Parliamentary Assembly
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Recommendation 2156 (2019)[1]

Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children

Parliamentary Assembly

1. It is estimated that more than 8 million children worldwide have been born as a result 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 donation or international adoption fields. States also sought to preserve the filiation of donor-conceived children in accordance with the United Nations Convention on the Rights of the Child (Articles 3, 7 and 8). Most States thus restricted the right of donor-conceived people to know their origins.

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

3. However, 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.

4. This balancing of different rights, interests and obligations has until recently often tended to favour the donor's right to privacy, and therefore donor anonymity. However, several European States have decided to waive donor anonymity, and the State of Victoria in Australia has abolished donor anonymity completely and retrospectively, having come to the conclusion that the State has a responsibility to provide all donor-conceived people with an opportunity to access information, including identifying information, about their donors. The current legislation and practices of Council of Europe member States in the field of medically assisted procreation vary significantly.

5. The distinguishing features of the Council of Europe, namely its mandate to promote human rights, democracy and the rule of law, and its role of fostering good practice among the member States, places the Organisation in an ideal position to address the risks and challenges related to the anonymity of sperm and oocyte donations. The Parliamentary Assembly thus recommends that the Committee of Ministers make recommendations to member States in order to improve the protection of the rights of all the parties concerned, while 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.

6. The Assembly invites the Committee of Ministers to deliberate on whether these recommendations should ultimately become legally binding.

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1. *Assembly debate* on 12 April 2019 (18th Sitting) (see Doc. 14835, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Petra De Sutter; Doc. 14854, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pierre-Alain Fridez). *Text adopted by the Assembly* on 12 April 2019 (18th Sitting).

7. Whatever form the recommendations take, the Assembly considers that they should be based on the following principles:

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.