



**K N O W I N G   O N E S**

**O R I G I N S**

**&**

**A C C E S S   T O**

**J U S T I C E**



**O R I G    I N E S**

[www.associationorigines.com](http://www.associationorigines.com)

**AUDREY ET ARTHUR KERMALVEZEN  
(GAUVIN-FOURNIS)**



# KNOWING ONES ORIGINS AND ACCESS TO JUSTICE

« *A society is judged by the fate it reserves for its children* »

(Parliamentary report on the state of the children's rights in France 1998, Laurent Fabius and Jean-Paul Bret).

« *A homeland without justice is a prison* »


(Georges Clémenceau)



# Who are we ?

Audrey & Arthur Kermalvezen (Fournis)



- **100 000 donor conceived people in France**
- **More than 8 millions of donor conceived people around the world (Source : APCE rapport n° 14419, Mme Petra de Sutter, 12 avril 2019)**
- **Millions and millions of people deprived of their origins around the world**
- **Co-founders of association** 





## Arthur Kermalvezen (Fournis)



- In France, like in each country that practices donor conception in the past, the **secret was recommended**.
- They **chose a donor** that looked like the infertile parent (same skin color, same hair color, same eyes-color, same height, same weight and same blood-type). The goal was that the child would never know anything, never know that they are a donor conceived person !
- **I always knew** that I had a donor. It wasn't a secret. Probably because my mother is psychanalyst, my parents chose to tell me the truth about my conception and my father's infertility.
- **During my childhood**, I was convinced that one day my parents would, introduce me to my donor. But that day never came.





## Arthur Kermalvezen (Fournis)



- So, **when I was 19 year old** I told them : Ok, now I'm an adult, you can give me the file and the donor's file. My parents were sorry. They explained to me that they didn't have a file.
- **In 2006 (I was 26 year old)**, I began to testify publicly of my need to know who my donor was.
- **In 2017**, through a DNA-test bought on the web, (even though it's illegal in France and we will come back to that later), I found my donor in 11 hours. I discovered Gerard my donor lives 150 km from us !



- Arthur and his donor (Gérard)





# Audrey Kermalvezen (Gauvin-Fournis)



- **As far back as I can remember**, I've always believed in Justice.
- **After my master's degree in European law**, I completed a higher education diploma specializing in bioethics law.
- **When I became a lawyer**, I chose a way that no one in my family had taken before. Law was a benchmark for me.
- So, it was quite natural that I turned to law when I discovered 6 years later (**in 2009**) that I have been conceived by a donor (**I was 29 years old**) and I found myself confronted with a multitude of questions.





## The right to know the identity of ones parents is provided for in international and regional texts



- **CRC art. 7 § 1** : The child has the right to be registered immediately from birth and **has from that birth the right** to a name, the right to acquire a nationality and, **as far as possible, the right to know his parents** and to be raised by them .

**Problem** : I was 29 years old when I discovered I was donor conceived !

Arthur was 19 years old when he has discovered he couldn't have access to his donor.

file. Judge : you can't refer to CRC after 18 years old

- **ECHR art. 8** : everyone has the right to respect for their private and family life.
- **art. 14** : prohibition of discrimination
- **CEDH** : Gaskin v. United Kingdom 1989, Odièvre v. France 2003, Jäggi v. Swiss 2006, Pascaud v. France 2011... etc : article 8 includes the right to know ones biological parents.







# French courts



I knew that the first laws governing donor conception dated from 1994, 14 years after my birth.

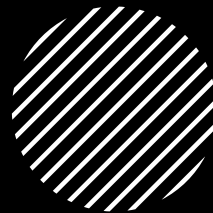
I asked the french hospital where I was conceived :

Everything was denied. I lost each trial. They even refused to tell us before we married if we had the same donor.

if **my brother** Peter and me have the same donor. And then, when Arthur became my fiancé if we have the same donor.

to **contact my donor** and to **ask him** if he would you like to give his identity or a photo to me.

