



## Banning a woman from donating embryos obtained from *in vitro* fertilisation to scientific research was not contrary to respect for her private life

In today's **Grand Chamber** judgment<sup>1</sup> in the case of **[Parrillo v. Italy](#)** (application no. 46470/11) the European Court of Human Rights held, by sixteen votes to one, that there had been:

**No violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights.

The case concerned a ban under Italian Law no. 40/2004, preventing Ms Parrillo from donating to scientific research embryos obtained from an *in vitro* fertilisation which were not destined for a pregnancy.

The Court, which was called upon for the first time to rule on this issue, held that Article 8 was applicable in this case under its "private life" aspect, as the embryos in question contained Ms Parrillo's genetic material and accordingly represented a constituent part of her identity.

The Court considered at the outset that Italy was to be given considerable room for manoeuvre ("wide margin of appreciation") on this sensitive question, as confirmed by the lack of a European consensus and the international texts on this subject.

The Court then noted that the drafting process for Law no. 40/2004 had given rise to considerable discussions and that the Italian legislature had taken account of the State's interest in protecting the embryo and the interest of the individuals concerned in exercising their right to self-determination. The Court stated that it was not necessary in this case to examine the sensitive and controversial question of when human life begins, as Article 2 (right to life) was not in issue.

Noting, lastly that there was no evidence that Ms Parrillo's deceased partner would have wished to donate the embryos to medical research, the Court concluded that the ban in question had been "necessary in a democratic society".

*Additional point on the admissibility of the application: for the first time, the Court examined whether the procedure for bringing a question of constitutionality, introduced in Italy in 2007<sup>2</sup>, represented a domestic remedy that had to be exhausted before an application was lodged with it. It concluded that in the present case, with regard to an issue of medically assisted reproduction, this form of review did not amount to an effective remedy that the applicant ought to have used.*

### Principal facts

The applicant, Adelina Parrillo, is an Italian national who was born in 1954 and lives in Rome (Italy).

In 2002 Ms Parrillo and her partner had recourse to assisted reproduction techniques and underwent *in vitro* fertilisation treatment (hereafter "IVF"). Five embryos were obtained, and were stored by cryopreservation.

Ms Parrillo's partner died in November 2003, before the embryos could be implanted. After deciding not to go ahead with a pregnancy, she sought to donate them to scientific research and thus contribute to finding ways of curing diseases that are difficult to cure. However, section 13 of Law

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

<sup>2</sup> Constitutional Court judgments nos. 348 and 349 of 24 October 2007 (see §§ 23 – 26 of the *Parrillo* Grand Chamber judgment).

no. 40/2004 of 19 February 2004 prohibits experiments on human embryos, even for the purposes of scientific research, making any such experiment punishable by a sentence of between two and six years' imprisonment. Ms Parrillo's requests for the release of her embryos for this purpose were therefore refused. She submitted that the embryos in question had been obtained before Law no. 40/2004 entered into force and considered, in consequence, that it had been entirely legal for her to have them preserved rather than proceeding with immediate implantation.

## Complaints, procedure and composition of the Court

Under Article 1 of Protocol No. 1 (protection of property), Ms Parrillo complained that she was unable to donate her embryos, conceived through medically assisted reproduction, to scientific research and was obliged to keep them in a state of cryopreservation until their death. Ms Parrillo also considered that the prohibition in question amounted to a violation of her right to respect for her private life, protected by Article 8.

The application was lodged with the European Court of Human Rights on 26 July 2011. On 28 May 2013 Ms Parrillo's complaint under Article 10 (freedom of expression) – that the prohibition on embryo donation in question amounted to a breach of freedom of expression, a fundamental aspect of which was freedom of scientific research – was declared inadmissible, since it concerned a right which was not vested in the applicant directly, but rather in researchers and scientists.

On 28 January 2014 the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber<sup>3</sup>. A [hearing](#) took place in Strasbourg on 18 June 2014.

The following were authorised to intervene in the written proceedings (Article 36 § 2 of the Convention): the European Center for Law and Justice ("the ECLJ"), the associations *Movimento per la vita*, *Scienza e vita*, *Forum delle associazioni familiari*, *Luca Coscioni*, *Amica Cicogna Onlus*, *L'altra cicogna Onlus*, *Cerco bimbo*, *VOX – Osservatorio italiano sui Diritti*, *SIFES – Society of Fertility, Sterility and Reproductive Medicine* and *Cittadinanzattiva*, and 46 members of the Italian Parliament<sup>4</sup>.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Josep **Casadevall** (Andorra),  
Guido **Raimondi** (Italy),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro** (Monaco),  
Ineta **Ziemele** (Latvia),  
George **Nicolaou** (Cyprus),  
András **Sajó** (Hungary),  
Ann **Power-Forde** (Ireland),  
Nebojša **Vučinić** (Montenegro),  
Ganna **Yudkivska** (Ukraine),  
Vincent A. **de Gaetano** (Malta),  
Julia **Laffranque** (Estonia),  
Paulo **Pinto de Albuquerque** (Portugal),  
Helen **Keller** (Switzerland),  
Faris **Vehabović** (Bosnia and Herzegovina),

<sup>3</sup> Under Article 30 of the European Convention on Human Rights, where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

<sup>4</sup> See the third-party observations in paragraphs 140-148 and 205-210 of the *Parrillo* Grand Chamber judgment.

