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# THE ANONYMITY OF GENETIC PARENTS AND THE HEALTH-RELATED WELL-BEING OF THE CHILD: REMARKS IN THE LIGHT OF RECOMMENDATIONS 2156(2019) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE*

## I. PRELIMINARY REMARKS

The use of medically assisted procreation is a fact and a necessity for numerous couples who wish to have children but are otherwise unable to conceive and give birth to a child.[1] Medical knowledge allows the application of infertility treatment techniques which mean that one or several stages of becoming pregnant can be omitted in adult heterosexual couple in a potentially child-bearing age. However, the use of such medical technology, which is practically unlimited, should take into account certain restrictions that are applied in this respect, in accordance with the will of particular legislators.[2] At the same time, that will is usually the result of a compromise and must be informed by various values that the lawmaker takes into consideration when admitting or prohibiting the possibility of giving life to a human being outside the body of the mother, or utilizing cells from persons who are not interested in becoming parents.[3] The multiplicity of potential configurations and cases which can occur in clinical practice will necessitate the adoption of certain preliminary assumptions, and the examination of only a few possible research problems. This approach is justified in view of the intention to address certain detailed research problems, as well as due to the comprehensive nature of previous analyses in the pertinent literature and the obtained results.[4]

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[1] Bączyk-Rozwadowska (2018): 15.

[2] See the list of legal acts compiled in Bączyk-Rozwadowska (2018): 771–778.

[3] Cells from persons who are interested in becoming parents may indeed take place, but not involving pregnancy of the woman who will become the legal mother. Oszkinis (2019): 112–225; Berti De Marinis (2014): 1715B.

[4] Haberko (2016): 1–468; (2012): 31–44; (2014b): 3–15; (2018a): 169–183; (2018b): 184–195; Haberko, Grabinski (2011): 33–61; Haberko, Sztandera (2017): 98–115; Łuczak-Wawrzyniak, Haberko (2015): 20–44.

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This paper is therefore concerned with one of the problems arising in connection with the right of the child to establish their descent, given that the child – through no fault of their own but for reasons accepted by the legislator – was deprived of the possibility of being brought up in a family in which the legal parents are simultaneously the genetic parents. It should be noted that although the problem could possibly arise in many actual situations, it will be crucial in terms of the legal standpoint on anonymous adoption and medically-assisted procreation techniques using gametes from an anonymous donor adopted in Polish law, as well as the stance on anonymous births found in other legal systems.[5] Naturally, such cases cannot be directly compared and treated equally when protection of the interests of the child is at stake, both in the pursuit of the good of the child in general and with regard to knowledge of one's genetic identity. However, in all such situations, the possibility of establishing one's origins in accordance with the genetic truth is to some degree precluded,[6] either for a certain period of time or permanently.

The following analysis will focus on suggested solutions for the application of the institution of anonymity of origin, disclosure of the genetic parent and the impact of that knowledge on human health-related wellbeing.[7] This is not a new problem for family law, but it is currently gaining an altogether different import than it had several years or over a decade ago.[8] The fact that the Parliamentary Assembly of the Council of Europe issued a Recommendation in that respect attests to the significance and relevance of the matter.[9] Both in the doctrine and at the legislative level one sees an increasing number of initiatives aiming to change the current state of affairs and thus ensure the possibility of determining the origin of a child conceived and born as a result of heterological techniques, or a child who does not know their genetic parents for other reasons (anonymous adoption, having been found in the so-called 'window of life', the 'safe haven' institution[10] or the so-called anonymous birth).[11] As it is emphasized, pursuant to Article 8 ECHR, knowing the identity of one's parents is one of the elements of the right of the individual to respect for their private and family life,[12] while the duty to respect the right of the child to know their genetic parents is also inferred under Article 8 of the Convention on the Rights of the Child.[13]

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[5] Por. Velletti (2017): 409–416; Vitale (2019); Santarsiere (2009): 1531; Grosso (2011): 208; Gigliotti (2017): 900; Lo Voi (2018): 1120; Velletti (2017); Cagnzzao (2017): 409–416; Vitale (2019); Klier et al. (2012): 428–434; Grylli et al. (2016): 291–297; Coutinho, Krell (2012).

