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Legal Regulation of MAR and Their Impact on the Child's Right to Origin Disclosure – A Slovenian Perspective**

ABSTRACT: Having a child remains one of the fundamental values of life for individuals. However, many individuals and couples face difficulties in conceiving a child naturally. The rapid development of medicine—in particular, reproductive medicine—has brought hope and the realisation of the desire to have a child to individuals and couples who, in the past, would have remained childless. Artificial reproductive technologies have been developed, enabling the conception of a child who is genetically related to both parents, as well as a child whose conception involves a third party (e.g., a gamete donor, surrogate mother, or mitochondrial parent). The rapid development of reproductive medicine also requires appropriate legal regulations. In particular, issues relating to the right to disclosure of persons conceived with donated gametes and the related right to know the (genetic) origin have been raised in recent years. Many legislations, including that of Slovenia, still lean more toward maintaining donor anonymity, with possible exceptions (e.g., medical reasons), primarily regarding access to non-identifying information about the donors. While Slovenian legislation emphasises the right of the child to information on their origin, it limits this to essential medical information and does not include personal data about the donor. This paper discusses possible amendments to existing Slovenian legislation in light of defining a child's right to origin disclosure and balancing the interests of the other parties involved.

KEYWORDS: infertility, artificial reproductive technologies, gamete donation, right to know the origin, personal data, anonymity.

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1. Introduction

Fertility is a key element of the reproductive system, enabling the continuation of the human species in the broadest sense. However, couples have faced infertility not only today but also throughout history.[1] The approach to and the understanding of infertility today and in the past are diverse. Throughout history, infertility has been considered a social stigma and was often treated as a socially, mentally, and physically harmful experience for women who could not conceive. Fatherhood has been perceived as a social rather than a biological concept**.** Consequently, the burden of infertility fell entirely on women, as infertility was also a legitimate reason for divorce and a source of shame for women.[2]

Although, nowadays, we are aware that the causes of infertility are very diverse and that the development of medically assisted reproduction (MAR) has made remarkable progress in recent years, infertility remains a public health and a societal problem[3] that leaves an indelible imprint on the lives, emotions, and experiences of individuals and couples (also, in some cases, in the broader family) facing infertility.

According to the European Society of Human Reproduction and Embryology (ESHRE), one in six couples worldwide will experience some form of infertility at least once in their reproductive lifetime. The World Health Organization (WHO) defines infertility as 'a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse'.[4] Infertility can be classified into primary and secondary types. Primary infertility in women refers to the inability to conceive for the first time, whereas in men it refers to the inability to impregnate any partner. Secondary infertility in women is defined as the inability to conceive again after a previous pregnancy. Secondary infertility in men refers to the inability to impregnate the same or a previous partner after a prior

[1] Following statistics, on average, between 1,100 and 1,200 children are conceived with biomedical assistance every year in Slovenia. Slovenia is one of the few countries where the first IVF procedures are fully covered by health insurance. After the birth of a child, a woman is entitled to four more procedures for each subsequent birth. (Arsovski, 2024).
[2] Sharma, Saxena and Singh, 2018, p. 10.
[3] Najzdravnik, n.d.
[4] World Health Organization, 2023, p. ix.

successful conception.[5] The ESHRE estimates that between 8% and 12% of women aged 20 to 44 worldwide have experienced infertility lasting at least 12 months. Most MAR treatments are performed on women aged 30–39 years.[6] The WHO further estimates that approximately 186 million people are affected by infertility worldwide.[7]

It is, therefore, not surprising that countries are striving in various ways to assist individuals facing infertility. Appropriate legislative frameworks are among the key factors that can support such couples. Inadequate, insufficient, or ambiguous legal regulations can be highly restrictive, harmful, and potentially result in human rights violations.

It is estimated that more than eight million children worldwide have been born using assisted reproductive technologies[8] (ART). Many of these children were conceived using donated sperm or eggs. Traditionally, most countries have favoured anonymous donation models because legislation in this area has often been based on organ donation laws or international adoption regulations.[9] In recent years, however, guidelines have been shifting toward the disclosure of donor information. On the one hand, this shift raises new legal and ethical questions, while on the other hand, the legislative frameworks of different countries remain highly diverse, adding to the uncertainty. Acknowledging that the right to know one's origin is not absolute, it must be balanced with the interests of children conceived with donated gametes, the legal parents of these children, and the donors themselves. Additionally, the interests of clinics, service providers, society at large, and the obligations of the State should also be considered.[10]

2. General

2.1. Fundamental Principles of MAR under Slovenian Law

The desire to have a child can be so strong that individuals who cannot conceive naturally seek other possible alternatives to become parents (e.g.,

[5] WHO, 2023.
[6] ESHRE, 2022.
[7] Seiz, Eremenko and Salazar, 2023, p. 6.
[8] Jain and Singh (2023) provide that ART are used to aid in achieving pregnancy conception in individuals who are having difficulty doing so spontaneously.
[9] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para. 1.
[10] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para. 3.

adoption, ART). Of course, international documents do not recognise the 'right to have a child', as having a child is not a good or service that the State can guarantee or provide. A child is a human being, regardless of age and maturity, who is a bearer of rights.[11]

