The push towards common european legislation with respect to the right to know one's genetic origins

El impulso hacia una legislación europea común, con respecto al derecho de toda persona de conocer sus orígenes genéticos

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Abstract

Twenty years since it was opened for signature, the Oviedo Convention needs updating. It does not deal with the issue of the donor-conceived children's right to know the identity of the gamete donors.

The European Court of Human Rights has recently stated that: a) the right to know one's biological background is protected by article 8 of the Convention on Human Rights; b) such a right must be balanced with the biological mother's right to anonymity (anonymous birth).

In order to find such balancing, a possible solution might be to require judges to summon mothers to ask them whether they would like to reverse their decision to be anonymous. If the mother reaffirms her intention to remain unknown, the court may not allow the child to learn of her identity and contact her.

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The authors also analyze two other issues not taken into account by the European Court: a) the balancing between the right to know one's origins and the gamete donors' right to anonymity; b) whether the donor-conceived children's right to know would make it mandatory for legal parents to disclose conception procedures.

These problems and the importance of the interests at stake induce the authors to argue that the choice to keep using the above mentioned article 8 as yardstick is far from ideal. It appears to be far preferable to deal with these issues while updating the Oviedo Convention or in such a way as to incentivize the enactment of legislation that would be uniform throughout the European Union.

Keywords: heterologous artificial insemination, right to know one's genetic origins, right to anonymity, duty to disclose, Oviedo Convention, European Convention of Human Rights.

1. Introduction

Twenty years since it was opened for signature, the Oviedo Convention (the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine) still represents a pivotal frame of reference within the ethical and legal debate on controversial issues related to biomedicine.

However, the Oviedo Convention does not cover the issue of medically assisted procreation (MAP), in particular those techniques that entail gamete donation (usually referred to as "heterologous", however inappropriately) and the ensuing issue of the right of the children thus conceived to know the identity of the gamete donors: their biological parents.

It is an extremely thorny issue. Conventional wisdom and prevailing legal doctrine call into question the legitimacy of heterol-ogous fertilization for the following reasons. First and foremost, it gives rise to a distortion in the principle of equality, since

it equates different situations: a) couples who undergo MAP procedures using their own gametes, which makes them the biological parents; b) couples who resort to gamete donors, which makes them biological parents only at a formal level [1]. Moreover, heterologous fertilization fundamentally unlinks biological and social identities for any given individual. In fact, such practices a) take away from newborn children the certainty to have been born within an exclusive interrelationship, b) violate such children's right to be aware of their familiar identity, c) make it harder to map out an accurate family anamnesis [2].

2. The growing acknowledgment of one's right to know their biological heritage

As pointed out by the Italian National Bioethics Committee, several pieces of legislation at the national level take into account requests from minors or adults, who came to know that they were conceived through gamete donation, to gain access to information regarding the donors. Some nations have repealed the obligation to enforce anonymity: Austria (1992); Germany (1998); Switzerland (2001); Holland (2002); Norway (2003); Great Britain (2004); Sweden (2006); Finland (2006). Outside Europe: New South Wales (2007); Western Australia (1999 and 2004); Victoria (1995 and 2009) and New Zealand (2004) [3]. Several international treaties have bolstered the children's right to know their genetic heritage as well. Article 7 of the Convention on the Rights of the Child of 1989 states that "a child has a right, as far as possible, to know and be cared for by his or her parents". It is a sweeping, generalized prescription, which was made necessary by child abductions in South America and related illegal adoptions. Far more meaningful, the European Convention on the Adoption of Children (2008) asserts that national authorities may deem the right of children to know their origins as outweighing the biological parents' right to

anonymity (art. 22, subsection 3) [3]. Italian legislative trends have evolved in the same direction. In 2001, Law n. 184/1983, art. 28, was reformed by lawmakers, marking the abandonment of the culture of secrecy. In fact, such a reform mandated that adopted children be informed by their foster parents about their having been adopted, not merely in order to uphold the children's right to their personal identity, but primarily to keep them from learning about their real status in an abrupt, possibly traumatic fashion [4]. Parents obviously retain the right to decide the way and timing of such revelations, at least as long as the child is underage[1]. The growing recognition of the right to know one's biological heritage can be explained away with the need for greater protection of the children's health and identity.

