

BETWEEN THE CHILD-WISH AND CHILDREN'S RIGHTS IN EUROPEAN GLOBALIZED GAMETE DONATION: FROM DIVERGENT TO CONVERGENT REGULATORY MODELS

Abstract

Technological procreation has profoundly transformed the legal architecture of filiation, shifting the foundation of parenthood from genetic facts to reproductive intentions and contractual consent. Because family law remains a matter of domestic jurisdiction, divergent national approaches have emerged. This comparative study evaluates North Macedonia, which represents a liberal legislative baseline, alongside Italy, a jurisdiction that initially enforced deep restrictions but subsequently experienced court-driven liberalization.

Accelerated by transnational gamete banks, cross-border reproductive care has exposed deep fractures between diverse national donor anonymity regimes, displacing traditional biological and marital presumptions of parenthood. Consequently, while adult reproductive autonomy has expanded, the legal position of the newborn has become fragmented and precarious. Drawing upon European Court of Human Rights jurisprudence and contemporary bioethical debates, this article argues that technological procreation has produced a structural imbalance between adult reproductive liberty and children's independent rights to identity and genealogical integrity.

Ultimately, this article contends that the law must re-center the newborn as a primary bearer of rights rather than a byproduct of market transactions. It proposes a harmonized European regulatory framework featuring a unified donor registry, enforceable donation caps, and a procedural bifurcation between parentage establishment and informational identity proceedings to restore normative coherence.

I. INTRODUCTION: FROM GENETIC TO INTENTIONAL FILIATION

Assisted reproductive technologies (ART) have destabilized one of the oldest legal institutions: filiation. Historically, parenthood has been determined through biological certainty reinforced by social presumptions, most notably the maxim *mater semper certa est* and the marital presumption of paternity (*pater est quem nuptiae demonstrant*). The legal order mirrored biological truth. Technological procreation disrupts traditional biological symmetry. Utilization of donor gametes and embryos, surrogacy arrangements, and, among the most controversial recent advancements - CRISPR-Cas9 (Clustered Regularly Interspaced Short Palindromic Repeats-associated protein 9) genome editing collectively fragment parenthood into distinct dimensions: genetic, gestational, social, and legal.¹ While traditional assisted reproductive technologies separate genetic lineages from gestational and social care, embryonic gene editing introduces radical transformation, allowing the intentional design and modification of the biological substrate

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¹ For the foundational fragmentation of parenthood *via* donation and surrogacy, see ELENA IGNOVSKA, SPERM DONATION, SINGLE WOMEN AND FILIATION 15–19 (Intersentia 2015).

itself.² Parenthood is no longer merely discovered, it is intentionally constructed. While the European Court of Human Rights (ECtHR) explicitly clarified in the landmark Grand Chamber surrogacy judgment *Paradiso and Campanelli v. Italy* from 2017 that Article 8 of the Convention cannot be stretched to recognize a standalone "right to found a family,"³ contemporary bioethical discourse and legal scholarship have increasingly pushed the boundaries of this restriction. Recent global initiatives and academic arguments have fought for the recognition of a "right to attempt to reproduce"⁴ or a right to access assisted reproductive technologies as a vital extension of personal autonomy.⁵ This emerging paradigm shifts the focus from a positive right to successfully obtain a child to a qualified right to utilize available medical advancements to overcome involuntary childlessness without disproportionate state interference.

Several authors have conceptualized deep-seated yearning for a child by establishing a clear phenomenological gradation between wish, desire, and fundamental need.⁶ This conceptual framework serves to delineate their varying degrees of urgency and importance, ultimately evaluating whether the realization of a child's wish elevates it to the status of a recognized human right. Within Frankfurt's taxonomic scheme, the profound desire for offspring is accurately classified as a "constrained volitional need". This category denotes an intense, unyielding desire that persists until it is fulfilled. Consequently, the frustration of such a constrained volitional need causes severe psychological distress. In the specific context of involuntary childlessness, the individual suffers profound existential and emotional harm.⁷ Within this theoretical framework, evaluating the reproductive drive through Harry Frankfurt's motivational hierarchy suggests that reproductive rights fundamentally belong to the category of basic human rights. This position aligns with legal and bioethical scholarship asserting that an individual claim elevates into a positive right precisely when society recognizes it not as a mere subjective wish but as a core need essential to human well-being.⁸

The transition from genetic to intentional filiation represents a paradigmatic shift in the family law. Whereas the law once presumed parenthood from natural procreation or adoption within marriage,⁹ today parenthood may also derive from prior written consent, contractual arrangements, or judicial recognition in cases of surrogacies and gamete donations. However, some judicial realities have not yet been accustomed to this new reality. For instance, in North Macedonia, court proceedings for legal filiation, that is, establishing or rebutting parental rights and responsibilities are mainly driven by the results of exact genetic tests that demonstrate or do

² Regarding the ethical and legal challenges of CRISPR-Cas9 on filiation and genetic identity, see David Baltimore et al., *A Prudent Path Forward for Genomic Engineering and Germline Gene Modification*, 348 *SCIENCE* 36, 36–38 (2015); or Christopher Gyngell et al., *The Ethics of Germline Gene Editing*, 36 *J. APPLIED PHIL.* 498, 498–513 (2019). For more recent developments see the debate: *The Embryo Frontier: Editing Human Life* (2026) YouTube video, The Daniel Callahan Annual Program, 23 April.

³ *Paradiso and Campanelli v. Italy*, App. No. 25358/12, Eur. Ct. H.R. [GC] (Jan 24 2017) para. 141.

⁴ See Muireann Quigley, *A Right to Reproduce?*, 24 *BIOETHICS* 403, 403–11 (2010).

⁵ FERTILITY EUROPE, *EUROPEAN ATLAS OF FERTILITY TREATMENT POLICIES* 2024.

⁶ Yvonne Denier, *Need or Desire? A Conception and Moral Phenomenology of the Child Wish*, 20 *INT'L J. APPLIED PHIL.* 81, 81–95 (2006). Denier elaborated Frankfurt's concepts as described in: G.H. Frankfurt, *Necessity and Desire*, 45 *PHIL. & PHENOMENOLOGICAL RES.* 1, 1–13 (1984); HARRY G. FRANKFURT, *THE IMPORTANCE OF WHAT WE CARE ABOUT* (1988).

⁷ *Id.* Yvonne Denier.

⁸ See Jacky Boivin & Guido Pennings, *Parenthood Should be Regarded as a Right*, 90 *ARCHIVES OF DISEASE IN CHILDHOOD* 784, 784–85 (2005).

