sup>

Interestingly, there is a warning to patients who decide to use non-identity donors on the website of one of the world's largest sperm and egg bank Cryos:

Nevertheless, with today's DNA-testing services, there is a possibility that children and donors will find each other, despite the donor being Non-ID Release. We understand that you may be curious to know more about your donor, but our advice is to hold back and respect that the donor has made a choice of being Non-ID Release and wishes to preserve his anonymity.<sup>60</sup>

For patients who wish to know the donor's identity (if a donor agreed as well):

By choosing an ID Release Donor, you provide your child with the possibility to know more about the donor than what has been enclosed in the donor profile. Whether your child wants to receive the identifying information about the donor is up to him or her. Some donor-conceived children would like to know as much as possible about their genetic heritage. In those cases, choosing an ID Release Donor will be a big help for your child. Other donor-conceived children may never even wish to contact the donor even though they may appreciate having the possibility to do so.<sup>61</sup>

Since 1996, donors in Iceland have had a choice at the time of donation. He or she either asks to remain anonymous or not. In the latter case, persons born by his or her donation will be able to access his or her identity from the age of 18.<sup>62</sup>

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<sup>59</sup> Binet, 2022, p. 32.

<sup>60</sup> Non-ID Release and ID Release Sperm Donors, Cryos. [Online]. Available at: <https://www.cryosinternational.com/en-gb/dk-shop/private/how-to/how-to-choose-a-sperm-donor/id-release-or-non-id-release-sperm-donors/> (Accessed: 18 September 2024).

<sup>61</sup> Ibid.

<sup>62</sup> Binet, 2022, p. 32.

Belgium does not recognise the right to know one's origin when a child is conceived through an anonymous donation. The donation of embryos to third parties can only be anonymous, without exception, to prevent commercialisation. When gamete donation is considered, the anonymity rule is more flexible; therefore, non-anonymous donation is based on the consent of the donor, and the recipient(s) is allowed.<sup>63</sup>

#### 4. Trends in European legal sources

##### ***4.1. Recommendation 2156 (2019) – Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children***

Regional trends at the European level are undoubtedly towards the principle of non-anonymity of donors. The reasoning and direction of the changes are best presented in the recommendation of the Parliamentary Assembly of the Council of Europe adopted in 2019<sup>64</sup> – Anonymous donation of sperm and oocytes: balancing the rights of parents, donors, and children. However, it has to be adopted by the Committee of Ministers. This recommendation has only seven chapters explaining contemporary social, medical, and human rights aspects, and the need for change towards non-anonymity.

In the Council of Europe, the Parliamentary Assembly recommends that the Committee of Ministers make recommendations to member states to improve the protection of the rights of all parties concerned, focusing on the rights of the donor-conceived person, who is in the most vulnerable position and for whom the stakes appear to be higher.

Chapter 1 of the Recommendation explains that more than 8 million children worldwide have been born because of assisted reproductive technologies, many of whom were conceived after sperm or oocyte donation. Most states have traditionally favoured anonymous donation models, as legislation in this area was often derived from laws in the organ

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<sup>63</sup> In academic literature, Baetens et al. (2000) highlight that it is not quite understandable why the non-commercialization argument was not applied to donated oocytes as well. However, most oocyte donors in Belgium are sisters or good friends of the recipients and more than half of them opt for known donation, meaning that the recipient only accepts if she receives the oocytes of the woman she recruited and/or the donor only accepts to donate if she can direct her oocytes to that specific recipient. Therefore, recipients want to know more about the donor and to transfer this information to the child. Non-anonymous sperm donation in Belgium is rarely performed.

<sup>64</sup> Recommendation 2156 (2019) Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children.

donation or international adoption fields. States have also sought to respect the filiation of donor-conceived children, following the United Nations Convention on the Rights of the Child (Articles 3, 7, and 8). Thus, most states restrict the right of donor-conceived people to know their origins.