[6] Tonolo (2014): 1123; Ballarani (2017): 965.

[7] Certain authors employ the term 'genetic confusion' to denote a situation in which a person does not have full knowledge of their genetic parents. Oszkinis (2019) with reference to Sants (1964): 2; Szczucki (2010): 193–194 cites a case of major depression owing to that state.

[8] A historical overview is presented in Bączyk-Rozwadowska (2018): 367–375.

[9] Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children, Recommendation 2156 (2019): <https://assembly.coe.int>.

[10] Kubicka-Kraszyńska (2017): 70 and the literature cited there.

[11] Oszkinis (2019): 89 with reference to Laing (2006): 549; Grosso (2011): 208.

[12] Oszkinis (2019): 314–325; Mostowik (2015): 311.

[13] Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Journal of Laws of the Republic of Poland [JL] 1993, no. 63, item 284, as amended, and the Convention on the Rights of the Child of 20 November 1989, JL 1991, No. 120, item 1158.

As previously noted, the knowledge of one's genetic origin affects the health-related wellbeing of a person, both in physical and psychological terms. This is because each person has a genetic history reflected in their immediate relations.[14] The knowledge of genetic conditions running in the family may have a decisive impact on a person's behaviour with regard to prevention, diagnostics and treatment. It may be presumed that such knowledge potentially safeguards a person's interest in the medical domain.[15] It facilitates the realization of entitlements in certain health-related events when the person requires for example a blood transfusion, a bone marrow transplant or an organ from a living donor.[16] It enables the person to avoid habits which may potentially result in negative consequences for their own health or health of other persons. Also, it eliminates the uncertainty one may have with respect to developing certain diseases.[17] Furthermore, it bears on the possibility of taking prompt, specific action to save life and health.[18] These actions obviously depend on the will of the organ donor, for instance, but nonetheless persons genetically related to the patient whose life and health requires medical intervention are known immediately. The legal system has developed certain measures to facilitate taking decisions and actions aimed at saving life.[19] The lack of a genetic match by no means precludes achieving the intended state of affairs, but it necessitates additional actions, such as obtaining authorization from competent bodies,[20] and requires time for the right donor to be determined, which may prove difficult in some cases and impossible in others.

The psychological aspect of the aforementioned health-related wellbeing manifests in the sense of being descended from persons to whom an individual considers themselves to be genetically related. Here, the crux of the matter is that one does not need to wonder whether the parents who bring one up and are recognized as parents by law, are also one's genetic parents.[21] This not only means actualization in the sphere of knowledge of one's origin, which naturally has its significance for the formation of genetic self-awareness (better understanding of oneself),[22] but also dispels one's uncertainty with regard to engaging inadvertently in intimate relationships with a genetic relative, with all the negative consequences this entails.[23] The above also prevents situations in which individuals find out that the persons they have considered their genetic relatives are not such relatives, for example when physical wellbeing is

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[14] Kapelańska-Pręgowska (2011); Skorek (2019).

[15] Nesterowicz (2010): 116; (2005): 1205; Sośniak (1958): 116; Lewaszkiewicz-Petrykowska (1994): 47; Haberko (2014a): 45–64.

[16] Haberko, Uhrynowska-Tyszkiewicz (2014): 117–140.

[17] Jóźwiak (2000); Jolie (2013).

[18] Dryla (2018): 91–105.

[19] See Haberko (2011): 44–54.

[20] Guidelines of the Legal Unit of the National Transplant Council for the Ethics Committee regarding interpretation of the clause of 'particular personal consideration' when collecting organs from unrelated living donors: <http://www.poltransplant.org.pl>.

[21] I am grateful to Krzysztof Nizołek for drawing my attention to this aspect of the issue.

[22] See Krekora-Zając (2015): 131–132; *Godelli v Italy*, Application no. 33783/09, <http://hudoc.echr.coe.int>.

[23] Oszkinis (2019): 511; Haberko, Sztandera (2017): 98–115.

attempted by, medical, means (blood must be transfused or a transplant performed). In such instances, improvement of physical health cannot be brought about promptly, and in addition psychological wellbeing is adversely affected.

