

OPINION

A new Dutch Law regulating provision of identifying information of donors to offspring: background, content and impact

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In 2004 a law was introduced in The Netherlands, which gives offspring conceived by semen or oocyte donation the right to know the identity of the donor. The law also regulates the provision of other information concerning the donor to the offspring, their parents or their general practitioner. With the introduction of this law, a choice has been made in which the wish of offspring prevails above others involved. Donors can no longer claim absolute anonymity; they are anonymous at the time of donation, but if a child aged ≥ 16 years requests information the donor may now be traced. During 15 years of debate on the abolition of donor anonymity the number of donors decreased by >70% and the number of semen banks by 50%. We describe the debate which led to the law, the characteristics of the law itself and note some of the probable and possible consequences for donor offspring, parents, donors and semen banks.

Key words: donor anonymity/donor insemination/donor recruitment/legislation/The Netherlands

Introduction

In June 2004 a law was introduced in The Netherlands, giving grown-up offspring conceived by semen or oocyte donation the right of access to information identifying their donor. This means that for donors, guaranteed life-long anonymity is no longer an option. The law was passed after a lengthy public debate, based on the arguments but clearly also on public opinion. Currently, energy is invested in implementing the law, making practical rules, and in actions by the officials and institutions involved, to safeguard the recruitment of new donors and inform parents, donors and public of the consequences of the law. In this paper we give an overview of the new law and describe the present situation on gamete donation in The Netherlands. Unless otherwise stated we focus our attention on donor insemination (DI) rather than oocyte or embryo donation. In this, we made use of the archives and knowledge obtained from the Dutch Society for semen banks and donor insemination (official name: Dutch–Belgian Society for Artificial Insemination, NBVKI; four of the authors are board members) to describe the situation in The Netherlands. The NBVKI unites the Dutch semen banks and was the main partner in consultations with the government during the years of legislation. Besides regular discussions, the NBVKI made surveys among semen banks and professionals performing DI in 1990, 1997–1998, 2000, 2003 and 2005. Reference to this source of information is made in the text when relevant.

History

The law by which donor offspring were given the right to know the identity of their donor was preceded in The Netherlands by ~15 years of debate. Originally, ideas concerning termination of donor anonymity came from religious politicians during the late 1980s. They speculated that removing the anonymity of donors might be a means to limit semen donation, and lesbian, or single parenthood. For a while, at that time, there appeared to be insufficient political support for removing donor anonymity. Nevertheless in 1993 a first draft of a law concerning the provision of information of donor identity to offspring was sent to parliament, initiated by religious political parties (Notes of the Dutch Parliament 1993, TK. 23 207). As ideas were not completely formed, and also because of other, unrelated political affairs, the real debate on the draft of the law only started 4 years later.

From the start, professionals working in the field of DI had been alarmed by the possibility that donor anonymity might come to an end (Kremer and Leenen, 1991; Werkgroep afstamming en donorinseminatie, 1992). They saw no need for giving offspring rights they might not really desire and that might be contrary to the interests of the parents and perhaps also to the donor children (whilst expressing regret that parents might become less open about DI usage). Problems with donor recruitment was another fear. To comply with the political ideas and public opinion regarding DI, a dual system was introduced,

giving parents a choice between anonymous semen donors (so called A-donors) and donors that could be traced if the child should, at a later date, request information regarding the identity of the donor (called B-donors) (de Bruyn, 1997). This dual system apparently was appreciated by many parents, as confirmed by a recent publication on this system in The Netherlands (Brewaeys *et al.*, 2005). To take maximal account of the (possible) wishes of the donor offspring, an autobiographical document was provided by the anonymous A-donors and added to the files. This could be revealed to the offspring when adult. In addition, professionals published a national protocol on DI, to be used as a practical guideline for professionals. At the same time this document served to justify their practice to the authorities and the public (de Bruyn, 1997).

Despite these efforts, political and public debate on the right to withhold knowledge of donor identity from offspring continued. The topic was broadened and updated, incorporating oocyte and embryo donation. Public awareness on the issue grew as a result of recurring discussion in newspapers, on radio and television. Especially coverage by the latter of 'real life stories' involving donor offspring (despite being limited in number) telling their stories, and a popular, moving, regular television programme about (almost always) adopted children searching for their biological parents, influenced public opinion. The message from various DI professionals that donor offspring hardly ever asked for information about their donors had little effect (Kremer and Leenen, 1991; plus experiences communicated within the society for semen banks and DI, NBVKI during the years 1990–2005). In fact, it may be said that many offspring had no knowledge of their DI origin, and furthermore, those that did have this knowledge may well have made little or no attempt to research their origin knowing that they had no chance of obtaining the relevant information. Nevertheless, the fact that so few DI offspring ever inquired at the semen banks may be considered remarkable. To resolve (some of) the apparent uncertainty and lack of knowledge on the topic of DI, a number of inquiries were held by the government. The topic of DI, however, is difficult to investigate, and the decisions that were finally made were based on a mixture of facts, arguments, feelings and suppositions. Public and political opinion were more and more in favour of the donor offspring having access to information identifying its donor. A final draft of law was sent to the Dutch parliament in 2001. Following debate and a number of amendments, the law was accepted almost unanimously by parliament in 2002 (Dutch Law: Wet donorgegevens kunstmatige bevruchting, 2002).