With regards to physical health, it is well-known how important access to genetic information may turn out to be, from the standpoint of prevention and family anamnesis. It is therefore essential to be able to rely on as thorough an information as possible relative to gamete donors, without necessarily disclosing their identity to donor-conceived individuals [5]. As for such individuals' psychological wellbeing, part of scientific scholarship claims that the inability to find out about donors' identities may cause damage to the children [6; 7]. Furthermore, it is worth considering that abroad, many donor-conceived children have filed lawsuits in order to be granted access to information as to their genetic background. That leads us to believe that it is important to those people's lives to repel all doubts about their genetic parents' identity. Consequently, it is reasonable to assume that any failure to acknowledge their interest in knowing their origins may entail psychological repercussions liable to negatively affect their well-being. Therefore, a precautionary principle ought to be adopted, enabling the child to find out about donor identity [5].

An evolution of the very concept of identity leads to the same conclusion. Identity is in fact among those inalienable rights enshrined in article 2 of the Constitution of the Italian Republic.

Such a concept has long encompassed the right to one's self in a broad sense [8]. In particular, the right to know one's origins has been reasserted by virtue of a need for individual identity protection [9; 10]. The European Court of Human Rights itself has buttressed this conclusion, stating that one's birth, and the circumstances thereof, and the right to know one's biological background is part and parcel of the child's and the adult's right to respect for their private life, codified in article 8 of the Convention on Human Rights [11-13].

Children have a vital interest (in terms of personal development) in attaining all information leading to the truth regarding a fundamental aspect of their personal identities, e.g. their biological parents' identity. Article 8 of the European Convention on Human Rights unequivocally states that the right to respect for one's private life belongs to every person, not merely to children, but to mothers as well. If mothers are denied the right to anonymity after giving birth, such a prohibition may increase the incidence of abortions, possibly illegal ones. Therefore, in order to truly abide by article 8 of the Convention, member states need to strike the right balance between rights and conflicting interests, that is, on the one hand the right of the child to know one's origins, and on the other hand the right of the mother to anonymity [11].

On those grounds, the Court has ruled that article 28 of law n. 184/1983 regulating adoptions runs counter to article 8 of the Convention, since it protects the mother's anonymity failing to strike the right balance between the above mentioned rights and conflicting interests. In fact, the plaintiff was unable to find out about her biological origins, because the ruling denied her the right to gain that information [11].

The above cited rulings, from the Italian Constitutional Court and the European Court of Human Rights, lay out principles that may apply in such cases as well, although said rulings do not deal with heterologous fertilization-conceived children. It is relevant to highlight the similarities between a heterologous fertilization child

and one who has been adopted after an anonymous birth. Both children, in fact, do not live with their biological parents, nor do they know their identities; at the same time, both have no prior family history with their biological parents. Only the child who was adopted has lived and developed in her mother's womb, and he or she was taken from her when she refused to be identified in the birth certificate. As for the woman who gave birth to the heterologous fertilization child and the donor, they both chose to give up on the newborn child and the donated gametes, thus forfeiting any legal claim over the baby [5].

3. Balancing between the right to know one's origins and the biological mother's right to anonymity in case of anonymous birth

In case of adoption, an issue arises as to the balance between the right to know one's origins and conflicting interests.

In Italy, this aspect has been regulated by law 4, May 4th, 1983, n.184, article 28, subsection 5, according to which adopted children, upon turning twenty-five, are entitled to gain information as to their biological identity and parents. They can do so upon turning eighteen, provided that there are serious and demonstrable psycho-physical health reasons.

Such rules do not seem to apply to heterologous fertilization cases, even less to anonymous births, given the different nature of those situations. In fact, adopted children have often lived for part of their lives with their biological parents, from whom they were taken as a consequence of legal proceedings and litigation. On the other hand, children conceived through heterologous fertilization and MAP procedures have been born by their legal mother and have not gone from a biological family to a legal one. Another relevant aspect is the presence of donors, who willingly provided

their gametes knowing full well that the child thus conceived would have different legal parents [5].