Chapter 2 of the Recommendation explains that there has been movement towards the recognition of the right to know one's origins, connected to the right to an identity and to personal development: particularly in international human rights law, there was an inclusion in the United Nations Convention on the Rights of the Child as a "stand-alone" right for children, and through the case law of the European Court of Human Rights. The jurisprudence of the European Court recognised this right as an integral part of the right to respect private life. This right includes the right to access information that would make it possible to trace one's roots, know the circumstances of one's birth, and have access to the certainty of parental filiation.

The Recommendation emphasises that:

this right is not absolute and must thus be balanced with the interests of the other parties involved in sperm and oocyte donation: principally those of the donor(s) and the legal parent(s), but also those of clinics and service providers, as well as the interests of society and the obligations of the State.<sup>65</sup>

The Recommendation recognises that the donor's right to privacy (meaning anonymity as well) prevails in balancing different rights, interests, and obligations. The Parliamentary Assembly, in its Recommendation, points out that states that have decided to waive donor anonymity have concluded that the state has the responsibility to provide all donor-conceived people with an opportunity to access information, including identifying information about their donors. In 2019, the legislation (only 5 years ago) and practices of the Council of Europe member states varied significantly in the field of medically assisted procreation.<sup>66</sup>

In Chapter 7 the Parliamentary Assembly invited the Committee of Ministers of the Council of Europe to adopt recommendations on anonymity based on the following principles:

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<sup>65</sup> Similar: Korać, 1999.

<sup>66</sup> Chapter 4.

7.1. anonymity should be waived for all future gamete donations in Council of Europe member States, and the use of anonymously donated sperm and oocytes should be prohibited. This would mean that (except in exceptional cases, when the donation is from a close relative or friend) the donor's identity would not be revealed to the family at the time of the donation, but to the donor-conceived child upon their 16th or 18th birthday. The donor-conceived child would be informed at that time (ideally by the State) of the existence of supplementary information on the circumstances of their birth. The donor-conceived person could then decide whether and when to access this information containing the identity of the donor, and whether to initiate contact (ideally after having had access to appropriate guidance, counselling and support services before making a decision);

7.2. the waiving of anonymity should have no legal consequences for filiation: the donor should be protected from any request to determine parentage or from an inheritance or parenting claim. The donor should receive appropriate guidance and counselling before they agree to donate and their gametes are used. The donor should have no right to contact a child born from donation, but the donor-conceived child should be given the option to contact the donor, as well as possible half-siblings, after their 16th or 18th birthday – subject to certain conditions being met;

7.3. Council of Europe member States which permit sperm and oocyte donation should set up and run a national donor and donor-conceived person register with a view to facilitating the sharing of information, as stipulated in paragraphs 7.1 and 7.2, but also with a view to enforcing an upper limit on the number of possible donations by the same donor, ensuring that close relations cannot marry and tracing donors if the medical need should arise. Clinics and service providers should be required to keep and share adequate records with the register, and a mechanism should be established to provide for cross-border exchanges of information between national registers;

7.4. the anonymity of gamete donors should not be lifted retrospectively where anonymity was promised at the time of the

donation, except for medical reasons or where the donor has consented to the lifting of the anonymity and thus inclusion on the donor and donor-conceived person register. Donors should be offered guidance and counselling before they decide whether or not to agree to the lifting of anonymity;

7.5. these principles should be applied without prejudice to the overriding consideration that gamete donation must remain a voluntary and altruistic gesture with the sole aim of helping others, and thus without any financial gain or comparable advantage for the donor.

This Recommendation sets up considerable demands (particularly the far-reaching request that a person be informed by the state about the circumstances of conception). The Committee of Ministers has not fulfilled the Recommendation's proposal to adopt these rules, however, it has some time as the suggested period for drafting such a document is until the end of 2025.<sup>67</sup>

The special rapporteur, Ms Petra de Sutter, in the Explanatory Memorandum (Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children) stated that the anonymity of human gamete donors is no longer a principle unanimously accepted at the European level. Gradually, since 1984, when Sweden became the first country to waive the principle of anonymity of gamete donations, there has been a growing tendency to prioritise the rights of donor-conceived persons to know their origins and in favour of waiving the anonymity of gamete donors in Germany, Switzerland, the Netherlands, Austria, Finland, Iceland, the United Kingdom, and Portugal (after the decision of Portugal's Constitutional Court).