⁹ ДЕЈАН МИЦКОВИЌ, АНГЕЛ РИСТОВ, СЕМЕЈНО ПРАВО, 2015 at. 199.

not demonstrate a genetic match.¹⁰ Nevertheless, to avoid inconsistencies, access to such proceedings is forbidden for children conceived by gamete donations or adopted. This legal attitude compromises the right of access to court (Article 6(1) of the European Convention on Human Rights (ECHR) for all children on an equal basis; therefore, it discriminates (Article 14 ECHR) against the most affected ones.¹¹ However, there is no separate procedure for addressing, on an information level, the right of the child to know his or hers parents (Article 7 of the Convention on the Rights of the Child – CRC) as an important part of their identity, therefore private life (Article 8 CRC and Art. 8 ECHR).¹² Historical attempts by the domestic Constitutional Court to balance these interests have resulted in an all-or-nothing secrecy approach.¹³ By prioritizing parental anonymity as an absolute pillar of public order, courts have historically closed the door to the child’s right to origin discovery. This statutory rigidity explains why the traditional single-track parentage model fails. To resolve this friction, the law must transition away from absolute secrecy regimes and toward a bifurcated framework that completely untangles the immediate establishment of legal parentage from the secondary, independent right to access genetic history.

The recent family law transformation produces central tension: while adult reproductive liberty expands, the child’s position becomes uncertain. Newborns are increasingly born into networks of private agreements, transnational markets, and divergent legal regimes.

The article advances three core claims:

1. Technological procreation has created structural asymmetry between adult autonomy and child-centered rights.
2. Cross-border gamete donation exposes profound regulatory fragmentation within Europe.
3. The law must develop a harmonized framework that protects the newborn’s right to identity, manageable genealogy, and legal stability.

¹⁰ *Id.* at 207.

¹¹ Elena Ignovska, *The Right to Access to Court in Parental Proceedings for Children of “Unknown Origin” in the Republic of North Macedonia*, 12 IUSTINIANUS PRIMUS L. REV. 1, 1 (Special Issue 2021). The Macedonian Family Law explicitly precludes parental proceedings following a legal adoption (Article 75), blocks the contestation of paternity if a spouse consented to heterologous insemination (Article 71), and bars the establishment of paternity for children conceived *via* artificial insemination (Article 62). This statutory framework highlights the domestic courts’ rigid adherence to biological ties, standing in stark contrast to the European Court of Human Rights’ growing emphasis on factual family life. Consequently, these domestic provisions infringe upon the right to a fair trial under Article 6(1) read in conjunction with the right to an effective remedy under Article 13 of the ECHR. Furthermore, they restrict the judicial examination of family life for adopted children and those conceived *via* gamete donation (Article 8), resulting in discrimination based on birth status under Article 14 ECHR.

¹² *Id.* at 13; *see also* Elena Ignovska, *In the Waiting Room of Reform: Balancing Autonomy and Protection in North Macedonian Family Law with a Focus on the Constitutional Court’s Rulings Regarding the Child’s Right to Know Their Origin*, 3 CHILD & FAM. CONTEMP. SOC’Y 103, 103–24 (2026). For evaluations of the domestic jurisprudence, *see especially* Уставен суд на Република Македонија [Constitutional Court of the Republic of Macedonia], Одлука, У.бр. 153/2017, June 20, 2018, Службен весник на РМ, бр. 122 (July 3, 2018); Уставен суд на Република Северна Македонија [Constitutional Court of the Republic of North Macedonia], Решение, У.бр. 93/2019, December 19, 2019.

¹³ *Id.* Ignovska (2026) at 119.

II. FAMILY LAW BETWEEN NATIONAL SOVEREIGNTY AND SUPRANATIONAL NORMS

Family law is one of the most culturally embedded legal regulations. States traditionally regulate marriage, parentage, and reproductive morality according to domestic traditions, religious heritage, and a localized ethical consensus.¹⁴ This national subjectivity has historically hindered European harmonization. Unlike commercial or competition laws, family law inherently resists standardization because it reflects a society's collective moral identity.

To illustrate the contemporary dynamics of this regulatory resistance and the inevitable friction it creates, this section analyses two contrasting national frameworks before evaluating the overarching European response. Section 2.1 provides a comparative examination of the Republic of Italy and the Republic of North Macedonia, tracking the deep legal divergence arising from their distinct approaches to bioethical discourse. While Italy embodies a perpetual state of intense deliberation over ethical concepts, largely driven by the profound socio-cultural and political influence of the Catholic Church, North Macedonia presents a striking paradox. In North Macedonia, the foundational framework was introduced in 2008 under a right-wing, self-proclaimed Christian Democratic government; however, despite this political ideology, the legislation was passed from a purely clinical standpoint, with virtually no public or academic debate surrounding the profound ethical and human rights dilemmas inherent in assisted reproduction. This section discusses how a jurisdiction anchored in strict public order (*ordine pubblico*) exceptions compared to a permissive system, one that expands medical access while maintaining structural silence regarding a myriad of ethical and legal concerns. Section 2.2 shifts the focus to the regional plane, exploring the convergent pathways forced upon these sovereign nations by the tightening web of European supranational scrutiny, most notably through the evolving human rights jurisprudence of the ECtHR and the legislative interventions of European institutions.

1. Divergent Regulatory Models: Italy and North Macedonia Compared

The Italian Republic provides a paradigmatic socio-legal laboratory for examining the acute tensions that arise between reproductive liberty, deep-seated moral traditions, and intensifying supranational human rights pressures. This represents a unique socio-legal intersection where codified Roman civil law traditions meet an intense Catholic moral heritage and the rapidly evolving, binding jurisprudence of the ECtHR. When enacted, Law No. 40/2004 was one of Europe's most restrictive Assisted Reproductive Technology (ART) frameworks. In its original statutory formulation, heterologous fertilization was prohibited, restricting the number of embryos that could be created and simultaneously implanted, banned embryonic cryopreservation, and strictly limited treatment access to stable heterosexual couples. Although explicitly designed to protect the abstract "legal subjectivity" and dignity of the human embryo from the moment of conception, Law no. 40/2004 has undergone over a decade of systematic "constitutional erosion" driven by domestic judicial intervention. The Italian Constitutional Court (ICC) has gradually moved away from a strictly biological-centric view of the family unit toward a functionalist psychological definition of reproductive health, ultimately reframing clinical access as an intrinsic

¹⁴ Elena Ignovska, *Private and Family Life and Contested Moralities in front of the European Court of Human Rights*, 14 IUSTINIANUS PRIMUS L. REV. 1, 1–3 (2023).

component of personal well-being and the fundamental right to find a family.¹⁵ A series of landmark interventions by the Italian Constitutional Court progressively dismantled the core statutory prohibitions. First, Judgment No. 151/2009 introduced the overriding principle of medical reasonableness; by striking down the absolute "three-embryo creation limit" and the mandatory simultaneous implantation rule, the Court effectively prioritized the clinical health of the woman and the mathematical success rate of the procedure over the abstract legal protection of the pre-implantation embryo.¹⁶

Subsequently, Judgment No. 162/2014 created a definitive watershed moment for individual reproductive autonomy within the Italian state.¹⁷ The Court ruled that an absolute legislative ban on conceiving *via* heterologous fertilization (using donor gametes) constituted an unjustifiable violation of the constitutional right to health. This right was interpreted broadly under Article 32 of the Italian Constitution, read in conjunction with Articles 2, 3, 29, 31, and 117(1), to encompass not merely physical integrity but psychological well-being and the fundamental "freedom to self-determine" one's reproductive and personal life, explicitly drawing conceptual support from the preamble of the World Health Organization (WHO) Constitution.¹⁸

