BELGIAN ADVISORY COMMITTEE ON Bioethics

Opinion no. 29 of 21 June 2004 on embryo donations

Initiative submitted on 13 July 1998

for the purposes of analysing the ethical issues relating to assisted reproduction

Request for an opinion of 16 November 1998,

from Mr M. Colla, Minister for Public Health and Pensions,
relating to "the ethical issues relating to reproductive medicine", and more especially point 5 of this question (see introduction below)

CONTENT OF THE OPINION

Introduction

The Advisory Committee on Bioethics has already issued three opinions on assisted reproduction, namely:

- Opinion no. 6 of 8 June 1998 on the ethical bases for optimisation of the services offered by and operating criteria governing in-vitro fertilisation centres;
- Opinion no. 19 of 14 October 2002 on the use of frozen embryos;
- Opinion no. 27 of 8 March 2004 on sperm and ovum donations.

During the plenary meeting of 15 December 2003, it was decided that a sub-committee would examine the remaining issues concerning surrogate motherhood, reproduction after the death of one of the partners, and embryo donation.

This opinion looks more especially at the question concerning embryo donation, which was raised on 16 November 1998 by Mr M. COLLA, Minister for Public Health and Pensions, namely:

"5. In reproductive medicine, use is made of sperm, oocyte and embryo donation. Are these three forms of donation comparable? In other words, should they be regulated in the same way?
Are there situations in which such donations should be disapproved?
Should donor anonymity be preserved in all cases?
Is a central sperm, oocyte and/or embryo 'bank' needed in order to guarantee a wider selection base for donors?"

The problem concerning the donation of sperm and ova was set forth in Opinion no. 27 of 8 March 2004.

A. In practice

As was described in Opinion no. 19 of the Advisory Committee on Bioethics, the donation to third parties of frozen surplus embryos is a possible use for these embryos in all the in-vitro fertilisation centres in Belgium.

In practice, surplus embryos are cryogenically preserved and kept for a period ranging from two to five years, or more, depending on the centre handling the treatment. At the beginning of the treatment, the centre asks the biological parents to decide on the fate of their surplus embryos at the end of the conservation period. Most centres contact the parents shortly before the end of this period and ask them to confirm the original use to which their embryos will be put. In practice, the original parents do not always answer the invitation and some cannot be found. In these cases, the centres respect the first use for the embryos indicated by them.

According to some experts, most parents intend to have their surplus embryos used for research. A minority opts for their donation. Many people have difficulty accepting the idea of one of their genetic children possibly being raised by strangers. The donation of an embryo, conceived by a couple or conceived using third-party gametes, has a very different symbolic meaning to the donation of gametes.
Other experts [1] point out that the breakdown between donation to a couple, donation for research and destruction, is more or less equal. They stress that the donation of an embryo to another couple is above all a gesture of solidarity between people unable to conceive. Moreover, it would be chosen much more often by people who themselves have received a sperm or oocyte donation.

The indications for embryo donations are the same as for oocyte donations and double gamete donations.

In Belgium, the first embryo donation dates from 1985. Since it was possible to implant an oocyte from a donor in a woman's uterus, it was logically deduced that it should be technically possible to implant an embryo that was genetically completely foreign there too. Embryo donation was thought of as an alternative solution in the light of the shortage of oocyte donors and bearing in mind the availability of numerous surplus embryos, even if the total lack of a genetic link with the recipients or their partner makes it a special procedure.

Candidate recipients for embryo donations are usually women or couples who have been facing infertility problems for several years. Most centres establish an age limit (according to the centre, the age imposed varies from 40 to 50) and refuse to implant embryos when the woman is older. This limit is justified for medical reasons (there are more complications in pregnancy when the woman is older) and for ethical reasons. Whilst some of the Committee members feel that the fact that the child's parents are older does not hinder his chances of development, others are of the view that from a certain age the parents generally have less energy. Only research will make it possible to determine whether this is harmful to the child.
Even when the man in the couple does not suffer from infertility, some applicant couples opt for embryo donation in order to avoid the woman going over the age limit, since the waiting list for oocytes is long.

All embryo donations are anonymous. The biological parents do not know to whom their embryos are going, and the recipient parents do not know from whom the embryos come. When the child finds out that he was born of an embryo donation, it is impossible for him to trace his biological parents.

Some centres only accept as recipients women who are in a stable heterosexual relationship. Others also accept single women and might accept lesbian couples. In practice the latter are not applicants, since it is not very likely that neither of the partners has oocytes. All the centres

[1] Laruelle C., Englert Y., "The future of surplus embryos and risks of multiple pregnancy in in-vitro fertilisation. What do couples think about it?", Rev. Med. Brux. 1996, 17, pp.115-9.

give counselling and discuss the applicant couple's or applicant woman's reasons, as well as the problems that could possibly arise, including keeping the manner of conception secret from the child. Whilst in the context of gamete and embryo donations, parents are usually advised to reveal to the child as early as possible how he was conceived, in practice most heterosexual couples keep it secret and take the risk of the child finding out the truth by chance at a later stage. However, bearing in mind the difficulties experienced by most parents suffering from infertility, it is probable that their nearest and dearest, and therefore the child's nearest and dearest, are aware of this. The risk of the secret being revealed by accident is therefore a real one.