Countries regulate MAR in various ways, but these procedures often remain inaccessible owing to issues such as inadequate health insurance coverage, high costs, and legal inconsistencies. Legal regulations, legalisation, or prohibition of certain MAR practices and eligibility criteria for (co)financing reproductive technologies vary from country to country. Consequently, many individuals and couples choose to seek reproductive medical assistance outside their home country.[12]

Thus, MAR procedures have become established as an important and effective method for treating infertility.[13] Article 55(1) of the Constitution of the Republic of Slovenia[14] (CRS) stipulates that everyone shall be free to decide whether to bear children. The State shall guarantee opportunities for exercising this freedom and shall create conditions that will enable parents to decide to bear children (Article 55(2) of the CRS). The constitutional provision of Article 55 of the CRS is further supplemented by Article 2(1) of the Infertility Treatment and Procedures of Medically-Assisted Reproduction Act[15] (Infertility Act), which provides that everyone has the 'right to infertility treatment' in the manner and under the conditions defined by the Infertility Act. Article 1 further specifies that the Infertility Act regulates medical measures to assist men and women in conceiving a child, thereby enabling them to exercise freedom in deciding on the birth of their children. Treatment under the Infertility Act is defined as

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[11] United Nations – General Assembly, *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, A/HRC/37/60, 15 January 2018, p. 15. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/71/PDF/G1800771.pdf?OpenElement (Accessed: 12 September 2024).

[12] See more on so-called reproductive tourism Kraljić, 2020.

[13] Reljić, 2019, p. 185.

[14] Constititution of the Republic of Slovenia (CRS - Slovene *Ustava Republike Slovenije):* Uradni list RS (Official Gazette), 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a, 92/21 – UZ62a

[15] Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (Infertility Act - Slovene: *Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo*): Uradni list RS, št. 70/00, 15/17– DZ.

a) determining the causes of infertility or reduced fertility;
b) addressing these causes through professional counselling, medication, or surgical procedures;
c) collecting and storing male sperm or female egg cells in cases where, according to the findings of and experience of medical science, the individual is at risk of becoming infertile (Article 3 of the Infertility Act).

As a rule, MAR procedures use the reproductive cells (gametes) of a woman and a man in a marital or non-marital partnership (Article 8(1) of the Infertility Act) (so-called endogenous techniques). In this case, there is no distinction between parenthood as defined by the provisions for motherhood and fatherhood under the Family Code[16] (FC). The parents are, in this instance, also the biological parents of the child, meaning that the child is the biological descendant of both the mother and father, who are recognised as such based on the legal presumption of maternity[17] and paternity[18] under the FC. According to Slovenian law, MAR is not permitted with the simultaneous use of donated eggs and sperm (Article 8(3) of the Infertility Act).[19] Therefore, at least one of the parents must be the biological parent of the child conceived through this procedure.

MAR techniques can also involve a third party. MAR procedures may also use donor eggs or sperm cells from the donor (so-called exogenous techniques). According to Article 14(1) of the Infertility Act, donors must

[16] Family Code (FC – Slovene *Družinski zakonik):* Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23, 34/24 – odl. US.

[17] Comp. Article 112 of the FC: '*The woman who has given birth to a child shall be considered the mother of the child'.;* see more Kraljić, 2022, p. 41 *et seq*.

[18] Comp. Article 113 of the FC: *'(1) The husband of the child's mother shall be considered to be the father of a child born within marriage. (2) If the marriage terminates with the death of the husband of the child's mother, and the child is born within 300 days of the termination of the marriage, the late mother's husband shall be considered to be the child's father. (3) The mother's husband from a new marriage shall be considered to be the father of a child born in a new marriage concluded by the mother 300 days after the termination of a previous marriage, regardless of the manner in which the previous marriage ended'.*

[19] Under Slovenian law, it is also not allowed to i) donate human embryos, ii) use a mixture of sperm from two or more men or mixture of oocyte from two or more women in MAR procedures (Article 13 of the Infertility Act), and iii) use the donor's sperm to fertilise a woman who, due to a familial relationship, would not be able to enter into a valid marriage with the donor. Likewise, donor's oocyte may not be fertilised by the sperm of a man who, due to a familial relationship, would not be able to enter into a valid marriage with the donor (Article 14(2) of the Infertility Act).

be adults, healthy, and of sound mind. Under Slovenian legal regulations, donor gametes can be used if:

a) based on biomedical science, pregnancy cannot be achieved using the reproductive cells of the spouses or non-marital partners, or
b) other MAR procedures provided by the Infertility Act have been unsuccessful, or
c) it is necessary to prevent the transmission of a severe hereditary disease to the child (Article 8(2) of the Infertility Act).

MAR procedures, such as using a donor's sperm for artificial insemination, in vitro fertilisation of a donor's oocyte and then implanting the embryo into a woman's uterus, or receiving an embryo conceived by another couple (which is not allowed in Slovenia!) result in a form of parenthood that is incompatible with biological reality. In such cases, issues concerning access to information about the child's origin arise, such as identifying the sperm donor, the oocyte donor, or the couple who provided their embryo.[20] We must also not forget about newer MAR technologies, such as mitochondrial transfer[21] and even gene editing[22], which raise additional legal questions regarding the right to know genetic origins.[23]

[20] Binet, 2022, p. 11.