Furthermore, the reasons that make it appropriate in adoption cases to limit the right to find out about one's origins do not apply to heterologous fertilization. In fact, adopted children may be emotionally distressed as a result of contact with their original families, whereas those born from medically assisted procreation run no such risk [14; 15].

Secondly, biological parents cannot play an ancillary and supportive role for an abandoned child, which rests with foster parents instead. Besides, gamete donation from a third party is by no means tantamount to child abandonment, which is often determined by seriously dysfunctional family situations, which make it necessary to keep the child away from his or her biological parents [1; 16]. A proper balancing between the rights of anonymity and to know one's biological heritage, as hoped for by the European Court of Human Rights, ought to be pursued by different means. For instance, a preventive support network may be instituted, providing care and counseling for pregnant women, and designed to verify their actual will to stay anonymous [17]. The Italian Constitutional Court points to an alternative way to safeguard such conflicting interests. Justices have declared the already cited article 28 unconstitutional, in that it does not require judges to summon mothers to ask them whether they would like to reverse their decision to be anonymous. It is in fact possible that the motives based on which the mother had chosen anonymity may have become immaterial or negligible over time [18]. Not all Italian courts have ruled uniformly according to the principles set forth by the Italian Constitutional Court. Several judges have ruled that only new legislation may lay out the proper proceedings through which the biological mother's will to be anonymous can be verified. Nevertheless, Italian lawmakers have not yet enacted any new legislation in that regard, therefore lawsuits are likely to be thrown out [19; 20].

The Italian Supreme Court has nonetheless clarified that in spite of the lack of targeted legislation, juvenile courts must make sure that biological mothers do not intend to reverse their position with regards to anonymity, and must do so upon request of anonymous birth children. To that end, courts must act in compliance with the legislative framework and principles put forth by the Constitutional Court via ruling n. 278 from 2013, which are fit to ensure respect for women' s dignity to the greatest extent possible. If the mother reaffirms her intention to remain unknown, the court may not allow the child to learn of her identity and contact her [21; 22]. Yet, the right to anonymity may outweigh the right to know one's origins only as long as the biological mother is alive. In fact, denying access to such knowledge after the biological mother's death would entail the "irreversible nature" of the secret that has been declared unconstitutional by the above mentioned Constitutional Court ruling n. 278, 2013 [23].

Specifically, the Trieste courthouse has laid out the following procedural steps. The biological mother will be summoned to the local social services facilities, where an honorary judge will inform her of the child's wish to know her identity. The judge should verify whether the biological mother is still determined to remain anonymous, and allow a reasonable time frame for her to make up her mind. If the mother ultimately decides to keep her anonymity, the judge will merely inform the court without compiling a report. If, on the other hand, the woman chooses to have her identity disclosed to her biological child, a specific report will be compiled and she will be required to agree to it and sign it [24].

The Italian Constitutional Court points to a model akin to the French system. In France, until law n. 22 from 22nd January 2002 was enacted, the biological mother's identity could never be disclosed, if she had opted for anonymity. The new legislation, instead, has made the search for biological origins easier, by means of a newly-instituted national council that provides access to information as to one's personal origins; such an independent body is

made up of magistrates, representatives from associations involved in the issue and professionals of similar extraction. Through such a body, children may ask their biological mothers to lift the veil of secrecy [17]. The European Convention on Human Rights has deemed the above mentioned French legislation as compliant with the Convention, and with article 8 in particular, since it has achieved the ideal balance and proportionality between the conflicting interests at stake. The European Court, in that regard, asserts that member states must be able to choose any legislative tools as they see fit, in order to reconcile all the interests involved [12].