The special rapporteur warned that, in the context of cross-border assisted reproduction, it would be advisable to propose such a recommendation to find the best balance of interests.<sup>68</sup>

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<sup>67</sup> It is interesting to examine the Vote on Recommendation - Doc. 14835.

An anonymous donation of sperm and oocytes: balancing the rights of parents, donors, and children, Assembly's voting results, as 42 parliamentarians voted in favour, one (from the Czech Republic) against, and two representatives were abstentions (from Austria and the Czech Republic). [Online]. Available at: <https://pace.coe.int/en/votes/37742>. (Accessed 15 September 2024).

<sup>68</sup> Chapter 2 of Explanatory Report: The international/European legal framework: gradual recognition of the right to know one's origins. *Ibid.*

#### ***4.2. Regulation of the European Parliament and of the Council on standards of quality and safety for substances of human origin (SoHO) intended for human application***

The European Parliament adopted a new regulation on substances of human origin (SoHO): the Regulation of the European Parliament and of the Council on standards of quality and safety for substances of human origin intended for human application and repealed Directives 2002/98/EC and 2004/23/EC on 24 April 2024 (hereinafter, SoHO Regulation).

The SoHO Regulation aims to set high quality and safety standards by ensuring, inter alia, the protection of SoHO donors, SoHO recipients, and offspring born out of medically assisted reproduction, as well as by providing measures to monitor and support the sufficiency of the supply of SoHO that is critical for the health of patients.

The importance of this document is emphasised by choosing a regulation, not a directive, as a legal framework for such important issues. Several amendments aimed at removing donor anonymity in medically assisted reproduction during the drafting process.<sup>69</sup> European Society for Human Reproduction and Embryology (ESHRE) stated that the EU only has legal competency regarding the quality and safety of SoHO, and that amendments should be outside the scope of this regulation. ESHRE supported Amendments 296 and 734, stating the need to inform donors of reproductive cells about the possibility of ID release, as full donor anonymity can no longer be guaranteed considering the increasing use of direct-to-consumer genetic testing.<sup>70</sup>

Although donor anonymity has not been waived, the traceability of gametes is emphasised in Arts. 3(53), 32, 42, and 43 of SoHO Regulation. Entities shall have a traceability system in place to link each person from whom substances of human origin (including sperms, eggs, and gametes) are collected. This is particularly important for inter-country MAR use. Each medical entity shall maintain the data necessary to ensure traceability in electronic or paper form for at least 30 years. In the case of third-party donations, or if SoHO for within-relationship use is moved between SoHO

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<sup>69</sup> Amendments 295, 571, and 675.

<sup>70</sup> ESHRE letter to MEPs about amendments to the SoHO regulation, ESHRE statement ENVI amendments SoHO reg May 2023.pdf. [Online]. Available at: <https://www.eshre.eu/Europe/Position-statements/Letter-to-MEPs-amendments-SoHO-regulation> (Accessed 28 September 2024).

entities, a code needs to be applied that is unique within the EU and does not reveal the identity of the person from whom the SoHO was collected.<sup>71</sup>

Traceability may help donor-conceived persons when there is a transfer to another clinic in the same country or abroad, and future legislation enables a donor to reveal his or her identity. In that case, a donor-conceived person may contact the clinic where gametes were collected and obtain some donor information, depending on national legislation.

## 5. Concluding remarks

This study aims to present the trends from anonymity to non-anonymity of donors in national legislation in representative European countries. This study was conducted considering the historical development of the approach to this issue, which remains controversial.

This study determined that arguments in favour of anonymity of the donor are:

- the parents' right to privacy
- the possible risk of destabilising the legal family (the role of the parent may be undermined by the figure of the donor, which may have a negative impact on the family and interfere with the healthy development of attachment and identity)<sup>72</sup>
- the donor's right to anonymity
- the risk of reduction in gamete donations<sup>73,74</sup>

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<sup>71</sup> This code should be machine-readable, unless this is not possible owing to the size or storage conditions of the SoHO. The code should be on the labels applied to the SoHO or on the documents accompanying the distributed SoHO, where it can be guaranteed that such documents will not be separated from the SoHO or will be kept digitally linked to the SoHO concerned. If SoHO for third-party donation are moved between entities, the code additionally needs to comply with the requirements for the Single European Code (SEC), which the European Commission will set out in another legal document.