[21] Mitochondrial transfer techniques (MT) (also known as 'mitochondrial donation', 'mitochondrial replacement', 'mitochondrial therapy', 'mitochondrial transfer', or 'three-parent IVF') are being developed as a method that allows at-risk couples to avoid giving birth to a child with mitochondrial disease. MT is a technique that prevents a woman from passing mitochondrial diseases to her children while still using her own ovum, thereby maintaining her genetic connection with the child (Ravitsky, 2017, p. 1). Healthy mitochondria from a ovum donor replace the mitochondria of the intended mother, while the mother's nucleus, responsible for her genetic identity, is retained. Thus, a child born using MT has DNA from three persons (a genetic father and two women) (Ravitsky, 2017, p. 4). The United Kingdom was the first country that regulated MT by passing regulations that came into force on October 31, 2015 (Newson, Wilkinson, Wrigley, 2016, p. 589; Cohen et al., 2020). In April 2016, the first baby boy conceived using MT was born. This technique was performed for a Jordanian couple by an American physician in Mexico, where the legislation was somewhat ambiguous (Ravitsky, 2017, p. 4).

[22] Following the WHO, is genome editing a method for making specific changes to the DNA of a cell or organism? It can be used to add, remove or alter DNA in the genome (World Health Organization, n.d.). See more Liu, 2020; Soni, 2024.

[23] Ravitsky, 2017, p. 1.

2.2. General about Paternity and Maternity for Children Conceived through MAR – Slovenian Regulation

Provisions regarding parenthood for children conceived through MAR were previously covered under the Infertility Act. Today, these provisions have been incorporated into the FC, which contains explicit rules concerning motherhood and fatherhood for children conceived through MAR. If the mother has consented to ART in accordance with the regulations governing it, her motherhood cannot be challenged. However, if the child was conceived with the help of a donor oocyte, the motherhood of the oocyte donor cannot be established (Article 133 of the FC).

For a child conceived through ART, the father is considered to be the mother's husband or her non-marital partner, provided that both have consented to the procedure in accordance with the regulations governing ART. The paternity of the individual recognised as the child's father cannot be challenged, except in cases where it is claimed that the child was not conceived through ART. If the child was conceived by using the donor's sperm, the paternity of the sperm donor cannot be established (Article 134 of the FC).

Under Slovenian law, a woman who intends to give the child to a third party, whether for payment after birth (surrogacy) is not entitled to MAR (Article 7 of the Infertility Act). The Criminal Code[24] (CC-1) stipulates in Article 121(4) that anyone who unlawfully performs an assisted reproductive procedure for surrogacy shall be punished by imprisonment for up to three years.[25]

Starting from Article 27 of the Infertility Act, donors have no legal or other obligations or rights in respect of children conceived through ART.

[24] Criminal Code (CC-1 - Slovene: *Kazenski zakonik*): Uradni list RS, št. 50/12 – official consolidated version, 6/16 – popr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP, 16/23.

[25] Deisinger, 2017.

3. Child and their 'right to know origin'

3.1. Convention on the Rights of the Child (CRC) as the Cornerstone of the children's rights

In 1989, the United Nations General Assembly adopted the CRC,[26] which is an international human rights treaty that defines civil, political, economic, social, health, and cultural rights for children. It has established a collective responsibility for the welfare of children.[27] With the adoption of the CRC, children's rights have gained new dimensions and become an indispensable basis for decision-making in all matters concerning them. This area illustrates the intersection of law with the actual lives of children. Although infertility issues pertain to couples or individuals facing such challenges, it is crucial to recognise that ART (especially MAR) contributes to the birth of a child who, upon birth, acquires legal capacity, thus becoming a bearer of rights and obligations.

The principle of the child's best interests, enshrined in Article 3 of the CRC, is a fundamental principle of children's rights law that obligates State Parties to follow it in the application and interpretation of all provisions of the CRC. Thus, the best interests of the child constitute a legal standard, and its content is determined on a case-by-case basis, including in situations concerning the child's right to know their origins. State Parties are, thus, obliged to ensure that the rights of the child, as a member of a vulnerable group, are protected. With the development of ART, specifically MAR, particular articles of the CRC have been given new aspects that could certainly not have been foreseen at the time of its adoption, in the light of today's rapid developments in, for example, the medical field (e.g., the aforementioned MT and gene editing). The latter has led to new perspectives, understandings, and interpretations of children's rights and individual articles on CRC. Article 7 of the CRC—' [...] *and as far as possible, the right to know* […]'—is certainly one of these articles.

Article 7 of the CRC explicitly states that a child has the right to know their parents and to be cared for by them. State Parties must ensure the implementation of this right in accordance with their domestic laws and obligations imposed on them by the relevant international instruments in

[26] Convention on the Rights of the Child (CRC - Slovene *Konvencija o otrokovih pravicah*): Uradni list SFRJ, št. 15/90; Uradni list RS, št. 35/92.
[27] Kraljić and Drnovšek, 2019, p. 114.

this field. However, according to Article 7(1) of the CRC, this right is only to be realised if possible. Simultaneously, there is a conflict of interest between the child's right to know their genetic origin and that of the gamete donor to anonymity. The provision in Article 7 of the CRC does not impose states to guarantee an absolute right for children to know their parents. Instead, Article 7(1) of the CRC merely states that the child 'shall, as far as possible, have the right to know their parents' and that State Parties will ensure the implementation of this right in accordance with their domestic laws and international obligations. Thus, while every child has the right to know the truth about their origins, unless this is the case, their best interests do not justify disclosure.[28] The European Court of Human Rights (ECtHR) has addressed the right to know one's origins in several cases, initially concerning adoption. ECtHR in 1989, in the case of *Gaskin v. United Kingdom*[29], has established*:* 'Respect for private life requires that everyone should be able to establish details of their identity as individual human beings and that in principle they should not be obstructed by the authorities from obtaining such very basic information without specific justification*'.*

