The Dutch 2002 Embryos Act and the Convention on Human Rights and Biomedicine: Some Issues

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1 Introduction

In the Netherlands, the Act of 20 June 2002 containing rules relating to the use of gametes and embryos (Embryos Act) came into force on 1 September 2002. In the context of the Embryos Act, an embryo is a cell or a complex of cells with the capacity to develop into a human being, whereas an embryo in the human body (in vivo) is referred to as a foetus (Article 1 (c-d)). The Act contains bans on certain uses of human gametes and embryos, a regulation of the conditions under which other uses of human gametes and embryos with a view to improving medical care may be permitted, and rules regarding control over gametes and embryos. The enactment of rules relating to these ethically delicate subjects, among which the subject of embryo research has shown to be especially controversial, took a long period of time. The Act is the result of balancing human dignity and the principle of respect for human life in general on the one hand, and the future child’s well-being, patients’ treatment or health promotion and the well-being of infertile couples on the other.  

In 1996, the Council of Europe Committee of Ministers adopted the Convention on Human Rights and Biomedicine. Several provisions in the Convention relate to subjects which have now also been regulated in the Dutch Embryos Act. The Netherlands has signed the Convention, but as yet has not ratified it. Ratification, which according to the Dutch Constitution requires an Act of Parliament, has been in preparation, but has now been postponed and will not take place during the current period of government.

This contribution will start with an outline of the Embryos Act. Then the contents of some of its provisions will be described by comparison with corresponding provisions in the Convention. Some Dutch legal provisions will show to be different from the corresponding international provisions. The solutions which have
been chosen by the Dutch legislature, where these differences seem to be problematic, will be illustrated. Finally, some comments will be given.

2 The Embryos Act in outline

2.1 General provisions

The managing board of an institution where embryos are created outside the human body, or other procedures involving embryos are carried out, is obliged to draw up a protocol regarding the use of gametes and embryos. Laying down these rules, the institution should take into consideration the rules governing control over gametes and embryos as contained in the Act. The protocol must contain rules regarding control over gametes and embryos, the creation of embryos outside the human body, inducing a pregnancy with those embryos, and the use of gametes and embryos for other purposes, insofar as this is relevant to the institution in question. A prior opinion of the committee which, pursuant to the Medical Research (on Human Subjects) Act is charged with the assessment of (human) research proposals in the institution, is needed. Any changes and additions to the protocol likewise require such opinion. The opinion, the protocol and any changes thereto must be brought to the notice of the Central Committee (which is the national committee defined in the Medical Research Act) and of the Minister of Health. The same applies to any plans to carry out procedures with gametes and embryos in the institution which will lead to a change or an addition to the institution’s protocol (Article 2).

Research involving embryos, including research involving gametes leading to the creation of embryos, is allowed only if it is carried out in accordance with a specially drafted research protocol, which contains a full description of the intended research, and on which a favourable judgement is received from the Central Committee (Article 3). Such a favourable judgement may only be delivered if the research protocol meets the conditions laid down in the Act. The Central Committee must submit an annual report to the Minister of Health regarding the application of the Act, giving particular consideration to new developments regarding the use of gametes and embryos. The Minister shall send this report to the two Chambers of Parliament together with his view on the new developments identified by the Central Committee. The Act enables the laying down of rules by order in council with regard to the views of the Minister (Article 4).

Within three years of the Act having entered into force, and every four years thereafter, the Minister must send a report to Parliament concerning the Act’s effectiveness and impact in practice (Article 32). The officers of the Health Inspectorate are charged with supervision of compliance with the provisions in or