I also asked for **non identifying piece of information** such as the number of my siblings and my donor's personal and family medical history



# ECHR : Gauvin-Fournis v. France



I appealed to the European Court of Human Rights in **2016**

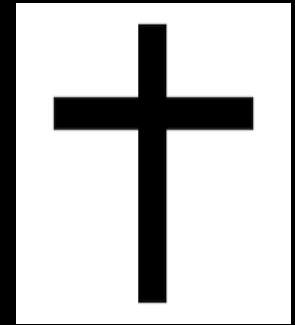
My case was judged on september 7, **2023**

**French law has changed in 2021  
but for me it hasn't changed anything**

- In october 2022, I submitted a request to the new commission

French administration sent me a letter in March 2023 to tell me that my donor is dead (**14 years after my first application** !) and they added that they can't give me any information because the donor didn't consent before dying. So I can't know (without making an illegal DNA-test) :

- **if my brother** and me have been conceived by the same donor
- **if my husband** (Arthur) and me have been conceived by the same donor
- if I have **siblings** in nature and how many and who they are
- the **medical history** of my donor while it's still in his file in the french hospital...



# ● Gauvin-Fournis v. France sept. 7, 2023

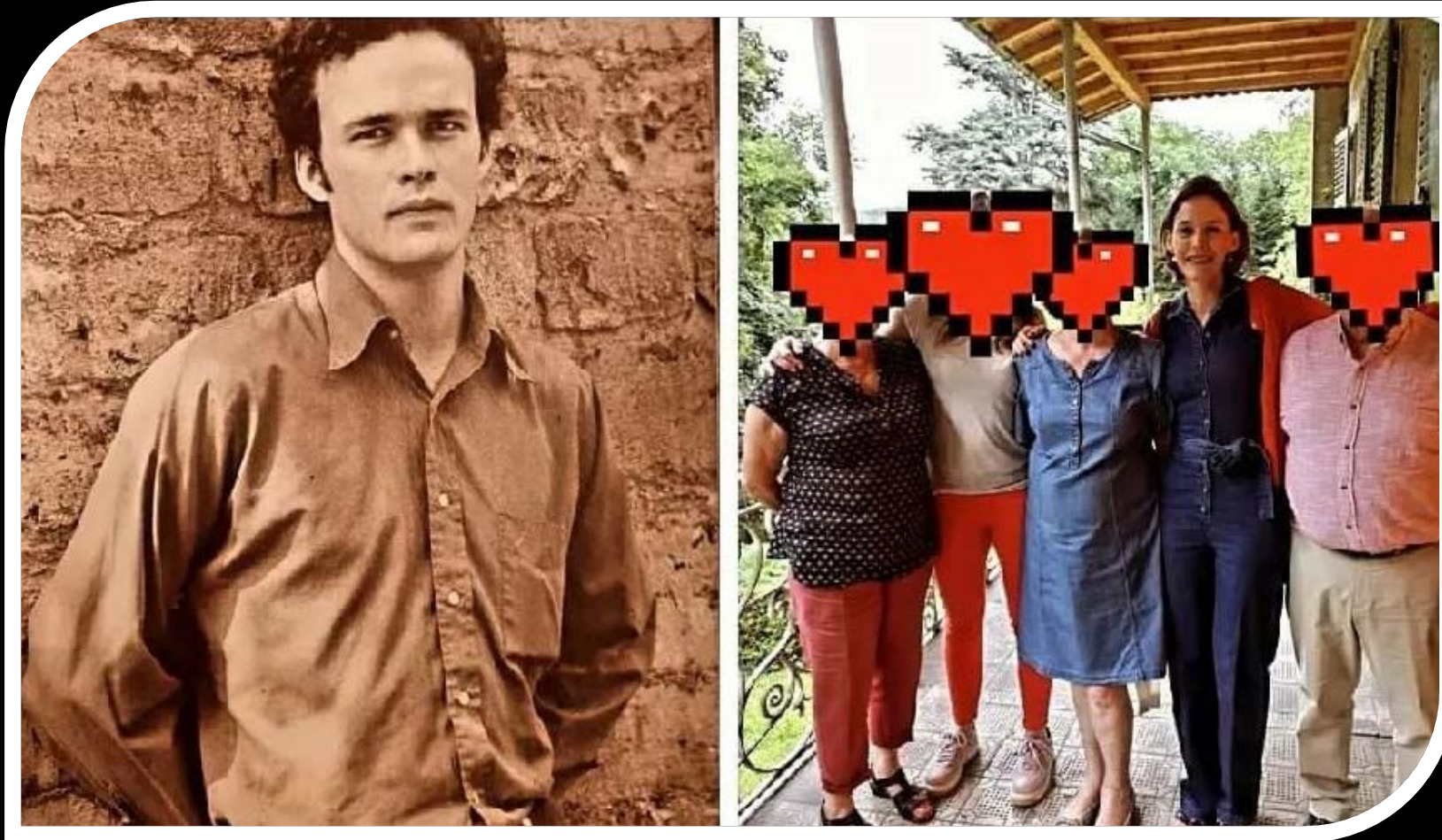
- **No violation of article 8** of the european human right's convention
- They consider there is **no european consensus** in favor of recognizing for each person a right to know one's origins but only a recent trend in favor of this right
- They added French legislator was guided by the **will to respect the situations arising under the influence of previous texts** and that they didn't see how he could have done otherwise.