The CRC leaves the decision on how States will legally regulate this right of the child to the individual State Parties.[30] Consequently, there are significant differences between the legal frameworks of the CRC's State Parties. However, according to Preložnjak, the text of Article 7(1) of the CRC, which states 'and, as far as possible, the right to know one's parents', can be interpreted more broadly also to include not only knowledge of gestational (surrogacy) and biological (donated gametes) but also mitochondrial parents (MT technologies).[31]

Article 7 of the CRC is complemented by Article 8, which provides the child's right to maintain their own identity.[32] However, the CRC does not clearly define what constitutes as 'identity' but provides three examples of what 'own identity' includes: nationality, name, and family relations (Article 8(1) of the CRC). This implies that, while nationality, name, and family relations are essential components of a child's identity, they are not

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[28] Fortin, 2009, p. 337.
[29] *Gaskin v. United Kingdom* App. no. 10454/83, 7 July 1989, para. 89.
[30] Novak IN: Novak, 2019, p. 742.
[31] Preložnjak, 2020, p. 1178.
[32] The word 'identity' derives from the Latin word '*identitas*' and means a group of individual characteristics that distinguish one person from another. (Petrović and Blašković, 2014, p. 79).

the only elements.[33] To swiftly restore identity, appropriate assistance and protection shall be provided in cases where some or all elements of a child's identity have been unlawfully deprived (Article 8(2) of the CRC). State Parties are, thus, obligated to ensure the prompt restoration of a child's identity.[34] Family relations, as mentioned in Article 8 of the CRC, are a fundamental part of a child's right to know their identity. This includes the knowledge of both legal-social parents (e.g., adoption) and genetic (e.g., in MT) or gestational parents (e.g., in surrogacy). In recent years, this has gained importance, as many children who were adopted, born through ART, or anonymous birth tend to search for their biological parents and, thus, their origins. While, in the past, this search relied mainly on paper documents and personal testimonies, the rapid advancement of modern technology has further facilitated and enabled children—many of whom are now adults—to search for their biological parents.[35]

Article 1 of the CRC already states that for its purposes, a child is defined as any human being under the age of 18 unless the law applicable to the child provides that the age of majority shall be reached earlier. However, individuals typically begin their search for their origins and identity after gaining the majority (adulthood). The ECtHR also affirmed this in the case of *Jäggi v. Switzerland*, where it explicitly pointed out that an individual's interest in knowing their parents' identity does not diminish over time but rather tends to increase.[36] A child who is informed during childhood[37] that they have been adopted (which also applies to children born through gamete donation) often embarks on a search for their biological parents upon reaching adulthood. The UN Committee on the Rights of the Child has explicitly called on State Parties to take necessary measures to ensure that all children, regardless of the circumstances of their birth, have the ability to

[33] Kraljić, 2021, p. 101.
[34] Čolaković, 2021, p. 2021; Clark, 2012, p. 627.
[35] Kraljić, 2021, p. 101.
[36] *Jäggi v. Switzerland* App. no. 58757/00, 13 February 2006.
[37] Such a regulation can be found in Article 92 of the Family Act of the Federation of Bosnia and Herzegovina (FA-FBH - *Porodični zakon Federacije Bosne i Hercegovine*: Službene novine FBIH, br. 35/2005, 41/2005, 31/2014, 32/2019). The FA-FBH explicitly states that a child has the right to know who their parents are. It even imposes an obligation on the adoptive parent to inform the adopted child about the adoption no later than by the child's seventh year or immediately after the adoption if the child was older at the time of adoption.

obtain information about their parents' identities to the extent possible.[38] This would also ensure the right to respect for private life, which includes the right to access information that would make it possible for an individual to trace their roots, understand the circumstances of their birth, and obtain certainty regarding parental filiation.[39]

However, the CRC does not provide any guidance or condition under which children should be granted this right.[40] the CRC does not provide any criteria for balancing the interests of the child and those of the biological parents in the event of a conflict; thus, it can be concluded that the CRC does not explicitly guarantee the protection of the child's right to know their identity.[41]

3.2. The right to know the origin in the light of MAR

Persons conceived with donated gametes live with and are raised by their social-legal parents. These persons (including those who are already adults) may or may not know that they were conceived with donor gametes, meaning that a third party was involved in their conception. Despite the growing trend towards advocating for the disclosure of genetic parentage, the involvement of a third party is not indicated or recorded in the civil registry—including in Slovenia. Thus, the disclosure of genetic origins remains the responsibility of the social-legal parents.[42]

However, before even discussing whether a child has the right to know information about the gamete donor, it is essential to address whether children conceived with donor gametes should be informed of the method of their conception. This could be considered as a preliminary question or a right to be informed about their conception. If children are not informed, the right to access information about the gamete donor becomes irrelevant.[43] The Slovenian law is already inadequate in addressing disclosure issues in the context of adoption, as such a provision is missing in the *Slovenian FC*. The legislature has missed an excellent opportunity to align Slovenian family law with modern frameworks, which explicitly mandate the duty of parents to inform their children that they were either adopted or conceived

[38] Concluding Observations, recommendations 31 and 32, CRC/C/15/Add.188, 8.
[39] Recommendation 2156 (2019) Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para. 2.
[40] Kraljić, 2021, p. 101.
[41] Preložnjak, 2020, p. 1179.
[42] Ravitsky, 2017, p. 2.
[43] Frith, 2007.

with donated gametes.[44] Based on the Slovenian legal framework, the FC does not impose a duty on parents to disclose this information, nor is it recorded in the civil registry that a child was adopted or conceived with donated gametes.