## II. THE POSITION OF A CHILD OF GENETICALLY ANONYMOUS PARENTS

The anonymity of the genetic parents, regardless of whether it results from techniques which consist in using gametes from persons uninterested in becoming parents,[24] from the child having been deposited in the so-called 'window of life',[25] or from anonymous birth, may give rise to numerous risks – medical, social, and legal, for the child and their parents alike.[26] These risks cannot be ignored by the legislators; on the contrary, they should be taken into account when law is being made.[27] In the first place, one should obviously determine the subjective and objective premises for the admissibility of medically assisted procreation techniques,[28] as well as the rules for determining the origin of a child found in the so-called 'window of life', or left at the hospital following the so-called 'anonymous birth', or through the institution of the 'safe haven'.[29] All of the above circumstances are different and require the careful consideration of the legislator who, guided by the adopted axiology and drawing on the value system they represent, will strive to reconcile the not infrequently contradictory interests of multiple parties. Bearing this in mind, the legislator must adhere to the overriding principle of the good of the child when taking the fundamental premises of the system into account.

It would be impractical to analyse each of the above circumstances in which the discrepancy between genetic and legal origins – posited by the legislator – may arise.[30] Therefore, given the serious ramifications, the following disquisition will be limited to the situation in which efforts are made to ensure the health-related wellbeing of a child conceived and born using anonymous

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[24] See Soniewicka (2018): 54–65.

[25] Kadłubowska (2018): 1–74; Czapliński, Kroczek-Sawicka (2017): 42.

[26] France has its National Council for Access to Information on Personal Origin (Conseil National pour l'accès aux origines personnelles, CNAOP).

[27] Ruszkiewicz (2014): 54; Żok, Rzymska (2015): 20; Hans-Bielut, Kroczek (2016): 15; Jarecka (2019); Ruszkiewicz (2019).

[28] Haberko (2016) and cited literature.

[29] Kubicka-Kraszycka (2017): 72–73, compares the outcomes for both the anonymity of the parent and the ability to have genetic origin disclosed to the child.

[30] One also has to bear in mind that the discrepancies may be due to certain actual events which have taken place in the life of particular individuals: e.g. the intercourse of a married woman with a man other than her husband may result in the birth of a child who will have the benefit of presumption of being descended from the husband of the mother, and having paternity determined on the grounds of declaration before the Chief Registrar, where there is no biological relationship between the father and the child. Assuming that such situations are rather exceptional and undesirable, as well as taking into account that the legal system – using such institutions as denial of paternity and determination of ineffective acknowledgement – makes it possible to arrive at a concordance of biological and legal truth, they will not be considered in this paper. See the extensive literature compiled in Pietrzykowski (2018): 562–568; Haberko, Sokołowski (2013): 519–521.

gametes. The situation differs from the ones mentioned above in that it does not constitute an exception, does not arise from extraordinary events in the life of the parent, but results from an action which has been deliberately permitted and provided for by the legislator.

Naturally, the issue of discrepancies with respect to one's genetic origin and reflecting this fact in the registry records is not a new one, and usually legislators adopt certain assumptions, in the form of experientially supported life-related presumptions, on the basis of which it is possible to achieve the good of the child by establishing their kinship with other persons.[31] These presumptions provide grounds to infer that the child is descended from particular persons, especially the father (Article 62 of the Family and Guardianship Code, or Article 85 FGC). Thus the legal relationship is ascertained, regardless of the objective genetic reality. Once it has been established, changes to the origin of the child cannot be freely effected, and usually do not depend on the will of the parties involved; what is more, the legislators often restrict the possibility of finding out the genetic truth – for instance by imposing specific temporal constraints – as they are guided by the interests of the child other than those of the genetic match with a parent, especially when the child is a minor.[32]