Furthermore, Judgment No. 33/2021 decisively shifted the domestic judicial focus to the principle of the best interests of the child.¹⁹ In this landmark ruling, the Constitutional Court addressed a formal referral from the Court of Cassation regarding the constitutionality of the Italian judiciary's refusal to recognize a foreign judicial decree. The underlying dispute involved a same-sex male couple united in a domestic civil partnership who sought formal parentage recognition for a child born through a commercial gestational surrogacy arrangement in an external jurisdiction. The legal core of the conflict examined whether the traditional "public order" (*ordine pubblico*) exception (validly invoked due to Italy's explicit domestic statutory prohibition of surrogacy) could justify the total non-recognition of a foreign *status filiationis*, and whether such an administrative refusal disproportionately infringed upon the child's right to a stable legal identity and private life under Article 8 of the ECHR. While the Constitutional Court ultimately upheld the domestic legislative ban on surrogacy practices within Italian territory, it simultaneously compelled the legislature to provide an effective, accessible legal mechanism to recognize the familial bond between the child and the "intended" (non-biological) father. In doing so, the court established two fundamental pillars for the legal recognition of parentage in complex cases of cross-border surrogacy: 1. The right to identity and social reality: Drawing directly upon the normative rationale of *Mennesson v. France*,²⁰ the Court asserted that established familial ties are central to a child's identity. When a child is raised within a legally recognized "community of affection," including same-sex civil partnerships, they possess a constitutional right under Article 2 to have this social reality mirrored legally. This formal recognition is essential for securing fundamental derivative rights to healthcare access, public education, and inheritance, independent

¹⁵ For a comprehensive analysis of the development and evolution twenty years after the initial enactment of the law, see Gian Matteo Vergallo et al., *20 Years Since the Enactment of Italian Law No. 40/2004 on Medically Assisted Procreation: How it has Changed and How it Could Become*, 22 INT'L J. ENVTL. RES. & PUB. HEALTH 296, 296 (2025).

¹⁶ See Dries Van Becelaere & Rim Guerni, *Italian Constitutional Court Decision N. 151/2009: Single and Simultaneous Implantation of no more than three Embryos*, BIODIRITTO (May 8, 2009).

¹⁷ Corte Costituzionale [Constitutional Court], 9 April 2014, Sentenza n. 162/2014 (It.), *translated in English*.

¹⁸ Corte Costituzionale [Constitutional Court], 9 April 2014, Sentenza n. 162/2014, in *Gazzetta Ufficiale* [G.U.] (ser. speciale), 18 June 2014, n. 16 (It.).

¹⁹ Corte Costituzionale [Constitutional Court], 28 January 2021, Sentenza n. 33/2021 (It.), *translated in English*.

²⁰ *Infra* note 59.

of parents' sexual orientation and 2. The irreversibility of parental responsibility (parentage recognition) ensures that those individuals who voluntarily undertook and authorized the initial "reproductive project" remain legally and permanently bound to their parental duties. The Court concluded that under Article 8 of the ECHR, these established responsibilities cannot be dismissed by a simple retrospective act of will, thereby compelling the state to provide a legal *lien de filiation* even where domestic statutes prohibit the underlying surrogacy agreement.²¹

The Constitutional Court's rationale correctly shifted the analytical focus from the legality of the initial reproductive act (the surrogacy agreement itself) to the affirmative protection of the resulting status (the child's legal identity). It cogently argued that the state's blanket refusal to recognize parentage created an impermissible legal vacuum that actively punished the child, rather than the intended parents, by denying them a permanent, stable, and legally enforceable bond with their primary caregivers.

The progressive dismantling of Law No. 40/2004 was largely triggered by structural tension between the statutory protection of the embryo and the fundamental rights of prospective parents. The landmark case of *Costa and Pavan v. Italy* (2012) serves as the primary external catalyst for this shift.²² The applicant couples were healthy genetic carriers of cystic fibrosis who sought access to ART and Pre-implantation Genetic Diagnosis (PGD) to avoid transmitting the severe hereditary disease to their offspring. While Law No. 40/2004 strictly banned access to PGD, parallel provisions in Italian healthcare law permitted legally induced abortion of a fetus diagnosed with the exact same genetic condition at a later gestational stage. The ECtHR found this statutory framework deeply "incoherent" and ruled it a violation of the right to respect for private and family life under Article 8 of the ECHR. Judgment No. 162/2014 of the Italian Constitutional Court was heavily influenced by *Costa and Pavan* logic, and the ICC integrated this rationale to strike down the heterologous ban, permanently reframing reproductive access as a fundamental facet of constitutional health protection under Article 32.

Conversely, *Parrillo v. Italy* (2015) established a clear supranational boundary regarding the embryo status.²³ The Grand Chamber of the ECtHR upheld Italy's domestic ban on donating cryopreserved embryos to scientific research, concluding that in the absolute absence of a European consensus regarding the precise moment when human life begins, the Italian State maintained a "wide margin of appreciation" to protect the embryo's "symbolic value." This creates an intricate legal paradox within the jurisdiction: an embryo can be validly created utilizing donor gametes (which is entirely legal), but once that embryo is brought into existence, its destruction, thawing, abandonment, or utilization for non-reproductive scientific purposes remain strictly controlled and penalized by the state.

Expanding the analytical scope to children and their independent right to identity, another highly relevant, though contextually distinct, intervention is *Godelli v. Italy* (2012).²⁴ Dealing with the right of an abandoned child to discover their genealogical origins, the ECtHR found that Italy's absolute secrecy law for biological mothers who surrender children at birth violated their child's rights. This precedent connects directly with children conceived *via* technological procreation insofar as it structurally pressures Italy to ensure that children born *via* gamete donation or surrogacy possess an eventual legal mechanism to access their biological history, further complicating the domestic "moral resistance" to these procedures.

²¹ Corte Costituzionale, Sentenza n. 33/2021, *supra* note 19, 5–6.

²² *Costa & Pavan v. Italy*, App. No. 54270/10, Eur. Ct. H.R. (Aug. 28, 2012).

²³ *Parrillo v. Italy* [GC], App. No. 46470/11, Eur. Ct. H.R. (Aug. 27, 2015).

²⁴ *Infra* note 45.