In the context of other opinions, some Committee members have already stressed that such treatments fall under a "medicine of desire". We could even consider that this is a form of therapeutic tenacity in respect of a fertility problem. Why not adopt a child?
The couples or women who put themselves forward as candidates for an embryo donation have usually already given it thought and refuse adoption in response to their infertility problem for various reasons. Firstly, because the adoption procedures are exhausting and there are few candidate children. Secondly, because they have often been told that adopted children are problem children because of prior traumas linked, among other things, to the difficulty in accepting the fact that their mother had abandoned them.

It is even more difficult to say goodbye to a problem of infertility when having a positive image of oneself as a woman in our society often means having to give birth to children or at least being able to give birth. Experiencing a pregnancy, and for the partner giving support to his wife during pregnancy, still seems - for many men and women - to be an absolute requisite for satisfaction in their lives.

Whilst adoption seems to be the sensible solution to a fertility problem, it is not the choice of those contacting a fertility centre. Some couples applying for an embryo donation have already adopted children. That has not stopped them from consolidating their desire to go through a pregnancy in order to fulfil a positive image of themselves.

Even if in scientific literature the first embryo donation was described as a "prenatal adoption" (this terminology was subsequently abandoned), in reality this is a completely different experience.
In the case of an embryo donation, as in the donation of oocytes, the embryo has developed in the womb of the (recipient) mother and has arrived at full term in a "natural" manner. The mother-child link is probably equivalent to that existing during a natural, sought-after pregnancy, and within the couple's relationship, the role of father, giving support to his wife during her pregnancy, is comparable.

B. Ethical reflections

The members of our Committee feel that embryo donation is acceptable from an ethical point of view. Nonetheless, it must be stressed, as is the case for gamete donations (see Opinion no. 27), when embryos are donated that it must be ensured that the human character imposed by the transfer of life is maintained, that the child's interest, health and quality of life prevail, and that finally it appears clear that the parental plan is genuinely authentic.

The members of the Committee consider that, in the socio-cultural context of our society, where giving birth to a child helps in the creation of a positive image for a woman, it is ethically legitimate to implant in sterile women embryos conceived using other couples'zygotes.

All the members consider that it is up to each individual, in a democratic state, in function of his philosophical convictions, to define the meaning he gives to his sexual blossoming, provided other people's convictions are respected. However, for some members of the Committee, embryos can only be implanted in women who are in a stable heterosexual relationship. Other members are of the view that, faced with the permanent evolution of the

concept of “family” in our society, children can also grow up in single-parent families and in homosexual families. Moreover, they feel that excluding single women or women living together as a couple would constitute discrimination.
All the members of the Committee nonetheless recognise that it would not be acceptable, from an ethical point of view, to force doctors and nurses to treat patients against their own moral convictions. The Committee therefore recommends that the diversity of criteria used by the different centres with regard to the various donations be maintained. It is up to the State to see to it that the maintenance of these different criteria does not lead to certain groups in society being deprived of the possibility of fulfilling their desire to be parents. It should also be ensured that every centre immediately explains its criteria for inclusion to every patient in clear terms.

1. Concerning the donors

From an ethical standpoint, some couples and some women prefer to offer their surplus embryos a chance of life rather than have them used for research or let them be destroyed. Some biological parents want to offer their surplus embryos to other people who, like them, have experienced infertility problems. As we said above, this is not an obvious choice for everyone. Some biological parents have trouble accepting the idea that one of their genetic descendants is living, whilst they will never find out where, or indeed ever know anything about him or her. They prefer to have their surplus embryos used for research, which implies their subsequent destruction, and a minority asks for them to de destroyed immediately. For all the members of the Committee, their interests contrast with the interests of the applicant parents on a waiting list, or even sometimes the philosophical conviction of the doctors and nurses. According to some members of the Committee, their interests also contrast with the possible interests of the embryo. However, it seems legitimate to accord the biological parents or the biological mother the right to decide the use to be made of their/her embryos. The Committee therefore proposes following, in practice, the procedure currently in force. When the fertilisation procedure begins, the mother or parent couple decides on the use to be made of the embryos that remain at the end of the period during which they are kept. As described in Opinion no.19, the members differ as regards the need to chase up the parents towards the end of this period. Some think it is clear that if the parents have not spontaneously contacted the centre to change their initial decision as to the use to which their embryos should be put, it means that they have not changed their mind. Other members are of the opinion that it is impossible to anticipate, at the beginning of the treatment, the use to which their surplus embryos should be put. They feel that the parents should therefore be contacted before the end of the period during which the embryos are kept.
We also refer to Opinion no. 19 for the ethical discussion on the use to be made of embryos when there is a difference of opinion between the original partners, when they have since divorced or in the event of one of them having died.