3.2.1. From 'no information' to 'full access'

As mentioned above, countries approach the right to know one's origins in different ways, even in the field of adoption, which is an established legal institution. However, we are witnessing the rapid development of ART, specifically MAR, which helps people who are unable to conceive naturally in fulfilling their desire to have a child. Every advancement, particularly in the field of ART and MAR, raises several legal questions. One fundamental issue, which is currently the subject of much debate, concerns the approach to accessing information on gamete donors.

Following Łukasiewicz, access to information may be divided into six types:

- No information – a donor-conceived person has no right to find out any identifying information regarding the donor's role in MAR. A child conceived as a result of the gamete donation may not request access to the records about the donor (e.g., in Iceland, the donors may request anonymity. However, a child conceived through artificial insemination can request information concerning their origin upon reaching the age of 18, provided the donor did not request anonymity).[45]
- No information, but with potential exceptions – the fundamental rule is the confidentiality of non-identifying information about the donor. However, there is an exception, as it is possible to disclose medical information stored in a confidential file without any identifying details about the donor. For example, under Greek regulations, access to the confidential file is only permitted for medical reasons.[46]
- Access to non-identifying information – the third group comprises countries that allow access to non-identifying information about the donor. The fundamental premise is that the anonymity of gamete donation is still legally protected, and it is prohibited to open records

[44] Comp. Article 92 of the FA-FBH.
[45] Łukasiewicz, 2020, p. 90.
[46] Calhaz-Jorge et al, 2020, p. 9; Łukasiewicz, 2020, p. 90.

revealing the donor's name and surname for the child. However, individuals seeking non-identifying information about the donor do not need to meet any requirement other than the legal age limit. The scope of non-identifying information available varies between countries. For example, in Poland, a person conceived with donated gametes has access to information about the donor's year and place of birth, as well as some health data. In Estonia, a person conceived with donor gametes can obtain information about the donor's citizenship, skin colour, education, marital status, whether they have children, height, body build, and hair and eye colour.[47]

- Access only to non-identifying information, but identifying data are available if a specific requirement is fulfilled – Spain allows access to non-identifying information about donors. However, in exceptional cases, the disclosure of the donor's identity is permitted. Such an exception is made, for example, in circumstances that pose a threat to the child's life or health.[48]
- Access to non-identifying information, but identifying data are available depending on the donor's choice – some jurisdictions have made significant steps towards disclosing identifying information about donors. In the Netherlands, a person who knows or suspects that they were conceived through donor artificial insemination and who has reached the age of 12 has access to certain non-identifying information about the donor: physical characteristics (height, weight, skin colour, eye colour, and hair colour and type), education and occupation, and information about the social environment (age, marital status, and family composition) as well as a description of distinctive traits and characteristics provided by the donors themselves. Identifying personal information of the donor (name, surname, date of birth, social security number, and place of residence) can be shared with a person who knows or suspects they were conceived through donor insemination and who has reached the age of 16, provided that the donor has given written consent. If the donor does not provide consent, disclosure may be prohibited only if the donor has a severe interest in preventing it due to potential

[47] Łukasiewicz, 2020, p. 90-91.
[48] Riano-Galán, Martínez González and Gallego Riestra, 2021; Łukasiewicz, 2020, p. 91.

consequences for the applicant. If the donor disagrees and has a compelling reason, the transfer and disclosure will not occur.[49]

- Access to non-identifying and identifying information as a rule – certain countries have enacted laws that ensure that individuals who conceived with donor gametes have access to both non-identifying and identifying information about the donor.[50] One such country is Sweden, which has guaranteed non-anonymous donations since 1985.[51] Sweden has achieved this through the '*Genetic Integrity Act*'[52], which addresses the 'right to information'. Section 5 of Chapter 6 provides: '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 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, upon request, to help this person find out if there are any data recorded in a special journal'. Section 5 of Chapter 7 provides: 'A person conceived through in vitro fertilisation 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 has the right to access the data on the donor recorded in the hospital's special journal if he or she has reached sufficient maturity. If a person has reason to assume that he or she was conceived through such fertilization, the social welfare committee is obliged, upon request, to help this person determine if there are any data recorded in a special journal'. The data collected and stored include identifying information about the donor, such as name, personal identification number, address, and phone number. Additionally, non-identifying data, such as physical

[49] Łukasiewicz, 2020, p. 91.

[50] The Australian State of Victoria has completely abolished donor anonymity, including retrospectively. The State has concluded that it is responsible for providing all individuals conceived with donor gametes the opportunity to access information about their donors, including identifying details (Recommendation 2156 (2019) Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para. 4; Ishii and de Miguel Beriain, 2022).