They forgot that **before 1994 there was no text !**

And even afterwards, the principle of anonymity **only concerns the donor-recipient relationship.**

The child was never targeted by the texts

# ● Justice versus real life (DNA tests)



# ● What absolutely needs to change ?

1/ Legalization of **DNA testing** (ancestry ones) where it's forbidden and support the research, results and connection if desired

+ **create an international registry** for all the people who are searching their origins.

2/ Transmission to donor conceived people and to children born under X :

- biological **parents's medical history**
- informations about **siblings**



# ● What absolutely needs to change ?

3/ Remove the possibility of remaining anonymous after death (for donors and women who gave birth in secrecy)

- It 's excessive with regard to the balance of interests at stake
- ECHR Jäggi v. Swiss 2006 : a deceased person cannot be affected in his private life because the right to respect for private life dies with its holder



# Our dream

## 4/ **Transforming childbirth under X into childbirth in discretion**

A high level of protection at birth and anonymity during 18 years (maximum). It's fundamental to systemically registered the name of biological parents and keep it secret during 18 years maximum.

## 5/ **Do the same for donors before 1 September 2022**

The french legislator chose to limit the access to donor's identity only if donor consent when he will be asked for but :

Before first bioethical law of 1994 : there was no legal anonymity

Between 1994 and 31 august 2022 : the french principle of anonymity concerns only the donor and the recipient. It doesn't concern the child who has been completely forgotten.

In any case, maintain the ban on establishing parentage by clearly separating the right to know one's parents from the right to establish one's parentage



# Old and constant recommendations based on CRC

**1998** : a parliamentary rapport on children's rights state in France recommended :

To organize, for the child, a reversibility of the secrecy of the identity of the woman who **gave birth anonymously (born under X)**.

They recommended then extending this reversibility of secrecy to **gamete donation**, for donor conceived children.

**2008** : Dominique Versini , Defender of children's right recommended :

- R 23 - Improve the functioning of the National Council for Access to Personal Origins (CNAOP) in order to reduce file processing times.
- R 24 - Consider transforming childbirth under X into confidential childbirth, removing anonymity, and allowing the child to be aware of its origins, and possibly be able to be recognized later by the father, without calling into question the impossibility of establishing maternal filiation.
- R 25 - Reconciling, in the context of medically assisted procreations, balance between the child's access to his or her personal origins and maintaining the ban on action for establishment of filiation or maintenance against the donor.

# ● Problems about the new french law

## 1/ Delayed entry into force

**Since 1<sup>st</sup> september 2022** : all the donors are open that means for gametes (sperm, egg) or embryo donation you have to leave your identity and this identity will be transmitted to the child from 18 year old if he or she asks for it.

**Problem** : all the gametes and embryos donated since 1st september 2022 can't be used until april 2025.

It's only in **2044** that people conceived by donation will have guaranteed access to their origins

- **For every child conceived by donor today**, there's no right no guarantee to access to information, even non-identifying data, without donor consent.

These children will only find out at the last moment (when they will be 18 years old) if yes or no, their donor agrees to give information.

# ● **Problems** about the new french law

**2/ No information on biological siblings** (people conceived by the same donor)

Whereas until before 1994 donations were sometimes paid and there were serial donors (more than 148 children by the same man)

He can have that kind of information by making a DNA test but it's legally forbidden in France).

**3/ No information on medical history** of the donor of his family

For this, the child has to contact and ask the donor.

# ● Problems with the new french law

**3/ Access to nothing** (neither identity nor non-identifying data) **if the donor refused or if he's dead**

**Compared to secret childbirth (accouchement sous X) :**

**The children (born under X)** can have access to **non-identifying data** about his or her biological parents and biological siblings without biological parent's consent in his **adoption file**.

**Donor conceived people** : no file at all.

**If the biological mother dies** before the administration ask her if she wants to stay anonymous or not, **her identity is transmitted** to the child.

# ● What is the dream bioethics law ?

- Transmission to parents **non identifying data about donor (for example medical history)** from the birth of their child.
- Transmission to donors **the number and the gender of children born by their donation.**