4. Balancing between the right to know one's origins and the gamete donors' right to anonymity

One may wonder whether the right to anonymity and its outweighing the children's right to know their genetic origins should only be upheld for biological mothers who choose to keep their identities undisclosed or if such a right ought to be extended to gamete donors. They are two very distinct scenarios. In case of gamete donations there is no risk of illegal underground abortions that justify the biological mother's right trumping the child's right to know her identity. Consequently, donor conceived children should be entitled to know the identities of their biological parents. Otherwise, the linkage between procreation and responsibility would be severed, which holds true in every case, because it is emblematic of a general principle of self-responsibility. For obvious reasons of peaceful coexistence and respect for others, it is necessary that each individual take responsibility for his or her actions. For those reasons, it is widely acknowledged that the biological fathers of naturally-conce-ived children cannot shirk their parental responsibilities, not even if they had been led to believe by their partners that the sexual intercourse was unfit to procreate. Such responsibilities of biological fathers still hold valid even if the chil-

dren already have a legal father, having been born within the marriage. Therefore, the fact that a child already has legal parents does not rule out his or her biological father's parental responsibilities. On the contrary, in heterologous fertilization cases, if the right to anonymity were allowed to outweigh the child's right to know his or her biological parents, such a child would be discriminated against, in that he or she would be deprived of any chance to establish contact with the biological parent, even in case of death of his or her legal parents.

In order to sustain a greater relevance of the right to anonymity on the part of the donor, it does not seem fit to cite the European directive 2004/23/CE, which came into effect in Italy via decree n. 191 on 6th November 2007, and reaffirmed the principle of donor anonymity [25]. In fact, gamete donation is not akin to any other cell donation. Donating spermatozoa or oocytes, there is no substitution of any body part or organ, as in cases of blood, bone marrow, etcetera.

Gametes thoroughly encompass an individual's identity, being the vessel by which DNA is passed on to one's offspring. That is the reason why law n. 91/1999, art. 3, subsection 3, which deals with organ and tissue transplants from deceased donors bans the donations of gonads (testicles and ovaries) and encephalon [14].

One more argument often made in favor of anonymity is that the donor would not be regarded as a "parent", either legally or biologically [26, 27]. In that regard, the very definition of parent can be discussed at length. Still, no discussion can overlook a well-established fact: those who are born from heterologous fertilization procedures present the genetic background of the donor too, in the same way as the children born from natural conception have the genetic background of the couple who conceived them. If the latter are indisputably the new born child's parents, then there is no reason to deny that donor conceived children are the donor's biological offspring, at least from a biological perspective.

Some scholars highlight different arguments in favor of the right of donors to anonymity. Newborn children need to be part of a family where the conditions exist for proper psycho-physical development. To that end, interpersonal processes are vital, namely the process of fusion with the mother who raises the child, irrespective of the biological contribution of another woman. Furthermore, looking for the donor cannot offer donor-conceived children any valuable contribution to the discovery of their personal history: gamete donors are total strangers who donated their gametes, thus establishing a genetic tie (however partial), but certainly not a parental connection. The individual who wants to find out the gamete donor's identity feels the urge to do so not only because of the need to define his or her identity, but possibly because of a lacking relationship with the social parents. Such an affection deficit may lead the child to idealize unknown parental figures on an imaginary level. Yet, knowledge of one's biological parent cannot in any way mitigate dysfunctional family relationships, since the donor has never embraced a parental project [3]. Nonetheless, relationship or affection-related issues within the children's social families may exacerbate their suffering, and they are denied the opportunity to solve their existential distress through contact with their biological parents. Besides, the fact that the latter had not previously espoused a parental project does not mean that such a wish on their part cannot eventually arise. However, donor-conceived children do not necessarily set out to find their biological parents hoping for them to take up parenthood. On the contrary, as the Italian case (on which the European Court has ruled) has shown, it is possible that such a search could take place at later stages in life, when it may well be the parents who need help from their children.