[51] Irvine, 2024, p. 4.

[52] 'Genetic Integrity Act (Svensk fbrfattningssamling 2006:351)' (Swedisch: *Lag om genetisk integritet)*, issued 18 May 2006.

characteristics, hair colour, and occupation, may also be collected and made accessible to individuals conceived with donor gametes.[53]

3.2.2. Understanding Origins: A Key Component of a Child's Identity

Most people who know their parents take their origins for granted.[54] However, some children and adults are unaware of their biological parents. Setting aside the sociological aspects, desires, and needs of children to know their parents, and focusing on the legal foundations, it can be confirmed that the rapid development of biotechnology has opened many legally sensitive issues in family law.[55] The right of children to know their origins has gained increasing significance in recent years, both abroad and in Slovenia. Following Besson, 'the right to know one's origins amounts to the right to know one's parentage, i.e., one's biological family and ascendance, and one's conditions of birth. It protects each individual's interest to identify where she comes from'.[56]

The reasons driving an individual's interest in discovering their origins vary. Central to this is the missing piece that individuals seeking their origins feel is crucial for shaping their own identity.[57] In *Mikulić v. Croatia,*[58] the ECtHR emphasised that knowing one's biological father is essential for an individual, as knowledge of one's origins is a significant element in forming one's personality.[59] Therefore, States must ensure effective procedures to facilitate this process. Access to information about one's origins can be important both in childhood (e.g., for health-care reasons) and later in adulthood (e.g., for searching for one's ancestors).

Individuals may have a psychological need for identity, a health-related basis (e.g., knowledge of hereditary diseases), or even material interests (e.g., inheritance, alimony). Curiosity about the donor's characteristics, a desire for a better understanding of ancestral history, family, and genetic background, and a simple wish to answer the question,

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[53] Łukasiewicz, 2020, p. 91; Ishii and de Miguel Beriain, 2022; Sabatello, 2014, p. 37; Irvine, 2024, p. 9.
[54] Besson, 2007, p. 138.
[55] Lamçe and Çuni, 2013, p. 605; Kraljić, 2022, p. 128.
[56] Besson, 2007, p. 140.
[57] Chan and Singer, 1999, S. 174.
[58] *Mikulić v. Croatia* App. no. 53176/99, 7 February 2002.
[59] Čolaković, 2021, p. 225.

'Why am I who I am?' also appear as reasons.[60] Although determining one's origins might lead to unpleasant consequences in the personal and family lives of all involved, the child's interest in learning about their origin should outweigh the interest in legal certainty and the need to protect the stability of existing family relationships.[61] As mentioned, the concept of 'knowing one's origins' can be understood as an umbrella concept that encompasses at least three aspects:

- Medical aspect: The right to know the complete family medical history and medically relevant genetic history of the donor.
- Identity aspect: The right to genetic information about the donor that could help descendants complete their understanding of their own identity.
- Relational aspect: The right to know the full identity of the donor with the aim of attempting to establish a relationship with the donor.[62]

In the case of adoption, a record of the child's biological parents is usually provided in the original birth register; however, this is not the case for children conceived with donated gametes. An example of good practice in the field of adoption is the 'Children Act of 1989'[63] and the 'Adoption Contact Register'[64] (both from the United Kingdom), which allow adopted children to access their original birth records upon reaching the age of 18. They can access and view their original personal name and the details of their parents if recorded. This enables adopted individuals to obtain information about their pre-adoption history.[65] In the case of children conceived with donated gametes, there is no such record, or all the documentation is usually kept at the health institutions that performed these procedures. Therefore, even if social parents decide to disclose, access to information about the gamete donor (according to national legislation) may be prevented. Following Article 18(2) of the Slovenian Infertility Act, a child conceived by MAR with donor gametes may, for medical reasons, request that the medical centre provide them with medically relevant

[60] Wade, 2021.
[61] Decision of the Constitutional Court of the Republic of Slovenia, no. *U-I-328/05-12*, 18 October 2007, para. 14.
[62] Ravitsky, 2007, p. 3; Preložnjak, 2020, p. 1176.
[63] *Children Act 1989*, [Online]. Available at: https://www.legislation.gov.uk/ukpga/1989/41/contents (Accessed: 10 September 2024).
[64] *Adoption Contact Register,* [Online]. Available at: https://www.gov.uk/adoption-records/the-adoption-contact-register (Accessed: 10 September 2024).
[65] Cretney, 2000, p. 329; Colcelli, 2012; Kraljić, 2022, p. 129.

information about the donor gametes, provided that they are of sound mind and at least 15 years old. The child's legal representative may only learn this information with the authorisation of a court in a non-contentious proceeding if there are exceptional medical reasons for doing so.

One of the key questions associated with disclosure is whether not knowing one's genetic origin harms individuals conceived with donated gametes. Two concepts of the right to know one's genetic origin attempt to address this question as follows.