Other pivotal ECtHR rulings have continuously influenced the vigor and direction of Italian legislative debate. In *Paradiso and Campanelli v. Italy* (2017), the Grand Chamber allowed the state authorities to remove a child born as a result of commercial surrogacy tourism who lacked any biological or genetic ties to commissioning parents, citing the legitimate protection of public order.²⁵ However, in *C v. Italy* (2023), the Court distinguished this boundary, finding that the prolonged non-recognition of parentage resulting from reproductive tourism violated Article 8 of the ECHR, which actively left the child destitute of a legal identity.²⁶ The case involved a child born *via* a surrogate carrier in Ukraine to an Italian biological father and an intended non-biological mother. As Italian civil registries refused to transcribe the foreign birth certificate, the child was left legally parentless and functionally stateless, completely devoid of identity documents, for a period of four years. The ECtHR ruled that while Italy is not structurally forced to recognize a foreign commercial surrogacy contract *per se*, it cannot leave the resulting child in a state of legal, parentless "limbo" for a prolonged duration. This sustained supranational pressure directly led to the ICC's recommendation and subsequent judicial adoption of *adozione in casi particolari* (adoption in special cases) as the primary pathway for non-biologically intended parents to secure a legal link to the child to protect their Article 8 rights. However, this process is slow, unpredictable, and uncertain because it does not constitute a comprehensive or immediate solution for granting a fully recognized, secure legal status to children born as a result of their parents' reproductive choices and intentional projects. Even more, the Constitutional Court exhausted its capacities to intervene, as its role is limited to reviewing legislation for unconstitutionality rather than substituting its judgment for that of Parliament, which retains the primary legislative discretion except where provisions are discriminatory or otherwise constitutionally incompatible.

Political and moral resistance to these judicial developments crystallized in late 2024, when Italy formally adopted highly controversial legislation criminalizing surrogacy as a "universal crime" (*universalizzazione del reato di surrogazione*).²⁷ This statutory amendment permits the domestic prosecution of Italian citizens who engage in gestational surrogacy arrangements abroad, even within jurisdictions in which the procedure is entirely legal and regulated. This extraterritorial extension of domestic criminal law is highly unusual within international jurisprudence, as the doctrine of universal jurisdiction is traditionally and strictly reserved for egregious international crimes, such as genocide, piracy, war crimes, or crimes against humanity. Legal critics and scholars argue that measures that violate core international legal principles of double criminality indirectly inflict severe psychological and social harm on children through the criminal prosecution of their primary caregivers, and create acute, preventable risks of statelessness and legal displacement.²⁸ Consequently, it remains to be seen how domestic courts, the Italian judiciary, and the wider international community will react to such drastic legislative measures. Ultimately, the Italian model demonstrates a striking dual movement: intense moral and political resistance to the marketization of human reproduction, existing alongside increasing constitutional and supranational pressures to protect children's identity, legal status, and family life.

²⁵ For a detailed analysis of the Grand Chamber's reasoning, see Elena Ignovska, *Paradiso and Campanelli v. Italy: Filiation of an Adopted Embryo Born by Surrogate Woman in a Foreign Country*, STRASBOURG OBSERVERS (Apr. 4, 2017).

²⁶ *C v. Italy*, App. No. 47196/21, Eur. Ct. H.R. (Aug. 31, 2023).

²⁷ *Maternità surrogata: pubblicata in Gazzetta Ufficiale – e in vigore dal 3 dicembre – la Legge 4 novembre 2024, n. 169*, GIURISPRUDENZA PENALE (Nov. 19, 2024).

²⁸ See Madison Sill, *Italy's Extraterritorial Surrogacy Prohibition: Cross-Border Parenting Recognition and Legal Fragmentation*, J. INT'L L. & COM. (Syracuse Univ. Coll. of L.) (Jan. 28, 2026).

The Republic of North Macedonia presents a contrasting legislative model characterized by an entirely different intersection of domestic sovereignty, medical utilitarianism, and human rights implementation. The primary domestic legal source, the Law on Biomedically Assisted Fertilization (2008),²⁹ established a highly permissive and progressive framework, especially when it was enacted.³⁰ It explicitly permits heterologous fertilization (encompassing sperm, egg, and embryo donation) and guarantees open access to treatment for single women subject to flexible interpretation, while still legally enforcing strict donor anonymity.³¹ As a result of liberal access, the country has become highly attractive for reproductive tourism, drawing patients from neighboring countries.³² To balance medical advancement with demographic and social needs, legislative architecture also allows for the cross-border importation of frozen gametes from international commercial banks,³³ posthumous reproduction utilizing cryopreserved material,³⁴ and controlled embryonic research.³⁵ The Law on Biomedical Assisted Fertilization provides for a State Register through which authorized healthcare institutions verify compliance with the rules governing the donation of gametes and embryos,³⁶ including the rule limiting the number of donor-conceived offspring to two per couple.³⁷ However, it does not impose any restrictions on the number of donations per donor. This creates a risk of over-donation and the emergence of complex networks of genetically related children, both nationally and internationally, particularly given that national clinics frequently import gametes from international donor banks. Therefore, it is strongly recommended that, in addition to regulating the number of donor-conceived offspring per couple, the law should also regulate the number of times the same donor's sperm may be used. The personal, medical, and genetic data and documents concerning donors and recipients constitute classified information and must be protected and kept confidential in accordance with the applicable regulations on classified information and personal data protection.³⁸ Furthermore, the domestic landscape underwent highly significant legislative expansion with the 2014 Amendments to the Law on Biomedically Assisted Fertilization, which formally introduced and regulated altruistic gestational surrogacy within the national healthcare system. Under this statutory scheme, surrogacy arrangements are legal, provided that they are conducted through authorized, state-regulated healthcare institutions, comply with strict medical prerequisites proving a biological incapacity to carry a pregnancy, and involve exclusively married heterosexual couples who are citizens of North Macedonia. The surrogate carrier must participate on a purely altruistic basis,

²⁹ Закон за биомедицинско потпомогнато оплодување [Law on Biomedically Assisted Procreation], Службен весник на Република Македонија [Official Gazette of the Republic of Macedonia], No. 37/08, со измени во No. 164/13, 149/14, 145/15, 37/16 (North Macedonia).

³⁰ For more on the Macedonian legislation in this field, see ДЕЈАН МИЦКОВИЌ, ЕЛЕНА ИГНОВСКА & АНГЕЛ РИСТОВ, *НОВИТЕ РЕПРОДУКТИВНИ ТЕХНОЛОГИИ И ПРАВОТО* [The New Reproductive Technologies and the Law] (Универзитет „Св. Кирил и Методиј“, Скопје 2016).

³¹ *Supra* note 29 Law on Biomedically Assisted Procreation, Art. 7, 8 and 9. For more, see Драгица Трпчевска Зафировска [Dragica Trpchevska Zafirovska], *Скопјанка на 61 година роди бебе по 10 ин витро оплодувања* [A 61-Year-Old Woman from Skopje Gave Birth to a Baby After 10 In Vitro Fertilizations], DW (Nov. 26, 2024).

³² See Сандра Стојановска Зоксимовска [Sandra Stojanovska Zoksimovska], *Македонскиот либерален закон привлекува странци за ин витро* [The Macedonian Liberal Law Attracts Foreigners for In Vitro], Радио Слободна Европа [Radio Free Europe] (Jan. 3, 2025).

³³ *Op.cit.* Law on Biomedically Assisted Procreation, Art. 35

³⁴ *Id.* Art. 33.

³⁵ *Id.* Art. 37.

³⁶ *Id.* Art. 56 and 15 (3).

³⁷ *Id.* Art. 16 and 23.

³⁸ *Id.* Art. 17.

although the law allows for state-regulated compensation of basic medical, nutritional, and insurance costs.