2. Concerning the recipients

The candidate parent(s) for an embryo donation has (have) usually been undergoing treatment for some time for reasons of infertility. They want to have a child and seem to lay down fewer conditions on the fulfilment of this wish. Contrary to what is possible with sperm donation, where most centres try to find a donor who physically resembles the sterile father, it is not normally possible to look for conformities between the donor couple and the recipient couple. An ethnic similarity is sought.

As a rule the advisory organisation warns recipient parents that 50% of embryos do not resist thawing, whilst the chances of successful in-vitro fertilisation are 35 to 40%. These figures are identical when the embryos are replaced in the biological mother. Two embryos from the same genetic-parental couple are usually implanted. In in-vitro fertilisation techniques, several embryos are often replaced in order to increase the success rate, since some embryos do not implant and/or do not develop.
However, the practice of multiple births is of concern, on both a practical and ethical level. They involve a greater number of medical complications both during pregnancy and during the birth. What is more, irrespective of how desperate the desire to become a parent, not all future parents are necessarily prepared to take on the consequences of a multiple birth. Some members of the Committee stress that it is desirable to markedly reduce the number of embryos implanted and also argue in favour of a single embryo being implanted in the case of embryo donations.

Recipient parents are generally advised to inform the child or children of the way in which he/she/they were conceived. However, it seems that most parents do not impart this information.

3. Concerning the children

As described at length in Opinion no. 27, ethical reservations can be expressed about embryo donations if it is felt that a child's right to know his parents should be understood as his right to know his biological parents. As was argued in the aforementioned opinion, for the members of the Committee, relational and educational parenthood is at least as important as genetic parenthood. The members of the Committee thus consider that any damage that the child might suffer through never being able to receive any information at all concerning his biological parents is not sufficient to prevail over the importance for the recipient parents of fulfilling their desire for parenthood in order to stand in the way of anonymous embryo donations.

In Belgium, embryo donations are currently only carried out anonymously. The recipient parents are unknown to the donors and vice versa. The centres apply this anonymity because it seems to them that the donors prefer not to know where and to whom their embryo is being transferred, in order to facilitate a possible mourning process. They also feel that such a rule protects the recipient parents from any unwanted meddling on the part of the biological parents in the children's upbringing.
For medical reasons, the centres keep the genetic data on the child.
Some members of the Committee think that it is desirable and ethically legitimate to maintain this double rule of anonymity. Others, whilst not opposing the anonymity of embryo donations, feel that anonymity could nonetheless harm the child.
They are of the view that the child's right to know his biological parents is substantial enough to argue in favour of known donations, as well as anonymous donations, being permitted. By analogy with the arguments developed in Opinion no. 27 on the donation of sperm and ova, they suggest a two-track policy. Biological parents would be given the possibility of choosing between making a donation where they know who the recipients are, or making an anonymous donation. The recipient parents could choose between a donation where they know who the biological parents are, or an anonymous donation.

As described in the opinion on donations of gametes, all the members of the Committee consider that the recipient parents have the right to keep the manner of conception secret from the child. However, they feel that it is desirable for the child to be told as soon as possible of the way in which he was conceived, in order to spare him any trauma stemming from finding out by chance or linked to the sensation of there being a secret within his family.
There are currently no scientific data making it possible to determine that the revelation of the way in which he was conceived could cause the child identity problems.

4. Commercialisation of embryos

All the centres in Belgium respect the principle of non-commercialisation of human tissue. Embryo donations are therefore free of charge. Since the donation does not involve any specific costs for the biological parents, there is no settlement of expenses.

For the ethical justification of the principle of non-commercialisation of human tissue, we also refer to Opinion no. 27. For the ethical debate on this principle, we refer to Opinion no. 28. This debate will also be the subject of a forthcoming opinion upon submission of an initiative.

C. Legal aspects and recommendations

Since in Belgium the legal mother of the child is the woman who gives birth to it, an embryo donation does not pose any legal problems for the mother. Article 318, §4 of the Civil Code stipulates that it is impossible for the husband to contest his paternity if he has previously agreed to his child being conceived by means of a donation, provided that the child's birth is the consequence thereof. Nonetheless, it will have to be specified how the proof of the husband's consent to the embryo donation can be furnished.
A similar principle should apply to unmarried couples in order to avoid the partner subsequently refusing to recognise the child or, conversely, the mother - or later the child - contesting his paternity. Male partners, whether married or not, will in effect never be able to prove their paternity since they are not the biological fathers of the child.

It is therefore advisable for candidate parents for an embryo donation to sign a document establishing them as the indisputable parents and for this document to be accorded legal value, as the Committee recommended for the donation of gametes.

When the centres carry out anonymous donations, both for the donors and for the recipients, it is up to them to guarantee that this anonymity is maintained. If the regulations on the matter change, it must be ensured that this modification does not have a retroactive effect and does not alter the terms of a previous agreement.

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The opinion was prepared within select commission 98/3 – quater – 2004, consisting of:

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The working documents of select commission 98/3 – quater – 2004, questions, personal contributions of members, minutes of meetings, documents consulted – are stored as Annexes no. 98/3 – quater – 2004 at the Committee's documentation centre, where they may be consulted and copied.

This opinion is available on the website www.health.belgium.be/bioeth, under the "List of Opinions" section.