- The consequentialist approach[66] is based on the idea that a lack of knowledge of one's genetic origin harms individuals conceived with donated gametes. The harm experienced by these individuals can be empirically assessed and proven.
- The conceptual approach assumes that knowing one's genetic origin is a fundamental human right. In this approach, empirical data proving that a lack of knowledge about one's origin is harmful to an individual are not required. Notably, simply disclosing the genetic origin does not necessarily result in a better or happier life for individuals conceived with donated gametes. The disclosure itself can also negatively impact an individual. However, failing to inform individuals conceived with donated gametes about their genetic origin is certainly wrong. Such an action violates their right to access this information and deprives them of the freedom to choose. When individuals have all the information about their genetic origin, they can, in accordance with the principle of autonomy, decide how to approach this information and what significance to attach to the genetic components of their identity.[67]

Both approaches confirm that an individual has the right to know their origin (including genetic origin) and that clinical or legal frameworks that violate this right are ethically unacceptable and should be changed both nationally[68] and internationally.[69]

Although the right to know one's origin is incorporated into the CRC and is, therefore, a fundamental right of the child, it cannot be traced

[66] More on consequentalism see Savolescu and Wilkinson, 2019.
[67] Warnock, 1987; Frith, 2007.
[68] The Dutch Supreme Court ruled already in 1994 that a child's fundamental right to fully and freely develop their personality includes the right to know the identity of their biological parents (*HR 15 April 1994, NJ 1994, 608*).
[69] Ravitsky, 2017, p. 2.

explicitly either in the CRS or in the FC. This creates the impression that the Slovenian FC prioritises maintaining the anonymity of biological parents. However, although the right of the child to know their origin is not explicitly specified in either the CRS or the FC, this does not mean that it can be denied. Article 8 of the CRS states that ratified and published international treaties (including the CRC) are applied directly. Nevertheless, the Constitutional Court of the Republic of Slovenia addressed the right to know one's origin in 2007. It took a clear stance that an individual's right to know their origin falls within the scope of personal rights, whose foundation and limits are determined by Articles 34 and 35 of the CRS. Human personality is a composite of various personal goods protected by personal rights that belong to the person as an individual. The guarantee of personal rights ensures those elements of an individual's personality not protected by other provisions of the CRS, thus allowing individuals to freely develop and shape their lives according to their own decisions. Among the elements crucial for the development of an individual's personality is the knowledge of one's origin—knowing who one's biological parents are. This knowledge is essential to an individual's self-concept and place in society. Knowing one's origins also significantly affects family and kinship ties. The inability to determine one's origin can be a severe burden and a source of uncertainty for an individual. Therefore, the right to know one's origin is also part of personal rights.[70]

3.2.3. Broader Interest Regarding the Right to know one's origin?

Enabling access to information about genetic origins for individuals conceived through donor gametes has implications for various other interested parties or stakeholders. The State holds the responsibility of enacting appropriate family law legislation to ensure that gamete donors do not bear parental responsibilities for children conceived using their donated gametes. This is explicitly stated in Article 27 of the Infertility Act.[71] Moreover, it is the State's duty, or that of the industry (e.g., IVF clinics, gamete donation agencies, or sperm banks), to maintain proper records and registers of donors. This requirement is reflected in Article 39 of the

[70] Decision of the Constitutional Court of the Republic of Slovenia, no. *U-I-328/05-12*, 18 October 2007, para. 8.

[71] See Article 27 of the Infertility Act: »*Donors have no legal or other obligations or rights in relation to children conceived through ART.*«

Slovene Infertility Act**,** which mandates the recording and tracking of donor information.

Donors must be fully informed about the consequences of donating with an open identity and the fact that they may be committing to updating their records for life. They should also be aware of the possibility of meeting their genetic offspring one day. This means that parents must also receive counselling and be advised to carefully consider the implications of conceiving a child with a donated gamete. Parents should consider how they will handle the situation if their child wishes to access such information in the future, as well as the potential impact that disclosure might have on their family dynamics.[72]

While the question of gamete donation arises naturally in same-sex families, for heterosexual parents, the decision to disclose is one that they must consciously make. Many families struggle with this decision, even in countries that prohibit anonymous donation (e.g., Sweden[73]). Studies have shown that most parents choose not to disclose the circumstances of their child's conception because of reasons such as the desire to protect the child from the potentially unfavourable knowledge that they are not their genetic parents, concealing infertility, protection of the child from negative social reactions, protection of the family, and so on.[74]

The consideration of removing donor anonymity raises concerns about how this might affect the availability of donors. For example, there could be a shortage of potential donors, which would not be in the best interest of individuals or couples who require third-party assistance to conceive a child. The lack of donated gametes can also occur for other reasons. For example, the lack of male gametes is present in certain parts of Sweden, which changed the law in 2016 and made it possible for single women to undergo artificial insemination with donated sperm. The latter increased the demand for donations. Sweden is, therefore, working towards encouraging donations. With this, they want to shorten waiting times, reduce travelling abroad, and reduce the import of donated sperm from Denmark.[75] However, good practices in various countries have shown that much can be achieved

[72] Ravitsky, 2017, p. 3.
[73] More Sabatello, 2014, p. 30.
[74] Ravitsky, 2017, p. 3.
[75] Irvine, 2024.

through well-managed campaigns that emphasise and build on the altruism of donors.[76]

4. Final Thoughts

National legal frameworks vary significantly regarding the right to know one's origins. Some European countries, such as Norway (2003), the Netherlands (2004), the United Kingdom (2005), and Finland (2006), have abolished the originally established right to donor anonymity. Countries such as Austria, the Netherlands, Switzerland, and Germany permit the disclosure of donor identities. In 2018, Portugal ruled that anonymity was unconstitutional. In contrast, the legal framework in the United States allows donors to choose whether they want to remain anonymous.[77]

The balance regarding the right to know one's origins for children conceived through MAR (e.g., with donated gametes) is slowly but decisively tipping in favour of recognising this right. This means that children conceived through MAR increasingly have the right to know the identity of the donor, should they wish to do so. The right to know one's origins is closely linked to the right to respect for private life, as it encompasses the fundamental aspects of personal identity, family ties, and the freedom to make informed choices about one's life.