ESHRE, Regulation on standards of quality and safety for substances of human origin intended for human application (SoHO Regulation) – summary for professionals in the field of medically assisted reproduction, September 2024. [Online]. Available at: <https://www.eshre.eu/Europe/Factsheets-and-infographics>. (Accessed 27 September 2024).

<sup>72</sup> Muñoz, Abellán-García and Cuevas, 2019.

<sup>73</sup> Bay, Kesmodel and Ingerslev, 2014, p. 254. According to Danish experience in 2012, the most frequently stated factor was altruism, motivating 90% of the sperm donors, which was not significantly different from the previous surveys. If economic compensations were removed, only 14% would continue to donate. The proportion of anonymous donors who would stop their donations if anonymity was abolished was 51%, 56%, and 67% in 1992,

- protection of all MAR participants' future interference
- the donor's interest in being protected from legal, financial, or parenting claims

Cynics may notice that the risk of reduction in gamete donations, consequently causing less income for MAR clinics, is one of the most influential factors in this debate.<sup>75</sup>

Arguments in favour of non-anonymity of donors are louder and slowly prevailing in different legal systems:

- the right of a person conceived by a donor to know his/her genetic origin
- the health rights of a person conceived by donor's gamete to know the risk of genetic diseases
- building capacity for honesty in family
- preserving the mental health of a person conceived by donor's gamete
- prevention of incestuous relationships
- the existence of widespread commercial DNA kits that make anonymity questionable
- registrars of non-anonymous donors can prevent potential donors from donating uncontrollable gametes to different clinics<sup>76</sup>

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2002, and 2012, respectively. There was a significantly increasing proportion of donors who felt positive about donation to lesbian couples. The authors conclude that the motivation for sperm donation is multifaceted and primarily based on economic compensation and altruism. Most Danish donors would stop their donations if economic compensation or anonymity were abolished.

<sup>74</sup> Binet, 2022, p. 14.

<sup>75</sup> Infertility Treatment Market, 2024: The global sales of infertility treatment are estimated to be worth USD 1,899.8 million in 2024 and are anticipated to reach a value of USD 3,843.3 million by 2034. Sales are projected to rise at a CAGR of 7.3% over the forecast period between 2024 and 2034. The revenue generated by infertility treatment in 2023 was USD 1,770.6 million. The industry is anticipated to exhibit a Y-o-Y growth of 7.4% in 2024.... High treatment costs using assisted reproductive technologies (ART) are a major restraint to market growth. Procedures under ART, such as in vitro fertilization, also known as IVF, may run into a significant amount for a couple, up to USD 15,000 to USD 30,000 per cycle in the USA. These high costs can limit access to treatment and lead to financial hardship for those seeking to conceive. ... The growth of infertility treatment industry was positive as it reached a value of USD 3,843.3 million in 2034 from USD 1,899.8 million in 2024.

<sup>76</sup> Kesmodel and Ingerslev, 2014, p. 254. In a Dutch study, 69 donors (71%) stated that the number of children conceived by a donor did not matter. More about very recent case of a man who fathered more than 500 children: "Dutch court orders man who fathered 550 kids

Donor anonymity is not simply a question about the person who helped conceive the child. It is primarily the ethical and legal issue that touches on a person conceived with the donor's help. A recently published Belgium survey on insights of donor-conceived adults concluded:

Early revelation of donor conception is generally regarded as advantageous, whereas delayed disclosure can result in psychological challenges. Offspring from heterosexual couples show a heightened emphasis on the donor's role, indicating a greater need for donor information compared to those from lesbian couple-parented or single-parent families. Furthermore, a significant portion of donor-conceived individuals express a strong desire to obtain various levels of donor-related information, a possibility currently limited by the existing Belgian legislation. To circumvent this limitation, half of the respondents had already registered with international DNA databases, with many having successfully identified a genetic relative through this method. Consequently, donor anonymity has essentially become obsolete.<sup>77</sup>