Characteristics of the Dutch law regulating provision of donor information to offspring

At the heart of the Dutch system is a central register, regulating the possibilities for donor offspring having access to information regarding their donors. This register is controlled by an independent national foundation, installed by the government, according to the law ('Foundation for donor data, FDD', www.donorgegevens.nl). The foundation takes care of the accurate filing of donor and parent data, the functioning of the database, and handles requests for, and provision of, information.

The law describes in detail which officials are members of the board of the foundation. The board includes professionals from the field of DI, medical and socio-psychological experts, and lawyers. The foundation has the right to make additional rules concerning the management of its task, in case the law is insufficiently detailed. For instance, rules will be issued for DI performed on Dutch citizens in The Netherlands, using semen obtained from abroad and on the other hand, DI treatment of Dutch citizens abroad with semen from Dutch donors.

The law states that in the case of a successful birth resulting from DI, the professionals having carried out the DI should transfer information concerning the parent and donor to the central register within 60 weeks after the conception. The details to be transferred are: the data relating to the identity of the woman who has given birth after DI treatment, the day and place of the DI treatment, the term of the pregnancy, the information identifying the donor used, an overview of his physical, social and psychological characteristics [such as marital status, children, education, profession, motivation), a self-description of the donor, and medical characteristics that might be relevant (in fact the latter seems somewhat paradoxical, as medical data noted in the register, if any, will never concern serious diseases or predispositions: men who are not healthy, or have ambiguous (genetic) traits, are refused as donor]. These data will be kept for 80 years (Dutch Law: Wet donorgegevens kunstmatige bevruchting, 2002).

Offspring who know, or suspect, that they have been conceived with use of donor gametes may obtain information identifying their donor from the age of 16 years. To do this, they apply to the FDD. The FDD verifies whether the applicant is likely to have been conceived by DI, based on the name of the applicant and its mother, the age of the child, the duration of the pregnancy and the place where the DI was performed. Subsequently the donor, whose gametes were used according to the register, is contacted and asked permission for the transfer of identifying information to the child. This new consultation has been introduced because the donor's motives or circumstances may have changed since he donated gametes. In the event that the donor objects to the provision of information identifying him, the FDD weighs the pros and the cons. Blood group typing or, better, DNA investigations may be considered to verify or disprove the genetic relationship of donor and the applicant, if doubts exist on this point. Unless there are strong counter-arguments (not further specified in the law) the wish of the donor offspring will prevail, as the law states. If necessary the Court may be called in.

Even though the law gives donor offspring the right to know the identity of the donor, donors are not obliged to actually have contact with the offspring. Nor do they have any legal or financial obligation. The consequences of the offspring getting to know his/her donor may be anything between a superficial contact and an intimate long-lasting relationship.

Other information of the type mentioned above, but that does not lead to identification, can be requested from the FDD by the donor child from the age of 12 years, or by his/her parents. The medical information on file can be requested by the child's general practitioner.

Donors who donated gametes before 2004 have the right to remain anonymous, even in cases where their gametes, being stored in cryobanks, are used after the law came into force. If a request for identification is made, they have the right to deny it. It is clear that this aspect of the law creates some ambiguity: according to the law donor offspring conceived after 2004 by use of anonymous semen produced before 2004 will not be able to know who the donor is. Contacting former donors who had donated anonymously, to verify whether they might change their views about anonymity, however, was considered unethical. Any attempt at making such contact would risk jeopardizing their guarantee of lifelong anonymity. To minimize the ambiguity, the Dutch Society of semen banks and DI advises its members to refrain from the use of semen from anonymous donors, donated before 2004. A reasonable exception may be parents who have a donor child conceived before 2004, who want more children from the same anonymous donor.

Consequences of ending donor anonymity

Much has already been published on the issue of offspring's access to their donors' identity and the abolition of donor anonymity. Foreseeable or presumed effects have been described at length, although actual data are scarce, owing to taboos, privacy and secrecy among the donors, parents and others involved.

