



*CHRONICLE OF THREE
YEARS OF STRUGGLE OF
THE SOCIALIST DEPUTIES*

BIOETHICS AT THE SERVICE OF NEW
RIGHTS

BY HERVÉ SAULIGNAC, THE 23RD . 10 . 2020
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On October 23, 2020, Hervé Saulignac will review the positions taken by the group in the recent revision of the law of bioethics.

As the bill for the revision of the Bioethics Law completed its second reading during the summer, it is worth reflecting on what the Socialist Party should include in its program on these subjects. The group of Socialists and related parties was able to put forward a number of proposals, some of which are not exhaustive.

Medically assisted procreation

PMA Post-Mortem

To allow the surviving member of the couple, if it is a person capable of bearing a child, to continue the parental project, as successively recommended by the Biomedicine Agency, the Council of State and the information report of the parliamentary mission. Thus, the Council of State recommended to lift the ban on embryo transfer and post-mortem insemination with the husband's gametes taken before his death. The institution would consider it "paradoxical" that what a single woman could achieve with a third party donor would not be allowed to a woman who had an LDC project with her deceased husband. The CCNE also declared itself *"favorable to the opening of MAP in post mortem, that is to say the in utero transfer of a cryopreserved embryo after the death of the man, subject to medical and psychological support of the spouse"*.

The real question was raised: can we open the LDC to single women and refuse a widowed woman to be in the pursuit of her project? Wouldn't it be traumatic to ask a bereaved woman to donate or destroy the embryos conceived with her companion while offering her to continue her journey with a third party donor?

Several delays are possible:

- Spanish law limits this transfer to a period of 6 months following the death ;
- Belgian law allows the transfer only after a period of 6 months from the date of death and, at the latest, within two years from the date of death.

Pre-implantation diagnosis of aneuploidies

The main purpose of pre-implantation diagnosis (PGD) is to find a genetic abnormality that may be responsible for a serious condition that is recognized as incurable at the time of diagnosis, as well as the means to prevent and treat it. Examples include cystic fibrosis, myopathy and Huntington's disease. The current framework of the Bioethics Law of July 29, 1994 "relating to the donation and use of elements and products of the human body, medical assistance for procreation and prenatal diagnosis" authorizes this practice, only to avoid the transmission of these genetic or chromosomal diseases. This practice is well supervised and has not shown any drift.

Today, science makes it possible to know, through chromosomal analysis, whether embryos are viable or whether there is a risk of miscarriage. However, the law does not allow these tests to be carried out in their current state. Thus, even if only one embryo out of ten removed is viable, all of them are destined to be implanted.

The medical and scientific community has long alerted us to the suffering that some couples encounter. Today, while they have access to PGD for medical reasons, couples have a one in two chance of having embryos implanted that do not have the right number of chromosomes, which would lead to miscarriage, or very early death of their child in case of trisomy 13 or 18 for example.

Since the IVF process is long and difficult for these couples, we have proposed an amendment to experiment, for a period of three years, with an extension of the preimplantation diagnosis of aneuploidy. The idea being, for these couples, to look by observational technique if there is the number of chromosomes to implant an embryo which has all its chances of implantation. Rather than implanting an embryo that will not be viable.

The end of phenotypic trait matching

There is no legal requirement to carry out this matching, nor any regulatory or ethical recommendation. However, all MPA services offering gamete donation apply a systematic matching procedure, without necessarily informing future parents. Non-white couples are forced to wait to find a donor who resembles the intended parent. This can create considerable waiting times, since it is estimated that a black couple can wait 10 years in metropolitan France and 5 years overseas.

Corinne Fortier, a researcher at the CNRS, tells us that *"the CECOS scrupulously takes into account the respective phenotype of the two parents in order to assign them a sperm donor or an oocyte donor that best suits them, particularly in terms of skin, hair and eye color"*. This pairing is obviously aimed at making the future child look like the infertile parent.

Stéphanie Hennette, professor of public law, explains that *"for nearly forty years now, doctors have been carrying out this matching operation on the basis of criteria that have long remained opaque, essentially defined by them without any form of democratic deliberation"*. By matching phenotypic traits and blood type between the donor and the intended parent, the aim is clearly to allow parents to keep the child in secret.

In its opinion of November 20, 2018, concerning medically assisted procreation, the CNCNDH invites to "reinterview the evidence and practices that have been maintained until now by the "neither *seen nor known*" model. It reminds that "the search for *likelihood* "From the outset, the physical link of filiation between the child and its parents has presided, and still presides, over the choice of donor by doctors: it is therefore a question of finding a donor who resembles the sterile parent as closely as possible. "The CNCNDH considers that matching "may give rise to difficulties when the member of the couple who will not transmit their genetic heritage has physical characteristics that are more rarely represented in gamete donors".

The CNCNDH thus recommends *"a framework for this practice, notably by providing for the recognition of the right of parents to renounce the matching of their phenotypes with that of the donor"*.

Hormonal stimulation only when necessary

Hormonal stimulation is frequent in MAP, even when infertility is not ovarian. Prior to artificial insemination, the woman will therefore undergo a significant hormonal treatment, not without undesirable and painful effects for her. However, a fertile woman can reach 6 to 8 follicles per ovary without stimulation. It is therefore surprising that, even when infertility is exclusively related to the man, this protocol is not revised.

