

Hello everyone,

My name is Audrey Kermalvezen and I am delighted to be here :)

Before I start, I would like to say that we are in favour of assisted reproductive technology (ART). Without this technique we would not be here, our parents would never have been able to have children ... the pioneers of this technique thought of the parents, of the baby and we thank them for that but they forgot that the baby would eventually become an adult.

For a dozen years for me and fifteen years for Arthur, we have been expressing our need to know our origins so that ART takes better account of all the people it involves and in particular the child who is the result. Our wish is that the ART legislation be more humane and strike a fair balance between the different interests involved.

The donor is not a father, or at least I don't consider him as such, and he can never be legally recognised as my father, and I think that's fine (it avoids any inheritance problems, for example), but he is a person who counts in my story.

At the age of 23, I chose to specialise in bioethics law, unaware at the time that I was one of its first "products"!

I became a lawyer and six years later, on the eve of my 30th birthday, my parents summoned my brother and me and revealed that they used sperm donation to conceive us!

My first reaction was anger and a sense of betrayal.

How could they have kept it from us for so long? (32 years for my brother and 29 years for me). Especially since it was a lie about an essential part of our lives!

My parents explained to me that at the time, in the 70's, sperm bank doctors advised parents not to tell their child about their donor conception.

The donor was chosen according to a matching system: same hair colour and shape, same skin colour, same eye colour, same height and weight and same blood type as our sterile father.

In this way, no one could suspect, not even the child themselves, that they had been conceived by a donor.

This system, which is still in force today, is intended to protect the child and their family from a feeling of marginality. They should feel like everyone else.

But family secrets 'leak' and the unconsciously many things are picked up even when they are not said.

When I chose to specialise in bioethics law, I had regular discussions with my mother, particularly about medically assisted reproduction with a third party donor, which had been the subject of one of my university lectures.

My mother thought that I suspected something.

But she had made a pact with my father never to tell us how we were conceived.

Over the years, the silence became more and more difficult to bear.

For several years my mother asked my father's permission to reveal this secret to us. He finally agreed because my brother and I were already "settled" professionally and emotionally in our lives.

He was afraid that revealing this secret would be destabilising.

And it was!

At the time, I really didn't understand why they had told us when they couldn't tell us anything about the donor. I thought it was worse - I knew that my father was not my father but I could not know anything about him.

I was well aware of French bioethics law, which came out of the 1994 laws that provide for free and anonymous gamete donation, but our conception dated back to the 1970s, when there was no law governing gamete donation.

I therefore decided to investigate the early practices. This led to the writing of a book: "Mes origines : une affaire d'État" (My origins – a State affair) published by Max Milo in 2014.

I would learn, among other things, that in the sperm bank of the Parisian hospital "Necker" where my brother and I were conceived, donors were paid and there were even "donation professionals" who had made a lucrative business of it.

How many half-siblings do I have out there? At that time there was no law limiting the number of children that could be conceived with the same donor.

At the same time, I contacted Arthur, whose story I had read about in the press and whose testimony was published in the book titled "Né de spermatozoïde inconnu" (born by an unknown spermatozoon) published in 2008 by Presses de la Renaissance.

The first time we saw each other we immediately felt a mutual attraction...love at first sight.

We met at a meeting of an association of activists for the recognition of the right of access to knowledge of one's origins for the benefit of people born of gamete donation.

The same morning I had gone to the Centre that kept the files of the Necker sperm bank where I was conceived to ask them if my brother and I had been conceived with the same donor.

They refused to tell me on the grounds that the donor is anonymous. In any case, knowing whether or not it was the same person gave me absolutely no indication of his identity.

After unsuccessful amicable approaches, I decided to take legal action.

In 2010, I referred the matter to the administrative court in order to :

- to find out whether my brother and I were conceived with the same donor: do we have the same biological father?
- obtain some non-identifying information about my donor: how many times has he donated (to enable me to estimate the number of my half-siblings)? how old was he? was he a student, unemployed or working? what are his physical characteristics? does he have a medical history? is he still alive?
- that, if my donor is still alive, could the administration ask him whether he wishes to remain anonymous or not?

I lost in the first instance, on appeal and even before the State Council.

The only thing I received was a paper attesting to my conception by gamete donation at the Necker Hospital.

Despite this lack of information, Arthur and I got engaged during the procedure. Before the administrative court of appeal, a few days before our wedding, we asked to obtain non-identifying data on our respective donors in order to verify that we did not have the same donor. This was refused. We chose to get married anyway, relying on our "lucky stars".

At the end of 2014, 3 weeks before the birth of our first child, my gynecologist agreed to interview our respective sperm banks to find out the size and year of birth of our donors.

That's how we knew we didn't have the same donor.

We were relieved, Esteban was born a few days later "like a champagne cork".

However, in 2015, the State Council reaffirmed the prohibition on passing on non-identifying information about the donor to people conceived by gamete donation. Only the doctor can access such information. I proposed that this information be given to me through a doctor if the judges felt it was necessary, but this was refused.

So by giving us the information about our non-consanguinity, my gynecologist had outlawed herself!