Parents

For heterosexual couples (in The Netherlands an estimated 1100 yearly requesting DI, according to the NBVKI), the abolition of donor anonymity means that when they tell their offspring that they were conceived with donor gametes, they must take into account that their offspring not only may want to know the identity of the donor but that this will also be possible. This may have uncertain and undetermined implications for themselves, their (partner) relationship and their family. Dutch lawmakers claim to stimulate openness, albeit without actually doing much about it. Original promises of a large public campaign, and the installation of counsellors for parents seeking DI were not fulfilled when the Law was adopted by Parliament, and—besides the provision of some booklets and explanation by a website on the contents of the Law—the only measure that followed was that the Minister circulated a letter stating that she expected the semen banks and hospitals where DI was performed to be responsible for giving priority to informing donors and parents seeking DI help (letter, Minister of Health, March 15, 2002). Scarce data in the international literature show that 39–83% of semen donor parents intend to, or actually do, tell their offspring that they were conceived by DI (Rumball and Adair, 1999; Gottlieb *et al.*, 2000; Scheib *et al.*, 2003; Golombok *et al.*, 2004; Brewaey *et al.*, 2005; Lycett *et al.*, 2005). This broad range does not give much indication of what actually will happen in The Netherlands in the coming decades; national and cultural differences among the places where these investigations were done make it even more difficult to estimate what parents will do at some place. In addition, intending to tell offspring should be distinguished from actually telling them. The former leads to higher numbers than the latter (Cook *et al.*, 1995; Rumball and Adair, 1999; Gottlieb *et al.*,

2000; Golombok *et al.*, 2004). Interestingly enquiries made in The Netherlands in one of the larger semen banks, in the twilight of the system permitting a choice between anonymous and non-anonymous donor, showed that after all the years of debate and news on DI informing the public, still quite a significant portion of parents (37%) opted for anonymous donors (Brewaey *et al.*, 2005). This was mostly because of fears that traceable donors might interfere with their family life.

For lesbian and single women, abolition of donor anonymity makes little difference, as they are used to providing offspring with an explanation about their origin. It is estimated from data of the NBVKI that in The Netherlands there are respectively about 250 and 100 requests yearly from lesbian and single women. In fact, not all semen banks offer services to these women in The Netherlands.

All parents, heterosexual, lesbian or single, may be confronted with the shortage of donors which is expected to result from ending donor anonymity (see below). This might be experienced most acutely by women using DI because of a non-medical, social indication. Shortage of donors may stimulate parents to satisfy their needs in other ways, outside the official institutions, or abroad. In recent years, a number of Dutch parents have sought treatment in Belgium, where the waiting lists for DI are shorter, and the rules more liberal (Pennings, 2004). However, 'DI tourism' is an option only for people living not far from the border, and having the necessary financial resources required for treatment by DI.

Offspring

Little can be said with respect to the offspring conceived by DI (estimated yearly Dutch number ~700). It is completely unknown how many in the future will seek their donor. There is evidence that the majority of DI offspring wish to obtain their donor's identity, while other evidence suggests that this wish is not so widespread (Vanfraussen *et al.*, 2003; Roeghold 2004; Scheib *et al.*, 2004; Lycett *et al.*, 2005).

Donors

As described above, up until 2004 three types of donors were used in The Netherlands: (i) donors used for multiple women, anonymous at the time of donation and wishing to remain anonymous for ever (called 'A-donors'); (ii) donors used for multiple women, anonymous at the time of donation, agreeing to being identified should offspring request it (called 'B-donors'); and (iii) private donors, donating their gametes for only one or a few particular women, whose identity is known to the parent (they themselves having arranged the donorship). With the introduction of the law, only the latter two types of donors may continue, i.e. are allowed to donate semen.

During the last 15 years, the period of debate on the removal of donor anonymity, the number of donors dropped by a factor of three, as a result of diminished recruitment of A-donors (Table I). A number of semen banks closed between 1990 and 1997, which, according to the answers given in the NBVKI survey of 1997–1998, was mostly due to shortage of donors (de Bruyn, 1998). The number of B-donors and private donors showed a steady increase. This, however, cannot compensate

Table 1. Numbers of semen donors actively donating, and semen banks in The Netherlands

	Year				Effect of law on recruitment
	1990	1997	2003	2005	
A-donors	901	511	110	0	Stop (intake; continued use allowed)
B-donors	16	78	180	185	Continuing
Private donors	32	143	175	210	Continuing
Semen banks	21	13	14	12	

Data gathered from surveys held by the Dutch–Belgian Society of Artificial Insemination (NBVKI).