From the above it follows that the right to know one's genetic identity should not be treated as tantamount to and associated with the child's entitlement to change the already established familial status. Embracing a different conception could give rise to allegations of unconstitutionality.[33] This is because one cannot adopt a principle which would permit the once established familial status of a child to be freely modified. If a derogation is applied in that respect, it derives, for example, from the protection of the interests of the child and their rights. The Constitutional Tribunal observed as follows: 'The rights of filiation of the biological father are not respected in Polish family law unconditionally. [...] However, if the possibility of establishing familial relationship in accordance with the biological reality is to be eliminated from the legal system, it must always be substantiated by other constitutional values.'[34]

One could easily agree with the view expressed above, yet one should be aware of the duality of situations which may occur. First, there could be cases in which it may indeed be more advisable not to seek the genetic truth for the sake of safeguarding other constitutional values, in particular the good of the

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[31] Haberko (2018a): 169–183.

[32] Judgment of the Constitutional Tribunal of 16 May 2018, SK 18/17. In accordance with the governmental draft of the Act amending the Family and Guardianship Code (document no. 3573), Article 70 § 1 FGC is to receive the following wording: 'having reached majority, a child may file an action for denial of paternity within a year from the date that they have gained knowledge of not being descended from the husband of their mother. If a child has learned of the circumstance referred to in the foregoing before the date of reaching majority, the period for filing the action runs from the day of reaching majority.' See also *Paulik v Slovakia*, *M. Mizzy v. Malta*, *L. Shofman v. Russia*, *Y. Phinikaridou v. Cyprus*, Information Note on the Court's case-law, European Court for Human Rights: <https://www.echr.coe.int>.

[33] Haberko, Sztandera (2017): 98–115.

[34] Judgment of the Constitutional Tribunal of 16 July 2007, SK 61/06, OTK ZU 2007, no. 7A, item 77.

child.[35] Although such a position may be disputable in the context of striving to ensure a person's wellbeing, it may nevertheless be assumed – from a charitable standpoint – that the stability of the established familial ties combined with the lack of certainty of arriving at new findings, is equal in the hierarchy of constitutional values to person's health or ranks even higher.

Secondly, there may be situations in which a discrepancy in the matter discussed here is presumed at the outset, and the presumption applies to the furtherance of interest which in the hierarchy of constitutional values ranks objectively lower. What is more, its protective scope does not extend to the child. In this instance, the impossibility of exercising a certain right is assumed in advance for the sole reason of protecting not so much the rights of the child as the rights of other people. As may be supposed, these interests do not pertain to health or the stability of familial ties.

The first and the second situation are fundamentally different. In the former, there exists a legally guaranteed possibility of seeking to determine actual relationships based on consanguinity. The only limitation is that it cannot be taken advantage of prior to the child's reaching the age of majority. However, the restriction is dictated – while the child remains under age – by other constitutional values. In the second case, such a possibility is no longer available.

With medically assisted procreation, legal kinship has been separated from genetic relationship when cells from anonymous donors are used (as well as embryos from anonymous donors); moreover, the aforementioned instruments enabling determination of origin in accordance with the genetic truth have not been provided for in the legal system. In a sense, anonymous adoption represents a similar case: there is no genetic bond between the child and the adoptive parent. However, it may be noted that the principle that the court adheres to in anonymous adoption is the interest of the child, and it is for the child, who for whatever reasons was deprived of parents, that the parents are chosen.[36]

Having taken the above into consideration, the legislator introduces filiation mechanisms in the infertility treatment act which are adapted to a range of possible variants of infertility treatment: Article 62 FGC, Article $75^1$ FGC, Article $81^1$ FGC, and Article 85 § 1 FGC.[37] In the light of the aforesaid value, namely the stability of familial life, the solutions deserve a moderately positive assessment.[38] The assessment will be different when ensuring the person's genetic identity or pursuit of health-related wellbeing – physical or psychological – come into play, as the sole intention of the legislator has been to protect the interests of the child with respect to safeguarding the stability of the family law circumstances.[39] These are merely formal legal solutions to

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[35] This refers to the established and stable personal relationship between the child and the father who does not question the requirement to discharge his duties, particularly when denial of paternity could result in exceptional difficulties in determining consanguinity with the new father (lack of knowledge about this person, the fact that the father is deceased, etc.).