Thus, North Macedonia's regulatory framework is comparatively permissive regarding adult access and clinical options, but it remains structurally limited and remarkably silent concerning long-term identity safeguards and enforcement of the child's right to genealogical truth. Unlike the highly contentious socio-legal climate observed in Italy, constitutional litigation regarding ART in North Macedonia has been virtually non-existent, even though highly controversial decisions have been made regarding the alleged right of the child to know its own identity.³⁹ Domestic academic and political debates have simply not reached the same level of intensity regarding critical bioethical questions, such as the child's right to know their biological origins after reaching the age of the majority, the seamless recognition of cross-border parental status, or the regulation of donor over-proliferation. The Macedonian system prioritizes adult reproductive access, strict medical and clinical regulations, and formalized procedural consent. Less developed, however, are the accompanying protective mechanisms that address post-majority identity retrieval proceedings, systematic genealogical database management, and the long-term psychosocial impacts of these fragmented family structures on donor-conceived individuals. North Macedonia's framework fundamentally reflects a pragmatic, access-oriented orientation toward technological procreation, but it operates entirely without the layered, sophisticated constitutional scrutiny and rights balancing seen in Italian jurisprudence.

When examining the underlying regulatory philosophies of these two European jurisdictions, a deep systemic divide becomes apparent. Italy operates under a morally restrictive philosophy, treating technological procreation and gestational surrogacy in particular as an existential challenge to public order (*ordine pubblico*) and traditional family structures. This has resulted in heavy constitutional court involvement, an ECtHR-driven model of defensive adaptation, and official state emphasis on penal prohibition. Conversely, North Macedonia operates under a highly permissive and pragmatic philosophy. The Macedonian state frames assisted reproduction not as a moral battleground but primarily as a matter of medical access and healthcare provision, resulting in minimal constitutional litigation, a lack of direct supranational confrontation, and a top-down legislative willingness to expand clinical options. This philosophical divergence directly shapes how each state approaches the protection of the child's identity and fundamental human rights under international instruments, such as the CRC. Under sustained pressure from the Strasbourg court, Italy is increasingly forced to recognize the child's independent identity interests and the "social reality" of their upbringing, even though practical domestic implementation through adoption mechanisms remains imperfect and legally fragmented. On the other hand, North Macedonia preserves strict, impenetrable donor anonymity within its domestic clinics without formulating any legal or administrative identity retrieval mechanisms for offspring upon reaching adulthood.

Consequently, while Italy's primary systemic tension lies in the judicial and administrative recognition of non-biologically intended parents returning from abroad, North Macedonia's latent systemic tension resides in the complete absence of long-term informational and genealogical rights for the child. As a direct consequence of these disparate national regulations, citizens in both

³⁹ See more in Ignovska, *supra* note 12 especially Уставен суд на Република Македонија [Constitutional Court of the Republic of Macedonia], Одлука, У.бр. 153/2017, June 20, 2018, Службен весник на РМ, бр. 122 (July 3, 2018); Уставен суд на Република Северна Македонија [Constitutional Court of the Republic of North Macedonia], Решение, У.бр. 93/2019, December 19, 2019 See also *Mitrevska v. North Macedonia*, Eur. Ct. H.R. App. no. 20949/21 (May 14 2024), the implications of which remain uncertain.

countries are actively driven to participate in cross-border reproductive care (CBRC) for different operational reasons. Italian citizens frequently engage in reproductive tourism to avoid strict domestic prohibitions on surrogacy, same-sex eligibility, or genetic screening; however, they face severe legal friction, potential prosecution, and status vulnerability upon returning home. By contrast, North Macedonia appears on paper as a highly permissive jurisdiction within regional reproductive mobility. However, its surrogacy arrangements are completely closed to international visitors and legally reserved for heterosexual married nationals. Furthermore, despite the statutory existence of regulated altruistic surrogacy within North Macedonia, Macedonian citizens are frequently forced to seek reproductive services abroad, predominantly navigating commercial channels in jurisdictions such as Ukraine and Georgia. Within a domestic framework that stringently prohibits commercialization, Macedonian intended parents face a critical and permanent shortage of local gestational carriers who are willing to participate on a purely altruistic basis. This domestic deficit necessitates cross-border reproductive travel to external jurisdictions with commercialized legal structures, yielding a paradox in which over a 10-year period, only 12 children have been registered as born to altruistic surrogates domestically.⁴⁰ At this juncture, both the restrictive Italian model and the permissive Macedonian model converge; both demonstrate that isolated, purely national frameworks are fundamentally unequipped to manage or police the transnational flows of the globalized gamete market. Whether a state chooses the path of moral resistance or structural silence, the resulting cross-border mobility inevitably exposes newborns to unregulated market forces, highlighting the urgent need for a unified supranational approach to safeguard human dignity and the fundamental rights of the child.

2. Convergent Pathways: Regulatory Models Under European Supranational Scrutiny

Article 8 of the ECHR guarantees the right to respect private and family life, and the ECtHR has repeatedly recognized that questions of reproduction and filiation fall squarely within its protective scope. However, to navigate these morally sensitive domains, the Court employs the doctrine of the margin of appreciation, granting states significant discretion where no clear European consensus exists.⁴¹ Consequently, the evolution of ECtHR jurisprudence on reproductive rights is characterized by an enduring tension between state sovereignty and legal consistency.

This tension is vividly illustrated by comparing *S.H. and Others v. Austria*⁴² and *Costa and Pavan v. Italy*.⁴³ While both cases implicate Article 8 in affirming that the decision to conceive a genetic child through ART falls under the umbrella of private life, they represent two distinct judicial postures regarding state autonomy. The critical divergence lies in the Court's willingness to scrutinize internal legislative coherence. In *S.H.*, the Austrian government's ban on ova and sperm donation for In Vitro Fertilization (IVF) was upheld. The Court deferred to the State, noting that due to the lack of a "clear common ground" among European states at the time, Austria was permitted to restrict certain techniques to prevent perceived moral risks or unconventional family structures, provided its laws were kept under "constant review". Conversely, in *Costa and Pavan*, the Court shifted its focus from external European consensus to internal legal logic. The Italian

⁴⁰ Сандра Стојановска Зоксимовска [Sandra Stojanovska Zoksimovska], *Сурогат мајки родиле 12 деца во Северна Македонија* [Surrogate Mothers Gave Birth to 12 Children in North Macedonia], Радио Слободна Европа [Radio Free Europe] (Feb. 25, 2025).

⁴¹ See Ignovska, *supra* note 12, at 6.

⁴² *S.H. v. Austria* [GC], App. No. 57813/00, Eur. Ct. H.R. (Nov. 3, 2011).

⁴³ *Costa and Pavan*, *supra*, para 58–71.

government banned PGD for a fertile couple who was a healthy carrier of cystic fibrosis. While the applicants argued that they faced discrimination compared to couples where the male partner carried a sexually transmitted viral disease (such as HIV or Hepatitis), who were granted access to reproductive technologies under domestic rules, the Court ultimately chose not to rule on Article 14 claim separately. Instead, the ECtHR identified a glaring structural contradiction in the domestic framework: the state prohibited PGD from screening for a genetic disease in an embryo, yet legally permitted the medically induced abortion of a fetus diagnosed with the exact same condition later in pregnancy. Ruling that a state cannot ban a preventative measure while simultaneously permitting a significantly more invasive procedure for the same underlying medical rationale, the Court deemed Italian law illogical and inconsistent. In doing so, it established that, while states retain the right to carve out their own ethical paths, their resulting legislative frameworks must remain internally coherent.