LGBT rights

Opening up blood donation to MSM

Since the 2016 law to modernize our health system, article L. 1211 6 1 of the public health code provides that "No one may be excluded from donating blood because of his or her sexual orientation". Unfortunately, its terms and conditions of application, set by regulation, deviate significantly from the principle that has been enacted by the legislator.

As of July 2016, men could donate blood if they had not had sex with men in the past 12 months. The Minister of Health at the time, Marisol Touraine, committed to a gradual reduction of the 12-month abstinence period for MSM donors in order to bring the rules that apply to them closer to those that apply to other donors.

On October 3, 2018, during the examination of the bill proposed by Damien Abad, President of the "Les Républicains" group, aimed at consolidating the French model of blood donation, the Social Affairs Commission adopted an amendment by your rapporteur, aimed at standardizing the rules applicable to donors. Unfortunately, this advance was suppressed in public session.

But, with the support of all the benches in our hemicycle, Minister Agnès Buzyn had committed herself to the subject.

Thus, since April 2, 2020, the date of entry into force of the decree of December 17, 2019 setting the criteria for blood donor selection, this period has been reduced from twelve to four months without sexual intercourse with another man, including if he is in a monogamous relationship. According to the press release published by the Ministry of Solidarity and Health, "this decision is a first step, the target set being the eventual alignment of criteria for all donors, the disappearance of the reference to sexual orientation in favor of the search for individual risk behavior". This commitment is to be welcomed, but remains largely insufficient, and the elimination of this discrimination should be set in stone in the law.

Opening of the LDC for trans people (principle of non-discrimination a minima)

Since the law of November 18, 2016 on the modernization of justice for the 21st century, trans people can change the mention of their gender in the civil status without being operated or sterilized. Thus, a trans man may have the capacity to bear a child and give birth, and a trans woman may have her sperm frozen. However, a trans woman today cannot give her gametes to her partner, who will have to rely on a donor.

Therefore, it is important to specify that this change in the sex reference registered in the civil status is not an obstacle to the realization of an MRP and to allow couples to use their gametes.

Affiliated issues

Reform of filiation

It should be noted that the government decided to integrate the LDC into the draft law on bioethics, while giving as an argument on filiation that we could not reform filiation within the framework of this law.

A distinction must be made between filiation and biological parents. A child's parents are not necessarily the parents who conceived the child. Filiation is the legal link that unites a child to his or her parents. French law thus recognizes three types of filiation:

- legitimate filiation for children born of married couples: the mother is the person who gave birth; her husband is presumed to be the father.
- natural filiation for unmarried couples: the father goes through an acknowledgement of paternity.
- adoptive filiation for children who are not related to their parents by blood: full adoption gives the child the same rights as a legitimate child and simple adoption does not break the filiation link with the blood family.

But whether the parents are married or not, whether there has been adoption or not, all children are equal before the law.

Everything already existed in the law to simply extend the common law to women couples:

- Donation with third party donors
- exists; LDC exists ;
- The double filiation without biological link exists;
- The mention "mother and mother" exists since the law on marriage for all opening adoption to homosexual couples.

However, it is also possible to reform filiation by putting an end to the presumption of paternity, for example, and to allow children to no longer be kept secret when they are from an LDC with a third party donor.

Intersex children

In 2016, France has been condemned three times by the UN for these operations on children, serving to attribute a masculine or feminine gender. In 2017, a Senate report called for recognition and compensation for the suffering of intersex people. For its co-rapporteur, *the* environmentalist Corinne Bouchoux, "*for some, surgical and/or hormonal treatments have been experienced as torture.*"

Thus, on March 17, during a ceremony at the Elysée Palace, President François Hollande considered that "*the banning of surgical operations on intersex children, increasingly widely considered as mutilation*", was part of the "*many battles to be fought*" for the rights of LGBT people.

In the first reading of the bioethics bill, the National Assembly adopted an amendment following the opinion of the Council of State, which states that the therapeutic purpose of treatments aimed at promoting the psychological and social development of the child cannot be assessed without obtaining the expression of the personal will of the person concerned to express the psychological suffering associated with the variation.

In doing so, the proposed drafts mixed the issue of medical necessity with the issue of consent.

Today two types of interventions are practiced:

- So-called "therapeutic" interventions, such as the treatment of salt loss in case of hyperplasia/closed urethra in case of hypospade ;
- So-called "aesthetic" procedures, to which a medical benefit is attributed, with a "gendered conformation".

In all cases, the notion of "vital emergency" is satisfied by the law. Thus, when the child's vital prognosis is involved, article 1111-4 of the CSP provides that the doctor delivers the indispensable care without the obligation to obtain the consent of the minor or the parents.

The subject is therefore not so much medical necessity, but rather the obtaining of consent when operations of sexual conformation are envisaged.

We can thus distinguish the question of medical necessity from the question of consent. Is it necessary to prohibit operations of sexual conformation without consent? If so, whose consent? Two possible positions:

- Application of common law, the consent of the person concerned is the responsibility of the parents. This raises the question of informing parents of the informed consent expressed by them.
- In view of the seriousness of the operations, consent should be expressed by the person concerned, when he or she is of age.

It should be noted that, unfortunately, no reliable or official figures on the number of cases exist today. The associations, taking tweezers themselves, indicate that there would be about 1.7% of the births concerned, as well as several thousand operations per year.