Moreover, the majority (57.6%) of donor-conceived adults agreed that donors should be informed of the number of children born out of their donation(s).<sup>78</sup>

Therefore, if enabled, many donor-conceived adults would opt for non-anonymous donors and endorse the release of donor information at specific stages, including allowing donors to become aware of the number

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to stop donating sperm", April 28, 2023, Politico. [Online]. Available at: <https://www.politico.eu/article/dutch-court-orders-man-who-fathered-550-kids-to-stop-donating-sperm/> (Accessed: 28 September 2024). Clearly, certain donors are not aware of possible consequences, or are simply irresponsible.

<sup>77</sup> Casteels, Nekkebroeck and Tournaye, 2024.

<sup>78</sup> There was a difference between heterosexual families, lesbian couple parented or single-parent families. Offspring from heterosexual couples demonstrate a greater need for donor information compared with those from lesbian couple parented or single-parent families. A significant portion of donor-conceived individuals express a strong desire to obtain various levels of donor-related information; therefore, half of the respondents had already registered with international DNA databases, with many having successfully identified genetic relatives.

of children they have helped conceive. Moreover, a significant percentage of donor-conceived individuals contemplated becoming donors themselves, with the highest inclination being observed among those raised by two-parent lesbian families.<sup>79</sup>

The identity issue is so painful for donor-conceived persons that they have founded different national organisations that represent them. They founded Donor Offspring Europe, a European association, as well. Its aims are: 'to protect the interest of donor conceived persons: in particular the right to information about your ancestry', 'to put pressure on policy makers at a European level', 'to inform the public about donor conception and particularly the objectives of donor-conceived persons', and 'promote contact amongst donor conceived persons'.<sup>80</sup>

Moreover, ideological positions and social values may influence legal solutions. Traditionalists are more likely to advocate for the anonymity of donors, as MAR techniques that use donor gametes are more an exception than a rule. Thus, generally, family is based on kinship, and parental rights and responsibilities, as a rule, should not be transferred to another person. A child should be raised by his/her genetic parents. Based on the importance of genetic connections, this view defends heterosexual families as the only acceptable family type. It appears that the fact that a child is conceived with a donor's help should remain a secret (thus, it arises that legal parents are biological parents). Pennings argues that the anti-anonymity group adopts a weak version of bio-normative ideology, as they emphasise the importance of genetic ties. However, the practice of gamete donation is based on the socio-normative or 'new ideology of the family', that had been constructed to enable people who cannot have children the natural way (families without functional gametes, gay fathers, lesbian mothers, single women). It places weight on the psychological relations within a family, which are more important than genetics.<sup>81</sup>

Although ideology is not irrelevant, it does not place the rights of donor-conceived persons in the focus. It appears that their rights must be guided by national legislation. Genetic truth cannot be rejected simply

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<sup>79</sup> Ibid.

<sup>80</sup> Donor Offspring Europe. [Online]. Available at: <https://donoroffspring.eu/>. (Accessed: 28 September 2024).

<sup>81</sup> Pennings: The forgotten group of donor-conceived persons. [Online]. Available at: <https://academic.oup.com/hropen/article/2022/3/hoac028/6628588?login=false>, p. 5. (Accessed: 29 September 2024).

because of the reasoning that there will not be sufficient donors, or it will interfere in family relations. If this occurs, something is not right with the choice of funding of a family or with family relations, irrespective of how the child was conceived. There are many experiences with adoption and suggestions on how parents should communicate with their children to preserve family ties. However, compared with adoption, it is noteworthy that adoption saves the child, while MAR creates the child. For adoption, it is a positive obligation of the state to protect the child, while for donor-conceived persons, it is the obligation of the state to set up a legislative frame that will not endanger their rights and interests, particularly by enabling conception to fulfil the wishes of adult participants, irrespective of whether they intend to be the child's legal parents or are altruistic donors.

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