The margin of appreciation narrows substantially where the core aspects of personal identity are at stake, particularly regarding a child's right to uncover their biological origins. In this domain, the court has transitioned from merely balancing competing interests to enforcing a heightened standard of scrutiny over personal status. In *Odièvre v. France*,⁴⁴ which evaluated the French system of anonymous birth (*accouchement sous X*), the applicant's request for biological information was blocked by mother's demand for secrecy. Although the Court found no violation due to the state's interest in protecting maternal health and preventing infanticide, it firmly established that the "right to know one's origins" is a vital interest protected by Article 8, which recognizes psychological development.

The 2012 judgment in *Godelli v. Italy*⁴⁵ marked a decisive departure from the deference in *Odièvre*. In addition, involving anonymous birth, *Godelli* exposed the undue rigidity of the historic Italian framework. Unlike the French system, which offered a pathway to "reversible" anonymity should a mother later consent to disclosure, the Italian regime erected an absolute, permanent barrier with no mechanism for the child to request even non-identifying medical history. The ECtHR ruled that by prioritizing maternal anonymity to the absolute detriment of the child's identity interests without any statutory safeguards, Italy had overstepped its margin of appreciation. *Godelli* underscores that blind adherence to a singular policy at the expense of an individual's self-knowledge violates the Convention, establishing a positive obligation for states to actively facilitate identity realization through flexible judicial procedures. Spurred directly by *Godelli*, the Italian Constitutional Court (*Corte Costituzionale*) delivered its historic Judgment No. 278/2013, striking down the absolute anonymity regime as unconstitutional and introducing a mechanism for judicial reversibility that re-centered the child as an autonomous subject.⁴⁶

In contrast to the human rights mandates of the ECtHR, the European Union possesses limited competence in substantive family law, acting primarily in cross-border civil contexts through instruments that require strict unanimity of Member States.⁴⁷ While the harmonization of private international law through EU instruments (such as Brussels IIb) and the Hague Conference has improved jurisdictional clarity, it has failed to yield substantive unity.⁴⁸ Technological

⁴⁴ *Odièvre v. France* [GC], App. No. 42326/98, Eur. Ct. H.R. (Feb. 13, 2003).

⁴⁵ *Godelli v. Italy*, App. No. 33783/09, Eur. Ct. H.R. (Sept. 25, 2012).

⁴⁶ *Corte Costituzionale* [Corte cost.] [Constitutional Court], 18 novembre 2013, No. 278/2013 (It.).

⁴⁷ Consolidated Version of the Treaty on the Functioning of the European Union art. 81, paras. 1, 3, Oct. 26, 2012, 2012 O.J. (C 326) 47.

⁴⁸ Council Regulation (EU) 2019/1111 of 25 June 2019 on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and the Matters of Parental Responsibility, and on International Child Abduction, 2019 O.J.

procreation continually exposes the limits of this bifurcated model; when gametes travel across borders more freely than the legal recognition of the resulting parentage, legal fragmentation intensifies.⁴⁹ The structural dichotomy of the EU's intervention is thus characterized by procedural synchronization juxtaposed against persistent substantive fragmentation - the Union successfully dictates where a matter must be heard, but lacks the competence (or is unwilling) to define what constitutes a family unit.

This creates a systemic lag wherein the cross-border mobility of genetic material and reproductive services routinely outpaces the legislative capacity for mutual recognition of legal parentage. This regulatory friction is currently epitomized by the legislative stalemate surrounding the European Commission's proposed Council Regulation on the recognition of parenthood between Member States (COM(2022)695). Pursuantly empowered by Article 81(3) of the TFEU to enact family law measures with cross-border implications, the Union sought to protect children's fundamental rights (including the acquisition of nationality, residence, maintenance, and succession) through the creation of a uniform European Certificate of Parenthood.⁵⁰ However, because substantive parentage remains an exclusively guarded domestic competence requiring strict unanimity in the Council, divergent national public policy exceptions (*ordre public*), particularly concerning cross-border surrogacy and non-traditional families, have stalled its adoption.

This legislative push gained momentum following the Court of Justice of the European Union (CJEU) ruling in Case C-490/20, *V.M.A. v. Stolichna obshtina*, which established that parentage recognized by one Member State must be recognized by all others for the limited purpose of exercising free movement rights. Building on this judicial baseline, the European Parliament adopted its non-binding position on the proposed regulation on December 14, 2023, introducing a critical amendment to counter the arbitrary use of national public policy exceptions.⁵¹ Specifically, the Parliament proposed a suspensive effect: whenever a host Member State relies on *ordre public* to refuse the recognition of parentage established abroad, parenthood must be provisionally presumed valid for the duration of any pending judicial appeals or preliminary references before the CJEU. Recognition can only be formally extinguished once all domestic and supranational legal remedies are fully exhausted. However, despite these parliamentary efforts to safeguard the child's legal status during litigation, domestic sovereignty continues to resist automatic substantive recognition, leaving the newborn's overarching legal status acutely suspended at the border.

(L 178) 1; *see also* Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391.

⁴⁹ Commission Proposal for a Council Regulation on Jurisdiction, Applicable Law, Recognition of Decisions and Acceptance of Authentic Instruments in Matters of Parenthood, at 1–2, COM (2022) 695 final (Dec. 7, 2022).

⁵⁰ European Parliament, Regulation on the Recognition of Parenthood between Member States, Legislative Train Schedule, Policy Area: Supporting People, Strengthening Our Societies and Our Social Model. *See also* European Parliament, Legislative Report on the Proposal for a Council Regulation on Jurisdiction, Applicable Law, Recognition of Decisions and Acceptance of Authentic Instruments in Matters of Parenthood, at 2, COM (2022) 695 (Dec. 14, 2023).

⁵¹ *Id.* European Parliament, Legislative Report on COM(2022)695, p. 2.