[36] Łukasiewicz (2019): 105; Łączkowska (2008): 301–316.

[37] Haberko (2016): 406–418.

[38] Haberko (2015): 175–194.

[39] Safjan (1990): 55.

secure determination of origin in conjunction with presumed discrepancy between the genetic and the legal reality.[40] However, as a number of authors aptly observe, formal solutions relating to fatherhood and motherhood do not address all ramifications of personal descent,[41] since there are situations in which obtaining knowledge of one's origin in accordance with the genetic truth is justified. The situations may be resolved through recourse to the right of the child to know their genetic origin,[42] but the exercise of the right remains *de lege lata* dependent on the will of the legislator.[43]

## III. SITUATION OF THE CHILD CONCEIVED USING GAMETES FROM AN ANONYMOUS DONOR

In the Polish legal system, the matter is governed under Article 38(2) of the infertility treatment act, which entitles a person born as a result of medically assisted procreation involving anonymous donation and embryo donation to have access to data specified in Article 37(2)(2) and (3) ITA. The data, contained in the registry administered by the minister competent for health affairs, provides information on the year and place of birth of the donor of gametes or donors of the embryo, as well as particulars concerning the health of such donor or donors, that is, the results of medical examinations and laboratory tests that the prospective donor or donors had respectively undergone prior to collecting gametes, or prior to the development of the embryo. It should also be emphasized that the statutory representative of a child thus born is also entitled to access the information referred to in Article 37(2)(3) ITA, though the statutory representative may exercise such a right only when the information can contribute to averting direct threat to the life or health of the child.

The structure adopted here cannot be deemed acceptable, for several reasons. First, it needs to be noted that the catalogue of information made available to authorized persons lacks data enabling the full identification of donors. This means that psychological wellbeing is impossible to achieve. Taking a broad view of human affairs, the year and the place of birth are of no use. A person who was conceived and born thanks to infertility treatment methods will not learn the name of their genetic father or – in the case of embryo donation – of their genetic parents. They will only know that the donor was born in Krakow or in Poznań. In no way will this facilitate determination of their genetic identity, enable them to situate themselves within a circle of genetic relatives, or to live with a sense of being the 'flesh and blood' of a particular parent or parents. Also, it will impact wellbeing in the psychological sense, in that it entails – or may entail – the risk of negative consequences following potential intercourse with a sibling.[44]

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[40] Cagnazzo (2017): 408.

[41] Lipski (2015): 150.

[42] Dyoniak (1996): 159.

[43] Trends in this area are presented by Bączyk-Rozwadowska (2018): 375–393.

[44] Haberko, Sztandera (2017): 98–115.

Second, the Polish legislator violates the principle of obtaining knowledge of one's genetic identity where ensuring physical wellbeing is concerned. A person conceived and born as a result of medically assisted reproduction involving donation other than from a partner,[45] has been deprived of access to the information which is necessary to make correct diagnoses of potential future diseases, for example, data on the genotype of the genetic parents, as well as phenotypical data, because the information referred to in Article 37(2)(3) ITA is not stated with sufficient precision. What is more, the possibility provided for by the legislator can be taken advantage of exclusively with respect to situations which arose after 1 November 2015, in other words, when the infertility treatment act came into force, subject to age or, in the case of statutory representative, only when there is a direct threat but not for any future purpose.

The extent of information that the legislator permitted to be made available to the authorized person compels one to assume that *de lege lata* the exercise of the right to know one's genetic identity as a right to information on the genome of the donor is not ensured, while the right to know the identity of the donor of gametes as a right to information with respect to data which identifies the donor is even more restricted.[46] Consequently, the right to ensure health-related wellbeing, whether in its physical or psychological aspect, is not protected. Still, one has to be aware that ensuring such a state is possible only when the interests currently respected by the legislator are not realized and safeguarded. The interests in question include privacy of family life as well as the confidentiality and anonymity of the donation of gametes. Achieving such a state is not an impossible task, though this does not mean that the task itself is an easy one.