In 2019, the Parliamentary Assembly of the Council of Europe adopted 'Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors, and children' (Recommendation 2156)**,** which provided clear guidance regarding the right of children conceived through gamete donation to know their origins. Recommendation 2156 suggests that Member States should abolish anonymity in all future gamete donations and ban the use of anonymously donated sperm and oocytes. That is, except in exceptional cases (e.g., when the donation is from a close relative or friend), the identity of the donor would not be revealed to the family at the time of donation. However, the identity of the donor would be disclosed to the child, conceived with donor gametes, at the age of 16 or 18. Upon reaching the specified age, the child would be officially informed (the State should have this role) about the existence of further information regarding the circumstances of their conception. It is recommended that prior to this, legal parents should also be

[76] Ravitsky, 2017, p. 3; more also Reed and Kant, 2023.
[77] Riano-Galán, Martínez González and Gallego Riestra, 2021.

informed and reminded that their child will soon receive an official notification about their conception and origins. This would encourage parents to disclose this information to their child themselves prior to the official communication.[78] After being informed, the child could decide whether and when to access this information, including the identity of the donor, and whether to establish contact. Ideally, this decision would be supported by access to counselling, guidance, and support services.[79] An alternative approach would be to mandate the recording of donor-conceived status on birth certificates. This would ensure that individuals know they can access further information about the circumstances of their birth, including the identity of donors or surrogates, from the relevant State authorities. In line with the principle of autonomy, this information would only be available to individuals born through gamete donation.[80] Unfortunately, **Slovenia** has not yet adopted legislation to regulate this issue. Lawmakers should focus on placing the child's interests, particularly their right to know their origins, at the forefront of legal reforms in this area.

Recommendation 2156 also states that the waiver of anonymity should not have legal implications for parenthood. The donor should be protected from any claims for parental care (obligations and rights) or inheritance claims. The donor must receive appropriate guidance and counselling before consenting to donation and before their gametes are used.[81] This is appropriately regulated in Slovenian law, as donors do not have any rights or obligations towards children conceived with donated gametes. Additionally, the law provides for counselling before donation and the use of donated gametes.

Member States of the Council of Europe that permit the donation of sperm and oocytes should establish and maintain a national donor registry and a registry of conceived donors to facilitate the exchange of information, as outlined in paragraphs 7.1 and 7.2 of Recommendation 2156. This should also include the implementation of a cap on the number of donations from the same donor. Additionally, measures should be taken to prevent close relatives from marrying and to trace donors if a medical need arises. Clinics

[78] Wade, 2021.
[79] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para 7.1.
[80] Wade, 2021.
[81] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para 7.2.

and service providers should be required to maintain and exchange relevant records with the registry. Moreover, a mechanism should be established for cross-border information exchange between national registries.[82] Under Slovenian law, access to health data is provided, and a national registry and records are maintained. However, challenges arise with cross-border reproductive procedures, for which efforts must be made to enhance the adequacy of information exchange between national registries. A significant step forward has been made with the introduction of the 'Single European Code' (SEC), which ensures greater traceability within the European Union.

As previously mentioned, Australia has completely abolished donor anonymity, including retrospectively. Recommendation 2156 takes a different stance, suggesting that in the case of legislative changes, donor anonymity should not be retrospectively removed if it was promised at the time of donation, except for health reasons or if the donor has consented to the removal of anonymity and, thus, to the registration of donors and persons conceived with donated gametes registry. Before donors decide whether to consent to the removal of their anonymity, they should be provided with guidance and counselling.[83] If Slovenia chooses to amend its legislation to eliminate anonymity, it will need to clearly define when such changes will apply and what this will mean for past and future donors.

The principles and recommendations outlined above must be applied without compromising the most crucial aspect: Gamete donation must remain a voluntary and altruistic act solely aimed at helping others (singles or couples), without any financial or comparable benefit to the donor.[84] Legislative changes in certain countries that have strengthened the right to know one's origin for individuals conceived with donated gametes have also led to a decrease in the number of donors. This decline can be concerning given the increasing issue of infertility among couples. The reduction in donors poses a serious obstacle to achieving the desire for children among couples or individuals who cannot conceive on their own. Therefore, countries need to establish an appropriate system that focuses on informing, promoting, and encouraging donations, while ensuring transparency

[82] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para 7.3.
[83] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para 7.4.
[84] Recommendation 2156 (2019) on Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, para 7.5.

regarding the right to know one's origins. A sufficient number of donated gametes in national systems significantly facilitates couples' access to MAR as they do not need to seek treatment abroad. Thus, legislative changes must be twofold: on the one hand, they should prioritise the right to know one's origins, which, according to the CRC, is not absolute. On the other hand, the State should create the opportunity for individuals to decide, in accordance with their autonomy, whether to exercise this right. Thus, Slovenia should adopt this approach.

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