



Ban preventing couple of healthy carriers of genetic disease from screening embryos for in vitro fertilisation violated their right to respect for their private and family life

In today's Chamber judgment in the case of [Costa and Pavan v. Italy](#) (application no. 54270/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned an Italian couple who are healthy carriers of cystic fibrosis² and wanted, with the help of medically-assisted procreation and genetic screening, to avoid transmitting the disease to their offspring.

The Court noted the inconsistency in Italian law that denied the couple access to embryo screening but authorised medically-assisted termination of pregnancy if the foetus showed symptoms of the same disease. The Court concluded that the interference with the applicants' right to respect for their private and family life was disproportionate.

Principal facts

The applicants, Rosetta Costa and Walter Pavan, are Italian nationals who were born in 1977 and 1975 respectively and live in Rome. When their daughter was born with cystic fibrosis in 2006 they found out that they were healthy carriers of the disease. When Mrs Costa became pregnant again in February 2010, the applicants had the foetus screened and it was found to have cystic fibrosis. Mrs Costa had the pregnancy terminated on medical grounds.

The couple now want to have a child by in vitro fertilisation ("IVF"), so that the embryo can be genetically screened prior to implantation (preimplantation diagnosis – "PID"). Italian law prohibits PID³. It however allows IVF for sterile couples or those in which the man has a sexually transmissible disease⁴ such as HIV or hepatitis B and C, to avoid the risk of transmitting the infection.

On 13 January 2010, for the first time, the Salerno Court authorised a non-sterile couple of healthy carriers of muscular atrophy to use PID. But that was a one-off decision.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² Also known as mucoviscidosis, a serious genetic disease which generally causes respiratory difficulties and can be fatal.

³ Law no. 40 of 19 February 2004

⁴ Decree of 11 April 2008

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained that the only course open to them to have a baby that did not have cystic fibrosis was to start a pregnancy by natural means and medically terminate it every time the foetus tested positive for the disease. Under Article 14 (prohibition of discrimination), they claimed that they were victims of discrimination compared with sterile couples or those where the man had a sexually transmissible disease.

The application was lodged with the European Court of Human Rights on 20 September 2010. At the applicants' request, on 4 May 2011 it was decided to give the case priority (Rule 41 of the Rules of Court).

The European Centre for Law and Justice (ECLJ), the "Movimento per la vita" association and 52 Italian MPs, as one third party intervener, and the "Luca Coscioni", "Amica Cicogna Onlus", "Cerco un bimbo" and "L'altra cicogna" associations, together with 60 Italian and European MPs, as another third party intervener, were authorised to submit written observations (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Dragoljub **Popović** (Serbia),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court considered that the applicants' desire to resort to medically-assisted procreation and PID in order to have a baby that did not suffer from cystic fibrosis was a form of expression of their private and family life that fell within the scope of Article 8. The fact that the law did not allow them to proceed in this manner therefore amounted to an interference with their right to respect for their private and family life which was "in accordance with the law"⁵ and pursued the legitimate aims of protecting morals and the rights and freedoms of others.

The Italian Government justified this interference by the need to protect the health of the mother and child and the dignity and freedom of conscience of the medical professions, and to avoid the risk of eugenic abuses. The Court observed first of all that the notions of "embryo" and "child" must not be confused. It could not see how, in the event that the foetus proved to have the disease, a medically-assisted abortion could be reconciled with the Government's justifications, considering, among other things, the consequences of such a procedure for both the foetus and the parents, particularly the mother.

⁵ Section 4, paragraph 1, of Law no. 40/2004 and Ministry of Health Decree no. 31639 of 11 April 2008, on the one hand, and Ministerial Decree of 11 April 2008.

The Court stressed the difference between this case, which concerned PID and homologous insemination⁶, and that of *S.H. v. Austria*⁷, which concerned access to donor insemination. Furthermore, although the question of access to PID raised delicate issues of a moral and ethical nature, the legislative choices made by Parliament in the matter did not elude the Court's supervision. The Court noted that of the 32 Council of Europe member States whose legislation it examined, PID was only prohibited in Italy, Austria and Switzerland (regulated access to PID was currently being examined in Switzerland).

The Court observed that the inconsistency in Italian law – prohibiting the implantation of only those embryos which were healthy, but authorising the abortion of foetuses which showed symptoms of the disease – left the applicants only one choice, which brought anxiety and suffering: starting a pregnancy by natural means and terminating it if prenatal tests showed the foetus to have the disease. The Court accordingly considered that the interference with the applicants' right to respect for their private and family life was disproportionate, in breach of Article 8.

Article 14

Discrimination, within the meaning of Article 14, meant treating persons in similar situations differently without an objective and reasonable justification. Here the Court noted that, where access to PID was concerned, couples in which the man was infected with a sexually transmissible disease were not treated differently to the applicants, as the prohibition applied to all categories of people. This part of the application was therefore rejected as being manifestly ill-founded.

Just satisfaction (Article 41)

The court held that Italy was to pay the applicants 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

⁶ Using gametes from the couple (cf. donor insemination, using donated gametes).

⁷ [S.H. v. Austria, Grand Chamber judgment of 03.11.2011](#)