This is due to the fact that the legislator has to take a number of factors into account. First, one has to consider that the infertility treatment act became effective in 2015, whereas previously the techniques of medically assisted procreation were used in accordance with the general criteria applicable to the practice of the medical profession and the guidelines of scientific associations. There is no doubt that anonymous gametes were utilized before the act came into force and after it. Thus far, donors have been guaranteed full anonymity of their donation and use of the cells. A potential legislative change in that respect should not – it would seem – be retroactive, yet this does not mean that no attempts can be made to resolve the dilemma of the wellbeing of persons who were born as a result of methods involving anonymous donors, both prior to the promulgation of the act and at present.[47]

Second, if the legislator decided to impose certain limitations on the anonymity of gamete donation, this would necessitate solutions consisting either in total prohibition of methods involving donors other than partners – which does not seem viable, given medical realities – or in introducing legislative changes oriented towards enabling the child to access the data of the donor (embryo donors) in their full extent, as opposed to the limited extent

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[45] Haberko (2016): 38.

[46] Lipski (2015): 150.

[47] Proposals in this respect are outlined in Bączyk-Rozwadowska (2018): 375–394.

which is currently permitted. Were the legislator to adopt such an approach, the health-related wellbeing of persons born as a result of medically assisted procreation would become attainable. The possibility of knowing one's genetic parent would influence the process of identity formation, ensure the certainty of genetic origin, eliminate the risk of carnal encounter with a sibling, and provide a detailed insight into genetic medical history.

The concept has several weak points, which the legislator would have to address. First, the legal parents of the child would be put under obligation to inform the child that they were conceived through the use of donor cells. Such an obligation has been stipulated with respect to adoption in Italian law.[48] Naturally, the lawmaker does not determine the moment at which this should take place,[49] placing its trust in the parents who, knowing their child, will choose the most opportune time to convey that information.

Secondly, when the child learns[50] that they were conceived using anonymous gametes, they may decide – usually upon reaching adulthood – to establish their origin in accordance with the genetic reality. The rights of health-related well-being could thus be realized. Here, it has to be presumed that the protection of such values as private life and gamete donor anonymity must give way to the pursuit of the interest that the person has been deprived of through no fault of their own, due to the decision of other persons.

The anonymity of the parent, if guaranteed by the legislator at the moment of conception and even until birth or the issuance of the birth certificate, should be respected.[51] It is unlikely that it could be rescinded with a retroactive date. It may turn out, however, that, due to various motivations, the anonymous parent consents to waiving their anonymity later on. In the light of regulations concerning similar cases (anonymous births), a change of the parent's initial choice cannot be ruled out. Obviously, this is not an optimal solution as the disclosure of anonymity will ultimately depend on their decision, but it still creates an opportunity to change the situation which would remain unchanged without the decision of the anonymous parent.[52] Here, one could consider the instrument of a request submitted to a competent body (court), which would then turn to the anonymous parent asking for the possibility of having their data disclosed.

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[48] Legge 4 maggio 1983, n. 184; Cagnazzo (2017): 408; Abatantuono (2014/2015): 56.

[49] Article 28 sec. 1: 'Il minore adottato è informato di tale sua condizione e di genitori adottivi vi provvedono nei modi e termini che essi ritengono più opportuni'; Abatantuono (2014/2015): 56–58.

[50] Article 28 sec. 5: 'L'adottato raggiunta l'età di venticinque anni, può accedere a informazioni che riguardano la sua origine e l'identità dei suoi genitori biologici. Può farlo anche raggiunta la maggiore età, se sussistono gravie comprovati motivi attinenti alla sua salute psico-fisica. L'istanza deve essere presentata al tribunale per i minorenni del luogo di residenza.'

[51] Thus section 7.4. of the Recommendation of the Parliamentary Assembly of the Council of Europe.

[52] Henrion (2003); Villeneuve-Gokalp (2011).

## IV. POSTULATES *DE LEGE FERENDA*

To recapitulate, the particular problems arising in connection with the use of cells from anonymous donors translate into the necessity of heeding the interests of the child through: first, ensuring a legal relationship with the future parents, irrespective of whether or not the relationship is based on the genetic truth; second, by ensuring the child born as a result of medically assisted procreation has the same rights to have their wellbeing protected as do persons (children) born following the intercourse of their parents. While the former postulate is feasible *de lege lata*, the latter would require thorough change of regulations pertaining to the use of anonymous gametes.