Arguing in favor of donor anonymity, it was observed that only in case of adoption there may be a "family history" prior to abandonment. Knowledge of and access to one's roots takes on a different meaning for foster children: in some instances, knowing one's

biological parents may help to psychologically process the refusal from biological parents. The situation differs substantially for donor-conceived children. Assuming that children born through MAP have a «family history» and viewing donors as parents may end up limiting parenthood to the merely biological realm [3]. Yet, a biological parent is also someone who naturally conceives a child with no intention to do so (and unwilling to take responsibility for it) or believing that that particular sexual intercourse would be unfit to procreate. Despite all that, no one would ever question the child's legitimate right towards his or her parents in such instances, including the right to get to know them.

Lastly, several researchers theorize that allowing relationships between donor-conceived children and their biological parents might entail more serious risks than the possible psychological damage for such children stemming from donor anonymity. For instance: a) the upsetting of the legal family's existential balance, arising from external interference on family project and privacy; b) lack of adequate protection for the woman who has born the child (who is considered the legal mother, unlike the genetic one); c) traumatic repercussions on the donor's psychological health and on his or her family dynamics; d) a growing gamete market, considering that total transparency or other forms of burdensome commitment are easier to demand from those donors who are paid to provide genetic material [3].

None of the above mentioned arguments, however, appears to be a clincher. In fact, there may be negative consequences within the legal families, but positive ones as well. The very contact with one's biological parent may in fact drive a child closer to his or her legal parents. On the other hand, the odds of a child's legal family dynamics being upset is higher if he or she cannot fulfill the wish to discover his or her origins, thus gaining greater self-awareness [3]. Besides, the woman who bears the child is far from being left devoid of protection, since no authority can strip her of her motherhood rights.

As for the repercussions on the donor, over time he or she may even turn out to be happy to have found a child. At any rate, in the choice between safeguarding the rights of a donor or a child, it is obviously the latter who is more deserving of protection, since he or she is subjected to decisions made by others, e.g. the donor's choice to willingly provide the gametes. Consequently, if the child does not feel the need to meet him or her, the donation will end up being an act through which a couple fulfilled their wish to become parents. If, on the other hand, the child proves determined to find out about his biological origins, such an urge should be satisfied. Children are in fact the weak link in the reproductive chain, since they are subjected to choices made by others, and therefore deserve the information that they consider to be important.

Further reasons lead one to conclude that the right of children to know their biological parents should carry the most weight. To disregard their demand to know the truth is arguably tantamount to a form of violence. It is violence from those who refuse to tell them the truth about their biological parents, although they are privy to it and could disclose such information. The argument takes on even greater relevance when the individual who could tell the truth is the state itself. The state has no right, and should never have any power, to bar access to the truth, even more so when the truth has to do with personal identity [3; 14]. Donor anonymity gives rise to a form of inequality between those naturally conceived and donor-conceived children. The latter are in fact subjected to a legal prohibition to get to know their biological parents [1].

In addition to that, it is undeniable that being a parent entails something more than a mere biological connection with one's children: a steady relationship while fulfilling parental duties such as financial support, proper upbringing and education. When only either one component is present, is it possible to view someone as a parent? The answer is affirmative. It is to be considered a parent both someone who conceives a child but is then unwilling to take

care of him or her and somebody who legally adopts one, who by the way does not have to be a forsaken minor, since Italian law allows for the adoption of young adults over the age of 18 even if they already have biological parents (art. 291 and 297 of Civil Code) as well as minors who have not been abandoned and are not orphaned (art. 44, lett. B law n. 183/1984).

The crux of the matter is, however, whether being a legal or social parent may render a child's connection with the biological parents null and void. In that regard, it is worth noting that a biological connection turns an individual into someone else's child, regardless of the donors' willingness or unwillingness to be parents or the relationship established by them with their genetic children.

It is the biological bond which sets the parent-child relationship apart from any other one based on love, personal affection or even foster parenthood. That is the reason why Italian law on adoption allows children to discover their biological parents' identity, although such knowledge may turn out to be dangerous for adoptees, that could end up being exposed to the same dysfunctional family conditions that led to their abandonment in the first place.