Refer to text for definition of donor types.

for the decrease of A-donors, as with semen from B-donors and even more so from private donors, fewer children are conceived on average, compared to semen from A-donors. The reason for this is that Dutch rules allow a maximum of 25 children from donors over a population of 800 000 inhabitants, to limit the chance of inbreeding (de Bruyn, 1997; Janssens, 2003); a donor can, of course, determine that fewer children from his gametes are conceived. Moreover, for a B-donor it may be wise to set a limit to the number of children conceived with his gametes. This way he can restrict the number of offspring that may wish to know his identity, and possibly contact him. Although contact with an offspring may not necessarily be an unpleasant experience (perhaps even a pleasant, or interesting one), an excessive number of offspring making contact could become a psychological burden. Obviously, the data have to be collected so that in the future we can ascertain the effect of donor offspring contact on the donor. As yet, there has been no national agreement to changing the permitted maximum of 25 children per donor for DI in general. Survey by the Society of semen banks and DI (NBVKI) showed that few A-donors agreed to become traceable under the new law (becoming B-donors); most of them stopped donating. It seems that in the last few years the number of donors has stabilized. This may be a result of the recurrent interest in the topic by the media (covering issues like the legal changes discussed here and the donor shortage). Our data suggest that, despite real or apparent threats for donors (Fortescue, 2003), recruitment of donors in a non-anonymity system is feasible, as other studies have also shown (Lalos *et al.*, 2003; Daniels *et al.*, 2005). However, what will happen in the future, when public interest in the topic fades away?

The law making donors traceable seems to have brought about a change in the motives of the recruited donor. Whereas, before, the system was especially suited to strictly altruistic donors, the new system opens the way for donors motivated by procreation. This is explained by the fact that donors motivated by a desire to procreate appear to find it less of a problem that offspring might discover their identity (and possibly contact them). In our view this is because a donor who is interested in having offspring himself, (often) not only wants to know whether his donations resulted in offspring, but also, if possible, to make their acquaintance (which may be seen as a verification of the results of the donation). Obviously, an open-identity system gives donors a good chance in this respect, in contrast to a

system in which donors remain anonymous. The impression, gained from recent discussions in the NBVKI, is that new donors more often are motivated by procreation than previously. However, for most of the donors (75%) altruism still appears to be the main motivation for donation, according to an inventory made at one of the semen banks, a percentage comparable to that reported by another semen bank abroad, recruiting identifiable donors (Daniels *et al.*, 2005). In The Netherlands there are no nationwide data concerning the motives of donors.

Semen banks

The Dutch law imposes new obligations on semen banks: at intake new donors must be informed of the possible consequences of donation, a signed informed consent document has to be completed, and the identity of the donor has to be verified (identification). This should prevent ambiguity at a later stage, in the event that offspring might trace the donor's identity and make contact. Furthermore, semen banks have to report to the FDD data relating to the DI, if children are born following DI. This means that they have to keep track of the women they have treated by DI more rigorously than before (when records were kept mostly of pregnancies, not of births).

Last, but not least, semen banks have to cope with donor shortage. Many semen banks have intensified their efforts to recruit donors, for instance by means of advertisement campaigns, and setting up websites. Almost all semen banks now have a website with information for donors and recipients. Apart from the decreasing number of donors, semen banks in The Netherlands have also been confronted by other constraints in recent years. New governmental quality guidelines causing much extra work (Dutch Law: Wet veiligheid en kwaliteits lichaamsmateriaal, 2003), together with badly organized financial reimbursement for DI, led many institutions to consider the continuation of their existence. A number of banks coped with these difficulties and survived, but many did not and closed. Altogether, this has led to an almost 50% reduction in the number of semen banks during the last 15 years (Table I).

Conclusion

The new Dutch law, which regulates the provision of donors' identifying information to their offspring, has been instigated to serve donor offspring. Even though the law was intended for the well-being of donor offspring, only the future will show to what extent the offspring's interests really are served: how many offspring wish to discover their donors identity, what are the consequences of this knowledge and the ensuing contact that may result from this knowledge. The law provides donor offspring with new dilemmas (Janssens, 2005). The choice of what to do—look for their donor, or not?—is now exclusively theirs, at least it is if their parents have informed them about their donor origin. For the parents, the decision of whether or not to tell their offspring about the DI has also changed. As a result of the law, parents have less choice with respect to the donor type and fewer donor gametes are available. That it is not self-evident which system is the best is illustrated by the international situation. A number of countries forbid the use of

anonymous donors (Sweden, Switzerland, Austria, The Netherlands, Great Britain, The State of Victoria in Australia) whereas others allow or even require it (France, Norway, Denmark, Belgium, Spain, Israel). Given this diversity and the uncertainty concerning the consequences of abolishing donor anonymity, it seems premature to talk of European-wide legislation on this topic.

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