The conducted analyses make it possible to formulate the following rather cautious conclusions. Health-related interests, in terms of potentially achieving physical and psychological wellbeing, lend support to complete abrogation of the admissible anonymity of gamete donation.[53] Naturally, this does not mean the full disclosure of donation and liberal choice in this regard. The solution formulated in the Recommendation appears quite apt, as it suggests that the identity of the cell donor should remain undisclosed when the cells are utilized in the procedures of medically assisted procreation, but be revealed to the child when they reach a specific age (e.g. 16 years of age or majority).[54] The information obligation, under which an appropriate state authority is to inform a person of the circumstances of their birth and associated use of cells obtained from persons other than legal parents should be approached with some reserve. There is no doubt that it is the child who should be left to decide whether they wish to access the information regarding the donor, but the duty to inform the child of the manner of their conception should rest with the parents rather than the state. Age is also a matter for further discussion, yet it seems that establishing a rigid boundary is not the only solution one could devise.

Changes should also include the obligatory scope of information provided to the donors prior to donating their cells for use by the health services.[55] It is clear that when donating gametes, the donor does so without intending to establish a legal relationship, whether paternal or maternal. Nevertheless, the fact that no claims are raised should not obscure the information about the possibility of establishing a relation by the child once they reach a certain age. This means that the donor should be aware that despite the absence of a relationship of legal nature, the child may in the future wish to know the donor of the gametes or donors of the embryo, or develop a personal relationship. Knowledge in this regard will enable donors to contemplate whether to donate cells anonymously and altruistically, leaving them at the disposal of the health services, or proceed otherwise. On the other hand, the legislator should be left to decide whether information concerning a sibling conceived from the same

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[53] Thus section 7.1. of the Recommendation of the Parliamentary Assembly of the Council of Europe.

[54] Thus section 7.2. of the Recommendation of the Parliamentary Assembly of the Council of Europe.

[55] Thus section 7.3. of the Recommendation of the Parliamentary Assembly of the Council of Europe.

gametes should be disclosed. This bears not only on the psychological wellbeing associated with the aforementioned risk of carnal encounters with a brother or sister, but also on the physical wellbeing, for example if a marrow or organ transplant from a living donor is necessary.

One cannot fail to approve of the postulate that a register of anonymous donors should exist, along with the obligation to register persons conceived using gametes from one person. This is quite significant in view of both physical and psychological health. In the event of a medical necessity, it will be possible to contact the donor. Furthermore, the register enforces an upper limit of pregnancies obtained from the same cells which, as noted above, affects psychological wellbeing. However, the requirement should be formulated in more precise terms with regard to transnational exchange.

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## THE ANONYMITY OF GENETIC PARENTS AND THE HEALTH-RELATED WELL-BEING OF THE CHILD: REMARKS IN THE LIGHT OF RECOMMENDATIONS 2156(2019) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

### Summary

The text presents the problem of the health interest of a child conceived as a result of the use of medically assisted procreation techniques using donor genetic material. The use of modern medical technology is becoming increasingly common nowadays and the procedures which a few years ago were seen as experimental are now becoming standard. The present text covers the issues of risks and conflicts for family members related to the use of technology for the conception and birth of a child. The issue is the physical and mental well-being that can be derived from knowing one's origin from specific persons. Polish law does not provide access to information enabling the identification of a donor of reproductive cells, and the restrictions on the information that can be provided to an authorized person have been narrowly defined. This allows the formulation of the thesis, which is verified in the text, that the Polish legislator does not ensure the implementation of the right to know one's own genetic identity as the right to information in the field of donor genome, and even more so the right to know the identity of gamete donors as the right to information in terms of donor identification data. The text presents postulates based on Italian solutions and Recommendation 2156(2019) of the Parliamentary Assembly of the Council of Europe.

Keywords: well-being; relative; the right to know one's origin; identity