III. THE GLOBALIZED GAMETE MARKET: ETHICAL AND LEGAL CONCERNS

Deep regulatory divergence characterizes the European landscape regarding reproductive rights and access to fertility treatment. The 2024 European Fertility Treatments Policies Atlas highlights stark disparities across jurisdictions in treatment availability, gamete donation regimes, public funding structures, and patient access criteria.⁵² For instance, while all surveyed countries provide IVF and intracytoplasmic sperm injection (ICSI) using autologous gametes to heterosexual couples, only 21 jurisdictions extend sperm donation to female couples, and 37 permit access for single women. Egg donation exhibits an even narrower regulatory framework: 41 countries allow it for heterosexual couples, whereas only 16 extend this treatment to female couples and a mere six to male couples.⁵³ Regulatory regimes governing the legal status of donors are similarly fractured; 21 European nations mandate strict gamete and embryo anonymity, 13 enforce non-anonymous identity disclosure pathways, and 12 operate under mixed or hybrid frameworks.⁵⁴ This normative fragmentation directly incentivizes cross-border reproductive care (CBRC), or reproductive tourism, with historical data estimating that between 11,000 and 14,000 patients travel annually within Europe for reproductive purposes, generating up to 30,000 treatment cycles.⁵⁵ Their expert group calls policy makers and the European Parliament to recognize “a right to try to have a child” as a human right.⁵⁶

The European Society of Human Reproduction and Embryology (ESHRE) identifies the fundamentally dualistic nature of CBRC. On the one hand, cross-border mobility facilitates patient autonomy and aligns with the European Union’s foundational principle of the free movement of services, enabling individuals to bypass restrictive domestic statutes without committing technical illegalities. However, the absence of harmonized supranational oversight presents severe bioethical and clinical risks. These include heightened threats to maternal and neonatal health, such as high-order multiple pregnancies resulting from uncoordinated multiple embryo transfers, as well as structural exploitation of economically vulnerable donors and surrogates. While concerns persist regarding disparate standards of care for transnational patients, empirical data from the Centers for Disease Control and Prevention (CDC) suggest that clinical outcomes and embryonic transfer protocols remain largely comparable between domestic and international cohorts.⁵⁷ Nevertheless, reproductive mobility is far from a purely private exercise of bodily autonomy, and it actively generates complex transnational legal consequences for newborns. These systemic challenges within the globalized gamete market manifest across several distinct analytical axes. These issues begin with the commodification of international genetic material, where human gametes are increasingly treated as commercialized cross-border commodities driven by market forces. This commercialization directly accelerates the structural fragmentation of parentage, fracturing the legal, social, and genetic components of family identity across conflicting national frameworks. Compounding this fragmentation is the sharp collision between donor anonymity and the child’s fundamental right to identity, a legal tension that deepens alongside the regulatory

⁵² *Supra* note 5 FERTILITY EUROPE.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Françoise Shenfield et al., *Cross Border Reproductive Care in Six European Countries*, 25 Hum. Reprod. 1361, 1365 (2010).

⁵⁶ *Supra* FERTILITY EUROPE.

⁵⁷ ESHRE Task Force on Cross-Border Reproductive Care, *Cross Border Reproductive Care Fact Sheet*, at 2 (Jan. 2017).

vacuum exposed by transnational "mega-donors" whom isolated domestic registries are unequipped to track. Ultimately, these dynamics culminate in the non-recognition of legal status within the domestic state, wherein a child's home jurisdiction systematically refuses to acknowledge parental relationships legally established abroad through cross-border surrogacy or assisted reproduction, leaving children in a state of severe legal vulnerability and saddled with "limping" familial identities.

The rise of transnational commercial entities such as Cryos International exemplifies this marketization.⁵⁸ Operating across dozens of legal jurisdictions, these commercial banks allow consumers to filter prospective donors by precise phenotypes, educational attainment, personality traits, and comprehensive genetic screening profiles. This commercial architecture effectively reframes the human gametes as consumer goods. Although marketed under the banner of reproductive empowerment and individual choice, these consumer selection practices raise serious ethical anxieties regarding commodification and the emergence of "liberal eugenics", driven by autonomous consumer preferences. However, the normative outcome remains identical: the deliberate curation of genetic traits or parental selection of preferred characteristics for the future child. When a newborn's biological attributes are subjected to market-driven consumer filters, the child is placed at a profound risk of instrumentalization, threatening the Kantian premise that a person must be treated as an end in themselves and never merely as a means.

Technological procreation structurally deconstructs the traditional unitary concept of parenthood, splitting it into genetic, gestational, social, and legal dimensions. In donor-assisted reproduction, the legal father frequently lacks a genetic connection to the offspring, whereas in gestational surrogacy, the birth mother does not intend to establish a maternal relationship. Faced with this dislocation, contemporary family law has been forced to determine which dimension should enjoy normative primacy. Consequently, the concept of "intentional filiation" parentage, established primarily upon prior, binding consent, and psychological commitment, has assumed a central position across various European jurisdictions. This paradigm shift prioritizes the subjective, legally declared will of commissioning parents over objective biological ties, transforming parenthood from a naturally discovered state into a legally engineered construct.

This emphasis on intentionality often collides with international human rights standards. Articles 7 and 8 of the CRC recognized a child's right to know their parents and preserve their identity, including their familial relations. Legal frameworks that mandate anonymous gamete donation compromise this principle, creating severe tripartite tension between the donor's right to privacy, the recipient parents' expectation of confidentiality, and the child's fundamental right to genealogical truth. Under Article 8 of the ECHR, the ECtHR has increasingly treated self-knowledge of one's origins as an intrinsic component of the right to private life. In *Mennesson v. France*, the Court emphasized that a child's right to identity is a core element of personal status that cannot be compromised by the state's disapproval of cross-border surrogacy.⁵⁹ Similarly, in *Paradiso and Campanelli v. Italy*, the Grand Chamber underscored that both biological and social ties contributed to the matrix of family life, even though its decision was significantly different from that in the *Mennesson* case. Most recently, in *C v. Italy*, the Court heavily criticized the prolonged legal limbo imposed on children born abroad *via* surrogacy when host states refused to recognize their parentage for extended periods. The cumulative trajectory of Strasbourg jurisprudence demonstrates a clear, incremental evolution: while sovereign states retain the authority to regulate reproductive morality within their borders, they are structurally barred from

⁵⁸ *Donor Registry*, Cryos International.

⁵⁹ *Mennesson v. France*, App. No. 65192/11, Eur. Ct. H.R. (Sept. 26, 2014).

exercising discretion in a manner that completely disregards or extinguishes the child's identity interests.

The transnational expansion of reproductive technologies has exposed profound structural vulnerability because national regulatory systems are fundamentally unequipped to police a globalized, cross-border market. This regulatory vacuum was starkly illuminated by the widely publicized case of Jonathan Meijer, a Dutch mega-donor who systematically circumvented domestic donation caps by donating across multiple jurisdictions.⁶⁰ The absence of an interconnected international donor registry has enabled the creation of an expansive, uncoordinated network of hundreds of genetically related offspring. A Dutch court ultimately intervened, issuing an injunction backed by a €100,000 penalty per subsequent infraction, framing the restriction not as an infringement on reproductive liberty but as a necessary measure to safeguard public health and morals.⁶¹ Parallel systemic failure occurred when a Danish donor carrying a rare, hereditary TP53 cancer-causing mutation fathered nearly 200 children across multiple European states before the genetic risk was uncovered. Several of the resulting children developed early onset cancer, and the remaining offspring had a 50% risk of genetic transmission.⁶²

These high-profile crises illustrate three fatal systemic gaps in the current globalized framework: the total lack of cross-border data coordination between domestic health registries; an absolute reliance on unreliable, donor-driven self-reporting mechanisms; and the absence of legally enforceable international donation caps. Because of these structural failures, newborns are subjected to severe risks of accidental consanguinity, genetic monopolization, and profound psychological destabilization stemming from excessive, unmanageable sibling networks. The child is no longer born into a distinct family unit but rather into a diffuse, unaccountable genetic network. This reality raises a vital legal question: Does the state bear a positive obligation under Article 8 of the ECHR to actively protect children from such genealogical overload?