As highlighted by the Italian National Bioethics Committee, binding parental responsibility to the biological connection, considering it to be an irreversible relationship, which cannot be undone voluntarily, is in keeping with the principle of the child's best interest, which is enshrined in many legislative frameworks and in international charters on human rights. Thus, in the relationship between gamete donors who opt for anonymity –which right is upheld in many national legislations, in order to foster gamete donation– and donor-conceived children who demand to know their biological origins for the purpose of personal development, the right of the latter must be viewed as carrying more weight. Otherwise, there may turn out to be an imbalance in the degrees of protection of the two parties: heterologous fertilization constitutes in fact a forfeiture of the principle of parental responsibility, in that it visits upon the children a different family status

from the one that they would be entitled to, a status in which childbirth is unlinked from biological origins on the basis of the decisions made by the adults involved. It is then worth considering that the growing trend in many countries is towards repealing the right to donor anonymity, enforcing a principle of "favor veritatis" ("in favor of truth"), thus upholding the children's right to know the truth #which right may or may not be exercised rather than impose the concealment of the biological parent's identity. Ultimately, since donor-conceived children are discriminated against compared to other children, given that the artificial separation of the biological and family components leads to the abandonment of the child's right to grow up and be reared in his or her family (art. 1 law n. 189/1983), an element of equity and the principle of the minor's best interest should lead to the recognition of the children's right to access information as to their genetic parents' identities. Arguments in favor of the children's right to truth are based on pivotal principles from an ethical and legal vantage point: equal social dignity and non-discrimination; it is paramount to keep donor-conceived children from being the only group of individuals who are legally banned from accessing information on their biological parents. Donor-conceived children would suffer a discrimination compared to foster children, who are instead granted the right to gain information on their genetic origins, once they are adults [3].[1]

Even those who advocate for donor anonymity are persuaded that anonymity should not entail any risk to the child's health condition. In that regard, the Italian National Bioethics Committee sets forth two recommendations: a) the authority of doctors to come about any kind of data contained in registries and medical records of the donor and the use of such data for diagnostic and therapeutic purposes in order to preserve the child patient's health and well-being. To that end, it is essential to encourage a constructive and collaborative relationship between medical facilities and donors in the long term; b) keeping records in sperm banks or in

authorized facilities about donor identities, along with a gamete donor registry and all relevant information provided on a voluntary or mandatory basis by the donors in compliance with provisions laid out in European directives (Directives 2004/23/CE; 2006/17/CEE 2006/86/CE) [3].

5. Do donor-conceived children's right to know bind legal parents to disclose conception procedures?

Revealing to a child how he or she was born through a gamete donation from one or even two strangers is certainly an extremely difficult time to handle. There are several reasons why parents might want to conceal such a truth. The inability to procreate can carry social stigma or, at the very least, be the cause of severe marginalization and psychological distress. Studies have shown that male infertility may give rise to doubts and insecurities as to one's manhood and sexual fitness [28-31]. There is substantial risk that the social parent may feel less relevant within the family setting than the biological one. Plus, learning of the existence of a donor may not necessarily be in the child's best interest, since it could cause possible trauma and psycho-social discomfort [32; 33].

Lastly, the right to respect for one's private life entails the upholding of the right to anonymity, whenever chosen by the donor involved [34]. However, as far as adoptions are concerned, law n. 184/1983 (modified by law n. 149/1999) art. 28 states that «minor adoptees should be informed of their condition, and their foster parents should do so in due time and in proper terms as they see fit». Although the above mentioned law does not entail any direct interventions or coercive methods on the part of the parents, who enjoy a substantial degree of discretion, lawmakers have clearly defined the parents' duty to inform their foster children about their condition, which constitutes an integral part of their personal history.

According to the Italian National Bioethics Committee, there can be no legal binding of the parents to reveal to their children that they were conceived through heterologous fertilization, because such an obligation would be tantamount to an interference into private family dynamics.