In April 2016, I filed an application with the ECHR on the basis of Article 8, which protects the right to privacy. On this basis, the European Court of Human Rights considers that the Convention guarantees everyone the right to know the identity of their parents: everyone has the right to know the truth about an important aspect of their personal identity, such as the circumstances of their birth, as this contributes to the construction of their identity.

My ECHR application will be examined at the same time as that of Clément, a Frenchman also conceived by gamete donation and for whom I was the lawyer.

Indeed, when I began my legal proceedings, I launched an appeal within the association to other people conceived by gamete donation to find out if they wished to submit a similar request to the courts. Clément and a young woman, Sophie, wanted to do so and I defended their interests in court.

When Arthur and I took a DNA test at the end of 2017, which we had ordered illegally on the internet, I discovered that Sophie, for whom I had taken legal action in 2012, was in fact my half-sister and that her brother David was also my half-brother!

I refused for years to use a DNA test as I did not want to place myself in an illegal situation, I was confident that I would be successful given the moderate nature of my claims:

To ask my donor about his wish to remain anonymous or not and to respect his decision. I was also afraid of the use that could be made of my DNA by foreign private companies.

But after 7 years of unsuccessful attempts I took the plunge.

I don't regret it because it confirmed that there is no genetic link between Arthur and me. It allowed me to know that my brother and I were conceived with the same donor and it allowed me to discover that Sophie and her brother are my biological half-brother and sister.

In the end the only answers I could get about my origins came from a process that is illegal in France: the Ancestry DNA test.

I hope that the European Court of Human Rights will recognise that by imposing retroactively (the principle of anonymity was only written into French law in 1994, i.e. 14 years after my birth) a public order anonymity on donors, by refusing to collect their opinion, by refusing to give me the slightest information about my conception and my donor, including non-identifying data such as whether my brother and I on the one hand, or my husband and I on the other hand were conceived with the same donor, the French State has violated Article 8 of the ECHR and even Article 14 of this convention which prohibits discrimination because I am deprived of any information on the medical history of my progenitor solely because of my mode of conception.

My request is probably not unrelated to the fact that the French legislator has recognised, in the latest bioethics law of 2 August 2021, for the benefit of persons conceived by gamete donation, a right to know the identity of the donor from the time they reach the age of majority (in the matter of secret childbirth, the case of *Odièvre v. France*, decided by the Grand Chamber of the ECHR in 2003, had already led France to recognise in 2002 this right. This right will be guaranteed because it is a condition of the birth of a child that the mother's consent is obtained, and that the child's mother is informed of the birth.)

This right will be guaranteed because it will condition of gamete donation in the future.

For those conceived before, the lifting of anonymity will be subject to the donor's agreement.

This presupposes in particular that the donor is still alive.

The European Court may consider that these new rights will be sufficient to answer my questions about my origins.

However, this presupposes that my father is not dead. As for the fact of knowing whether my brother and I or my husband and I were conceived with the same donor, the latest bioethics law in no way enshrines these rights. Nor will it allow me to know whether my biological half-siblings can be counted on the fingers of one hand or in tens or even hundreds. It will allow me even less to identify them.

DNA testing has a long way to go. We hope that the ECHR will at least recognise their usefulness and the nonsense of penalising their use on French territory when they are used to find out about personal origins.

This seems all the more imperative as the French Government, in its observations before the ECHR, admits that there was indeed a risk of consanguinity between me and Arthur, but considers that this risk was dissipated thanks to the performance of a DNA test, even though it is criminally sanctioned by French law:

" 37. (...) the applicant's claim is in no way supported. Indeed, it is clear from her last submissions that, after recreational DNA testing, she has no consanguinity link with her partner, so that she suffers no harm from the lack of information on the genetic heritage of her third-party donor. (Government comments of 21 December 2018).

Extracts for information from my reply:

"The Government admit in § 37 of their observations that the applicant and her husband were exposed to a risk of consanguinity but consider that this would no longer exist since "after recreational DNA testing, she has no consanguinity link with her companion".

1. The applicant wishes to emphasise that it was not the French State that enabled the applicant to find out whether or not she and her husband were descended from the same donor, but a DNA test, the performance of which is punishable under French law. It was only after several years of unsuccessful amicable administrative and then judicial proceedings that she decided to take a recreational DNA test, thereby risking a criminal conviction and even a ban on practising her profession as a lawyer.
2. Prior to receiving this answer, the applicant may have been exposed to a consanguineous relationship with persons other than Arthur.
3. As soon as she was informed of her mode of conception, the applicant questioned each of her ex-boyfriends to try to find out whether their father might have been a sperm donor or whether they might have been conceived with a third party donor, knowing that they might not have known it themselves.
4. The risk of intermarriage and consanguineous unions will again exist for the applicant if she were to separate from her husband. Unless, according to the Government's position in its observations, she had her partner tested for DNA every time she met him (with a minimum delay of two months and a cost of EUR 100, not to mention the risk of a criminal conviction...)
5. This risk of inbreeding also exists for her children.