Driven by these acute controversies, the national ethics councils of Denmark, Finland, Norway, and Sweden have collectively mobilized to demand binding international restrictions on the number of children conceived from a single donor. The ESHRE has aligned with this rationale, advocating for a harmonized, EU-wide framework to regulate the cross-border exchange of gametes based on three primary pillars.⁶³ First, it proposes immediate family limits by establishing a uniform European cap of 50 families per donor, with the long-term goal of tapering this limit to 15 or fewer families. Second, it suggests introducing international standards designed to complement existing laws while explicitly maintaining that stricter national limits must always take precedence. Finally, it recommends clear time constraints to prevent excessive age gaps between donor siblings, proposing that a donor's gametes should no longer be distributed to new families for more than 20 years after the initial donation.⁶⁴ Furthermore, the ESHRE anchors this regulatory authority in the EU's principle of conferral, specifically invoking Article 168 of the Treaty on the Functioning of the European Union (TFEU), which grants the Union the explicit legal competence to establish high standards of quality and safety for substances of human origin.

⁶⁰ For a visual and narrative documentation of this case and its systemic legal ramifications, see *The Man with 1,000 Kids* (Netflix 2024).

⁶¹ *Dutch Court Orders Sperm Donor to Stop After 550 Children*, The Guardian (Apr. 28, 2023).

⁶² James Gallagher & Natalie Truswell, *Sperm from Donor with Cancer-Causing Gene was Used to Conceive Almost 200 Children*, BBC News (Dec. 10, 2025).

⁶³ ESHRE Positioning Paper, *International Limits on the Number of Offspring per Gamete Donor*, at 1 (Nov. 2025).

⁶⁴ *Id.* at 5 and 6. See also Lucy Frith et al., *ESHRE Position Paper: International Limits on the Number of Offspring per Gamete Donor*, HUMAN REPRODUCTION, July 8, 2026.

This mandate was formally codified *via* the Substances of Human Origin (SoHO) Regulation (EU) 2024/1938, which integrates provisions for enforcing national donor offspring limits.⁶⁵ Crucially, this regulatory framework expands the EU's traditional scope beyond purely physical health risks, legally requiring Member States and reproductive entities to proactively mitigate avoidable risks related to the protection of human dignity for both recipients and offspring conceived through medically assisted reproduction.

IV. CONCLUSION: RE-CENTERING THE NEWBORN

Technological advancements in bio-medically assisted procreation have fundamentally transformed the ontology of family law, shifting the establishment of *status filiationis* from a matter of biological destiny or strict matrimonial presumption to an intentional, contractual, and inherently globalized enterprise. However, as this comparative analysis between the Italian Republic and Republic of North Macedonia demonstrates, contemporary legal architecture remains deeply fractured. While Italy embodies the systemic friction that occurs when intense domestic moral resistance and public order (*ordine pubblico*) exceptions collide with escalating supranational human rights mandates, it exposes the latent human rights vulnerabilities of a permissive, medically oriented framework that expands clinical access while maintaining structural silence regarding identity architecture and long-term genealogical safeguards. Furthermore, this structural fragmentation is acutely visible in the total non-recognition of same-sex partnerships within North's Macedonia domestic legal order. Because the national legal framework strictly limits formal family structures to heterosexual unions, same-sex partnerships lack legal status and formal administrative recognition. Consequently, this domestic exclusion directly impairs the cross-border recognition of parental status established by same-sex couples abroad. When same-sex families conclude reproductive projects or secure parentage decrees in more permissive foreign jurisdictions, the Macedonian legal system treats these foreign *status filiationis* as determinations with absolute non-recognition, leaving the resulting children vulnerable to a complete legal vacuum upon crossing national borders.

Despite their divergent domestic philosophies, both jurisdictions ultimately expose the same structural crisis: human reproduction has effectively bypassed national borders through the forces of cross-border reproductive care, yet family law remains rigidly territorial. This regulatory chasm inevitably reduces newborns to vulnerable bystanders within an unregulated global market. If the law is to remain faithful to its foundational human rights obligations under Article 8 of the ECHR and Articles 7 and 8 of the CRC, then an adult-centric paradigm must be rejected. The child is not a derivative interest or a mere byproduct of parental autonomy, but an independent, rights-bearing subject whose legal stability and informational identity demand robust supranational protection. To resolve this systemic legal fragmentation and eliminate the phenomenon of "limping" familial status across jurisdictions, a harmonized, child-centered European response is urgently required. This transnational framework must move beyond unilateral territorial restrictions beginning with the establishment of a unified cross-border donor registry. By replacing isolated domestic databases with a centralized European mechanism, states can effectively monitor the utilization of genetic material across national lines and structurally prevent cumulative, trans-

⁶⁵ Regulation 2024/1938 of the European Parliament and of the Council of 13 June 2024 on Standards of Quality and Safety for Substances of Human Origin Intended for Human Application and Repealing Directives 2002/98/EC and 2004/23/EC, recital 42, 2024 O.J. (L 1938) 1; Consolidated Version of the Treaty on the Functioning of the European Union art. 168, Oct. 26, 2012, 2012 O.J. (C 326) 47.

jurisdictional over-donation. This registry must operate alongside enforceable global donation caps, ensuring that regulatory ceilings on the number of live births per donor are calculated cumulatively across the entire market, rather than in isolation by individual commercial gamete banks. Furthermore, achieving true oversight requires robust corporate transparency and liability, subjecting commercial sperm and egg banks to stringent statutory obligations that hold them legally accountable for any misrepresentation of donor data or noncompliant distribution. Ultimately, these regulatory pillars must culminate in a system of automatic recognition anchored by the European Parenthood Certificate (EPC). By mandating that parenthood legally established in one Member State is recognized in all others, this framework shields children from "legal orphanhood" following cross-border surrogacy, shifting the legal paradigm from rigid national biological biases to the true best interests of the child.

On a procedural level, states must decouple the establishment of familial security from the realization of genetic truth by introducing a twofold, dual-track procedural system. The first track must prioritize immediate, seamless recognition of parental status and intentional responsibility. By enforcing prompt administrative and judicial recognition mechanisms for families returning from abroad, the state upholds legal certainty and protects the child from being left in a prolonged and debilitating legal limbo. Second, an entirely independent track must guarantee distinct procedural pathways for identity access. This mechanism must allow donor-conceived individuals, upon reaching the age of the majority, to exercise their fundamental right to discover their genealogical origins and access non-identifying or identifying donor data, completely separate from the established, immutable parental bonds.

Ultimately, the future of cross-border filiation depends on the law's ability to harmonize private reproductive autonomy with permanent legal responsibility. Only by transitioning from territorial isolation to a unified, supranational framework can European family law effectively police the global reproductive market, guarantee the legal certainty of intended families, and ensure that the newborn is permanently re-centered as the primary subject of legal protection.

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