Yet, the Committee asserts that keeping a secret as to the MAP procedures involved in the child's conception is not a recommendable option for the purpose of preserving family stability and the private life of its members, nor is it desirable in order to protect the child's psychological welfare, whose well-being ought to outweigh any other consideration. It is in fact an extremely hard secret to keep over the long term, which could even cause damage to the child's health. Genetic testing is increasingly widespread an option meant to gather information on the genetic origins and identify genetic predisposition to diseases, the diseases themselves and guide reproductive choices on the basis of knowledge of the genetic parent's clinical records. That creates the need for a long-lasting relationship between gamete donors and medical facilities that provide such services, considering the possibility that the donor may carry genetic mutations that could belatedly give rise to an unexpected illness, the knowledge of which may well be relevant to the child from the preventive and/or therapeutic standpoint. In that context, it is hardly desirable for the secret to be kept. Moreover, such a secret might be given away by others, either accidentally or for offensive purposes. Such a scenario would make such a revelation (having another biological parent) all the more traumatic, possibly triggering unpredictable reactions, creating a feeling of betrayal and possibly irretrievably compromising the trust-based relationship between children and legal parents, much to the detriment of family life.[2] Instead, information disclosed to the child in a timely fashion and appropriately, possibly with the assistance of specialized counselors, may stave off such risks. For that purpose, it is necessary for physicians to provide solid counseling prior to medically assisted

procreation procedures, and exhaustive and reliable information to parents as to the possible risks inherent to the choice of secrecy [3].

6. Conclusions

The right to learn of one's genetic origins has spread well beyond the practice of adoption and has been asserted in heterologous fertilization cases as well. The European Court of Human Rights has outlined a set of standards that member states should abide by in order to draft new legislation that does not run counter to Article 8 of the European Convention on Human Rights: reconciling conflicting interests. That means that the right to anonymity may not necessarily outweigh the right of children to discover their biological origins.

In so doing, the European Convention has partially offset the lack of clearly-defined rules in that regard within the Oviedo convention. Yet, the choice to keep using Article 8 as yardstick is far from ideal. In fact, should the Court declare a member state's national policies meant to uphold the donors' right to anonymity to be in violation of Article 8 of the European Convention, all those who donated their gametes counting on anonymity would see their rights infringed upon.

It appears to be far preferable to deal with this issue while updating the Oviedo Convention or in such a way as to incentivize the enactment of legislation that would be uniform throughout the European Union. There are substantial interests at stake, it is therefore essential to avoid discrepancies in legislation among member states. Besides, all rulings will inevitably be influenced by the actual cases being tried. Instead, a new European regulation can deal with all the issues and find a balancing between competing interests from a wider point of view. For instance, if European lawmakers chose to allow donor-conceived children to know donor

identities, there may be specific measures put in place meant to offset a possible decrease in overall donors, which would likely occur. In countries that eliminated the anonymity option, the number of donors has in fact dwindled, whereas it increased in countries that have kept the possibility for gamete donors to choose anonymity. Despite such trends, several studies have shown that adequate informational and recruiting campaigns, stressing for instance the solidarity and altruistic arguments, may go a long way towards getting the amount of donors to rise [36-38].

In light of such considerations, pursuing uniform legislation at the European level aimed at reconciling all the interests at stake, however challenging it may be, appears to be the best possible hope for a positive outcome leading to international advancement from a civil and moral standpoint.

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[1] In the above mentioned paper, the Italian National Bioethics Committee has clarified that while there is no reason to limit the right of youths over the age of 18 to know their biological origins, more caution appears necessary in case of minors. At that age, the minor's best interest, which would generally be to know his or her origins, may call for greater caution, a longer wait, the verification of the minor's psychological condition and possibly the identification of the best way possible in order to make such a revelation non-traumatic to the minor and to the family setting within which he or she is settled.

[2] The Appellate Court of Perugia has asserted that in adoption cases, foster parents must truthfully inform their foster child as to his or her biological origins before the child enters the potentially delicate and possibly traumatic adolescence phase: every minor is in fact entitled to know their biological origins, in order to preserve them from the risk of accidental revelations, or worse, not coming from a reliable source, which may in turn damage the emotional and psychological balance of the child, who needs to be given the opportunity to choose sensibly and independently what kind of relationship he or she wants to pursue with the long-lost biological parent [35].

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