Dmitry Dedov (Russia),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### Admissibility – exhaustion of domestic remedies

The Italian Government alleged that Ms Parrillo ought to have used a remedy providing for a review of constitutionality, which was introduced in Italy in 2007<sup>5</sup>. The Court welcomed, in this new form of review, the encouragement given by the Constitutional Court to the national judicial authorities to interpret domestic standards and the Constitution in the light of the European Convention on Human Rights and the Court's case-law. However, it noted, on the one hand, that the Italian system provided only for indirect application by individuals to the Constitutional Court and, on the other, that it had not been shown, through established case-law and practice, that, where the donation of embryos to research was concerned, an action by Ms Parrillo before the ordinary courts to raise a question of constitutionality before the Constitutional Court in the light of the Convention would have amounted to an effective remedy. In consequence, it could not be claimed that Ms Parrillo ought to have exhausted this remedy.

### Article 8 (right to respect for private life)

#### *On the applicability of Article 8 and the admissibility of Ms Parrillo's complaint*

For the first time, the Court was called upon to rule on the question whether the "right to respect for private life" could encompass the right to make use of embryos obtained from IVF for the purposes of donating them to scientific research. The "family life" aspect of Article 8 was not in issue here, since Ms Parrillo had chosen not to go ahead with a pregnancy with the embryos in question.

The Court, noting that the embryos obtained through IVF contained the genetic material of the person in question and accordingly represented a constituent part of his or her identity, concluded that Ms Parrillo's ability to exercise a choice regarding the fate of her embryos concerned an intimate aspect of her personal life and accordingly related to her right to self-determination. The Court also took into account the importance attached by the domestic legal system to the freedom of choice of parents regarding the fate of embryos not destined for implantation. It therefore concluded that Article 8 was applicable in this case.

#### *On the legitimacy of the aim pursued by the interference in Ms Parrillo's private life*

The ban on donating to scientific research embryos obtained from IVF that were not destined for implantation constituted an interference with Ms Parrillo's right to respect for her private life, especially as the donation of embryos was not regulated in Italy at the time when she had had recourse to that reproductive technique. According to the Government, this interference, provided for in Law no. 40/2004, pursued the aim of protecting the "embryo's potential for life", as the human embryo is considered in the Italian legal system as a subject of law entitled to the respect due to human dignity. Although this aim could be linked to the legitimate aim of "protecting morals and the rights and freedoms of others", as provided for in Article 8<sup>6</sup>, this did not imply any assessment by the Court as to whether the word "others" extended to human embryos.

#### *Necessity of the interference in a democratic society*

<sup>5</sup> Constitutional Court judgments nos. 348 and 349 of 24 October 2007 (see §§ 23 – 26 of the *Parrillo* Grand Chamber judgment).

<sup>6</sup> Article 8 § 2: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

The Court considered at the outset that Italy was to be afforded a wide margin of appreciation in this case, which raised sensitive moral and ethical issues. In addition, it did not concern prospective parenthood, and the right invoked by Ms Parrillo was not one of the core rights protected by Article 8, as it did not concern a crucial aspect of her existence and identity. This need for a wide margin of appreciation was confirmed, firstly, by the lack of a European consensus on this subject and, secondly, by the international texts.

The Court noted that there was no European consensus<sup>7</sup> on the delicate question of the donation of embryos not destined for implantation<sup>8</sup>. Although certain member States had adopted a permissive approach in this area (17 countries out of 41), others had chosen to prohibit it (Andorra, Latvia, Croatia and Malta) or to impose strict conditions on research using embryonic cells<sup>9</sup> (for example, Slovakia, Germany, Austria or Italy<sup>10</sup>).

With regard to the international texts, the relevant Council of Europe<sup>11</sup> and European Union<sup>12</sup> materials confirmed that the domestic authorities enjoyed a broad margin of discretion to enact restrictive legislation where the destruction of human embryos was at stake, having regard, among other things, to the plurality of views in Europe on the concept of the beginning of human life. While certain limits were imposed at European level, these aimed rather to temper excesses in this area<sup>13</sup>.

With regard to the Italian legislation on this matter, the Court noted, firstly, that the drafting of Law no. 40/2004 had given rise to considerable discussions and that the Italian legislature had taken account of the State's interest in protecting the embryo and that of the persons concerned in exercising their right to individual self-determination, and, secondly, that the inconsistencies in Italian law alleged by Ms Parrillo – on account, she submitted, of the right to abortion in Italy and the use by Italian researchers of embryonic cell lines taken from embryos that had been destroyed abroad – did not directly affect the right invoked by her.

Lastly, the Court noted that there was no evidence that Ms Parrillo's deceased partner, who had had the same interest in the embryos in question as the applicant at the time of the IVF, would have wished to give the embryos to science. Moreover, there were no regulations governing this situation in Italy.

The Court concluded that Italy had not overstepped the wide margin of appreciation enjoyed by it in this case and that the ban in question had been "necessary in a democratic society". In consequence, there had been no violation of Article 8.

<sup>7</sup> See §§ 69 - 76 of the *Parrillo* Grand Chamber judgment.

<sup>8</sup> *Evans v. the United Kingdom*, no. 6339/05, *S.H. and Others v. Austria*, no. 57813/00, and *Knecht v. Romania*, no.10048/10. See also the [Factsheet on "Reproductive Rights"](#).

<sup>9</sup> Five categories of country may be identified among the 41 countries for which the Court has information concerning research on human embryos: three "**permissive**" countries which allow the creation of human embryos for research (Belgium, Sweden, the United Kingdom); 14 countries **which forbid the creation of embryos for scientific research** and allow, subject to certain conditions, research using surplus embryos from IVF treatment (Bulgaria, the Czech Republic, Estonia, Finland, "the Former Yugoslav Republic of Macedonia", France, Greece, Hungary, the Netherlands, Portugal, Serbia, Slovenia, Spain and Switzerland); four countries which **prohibit scientific research on embryos in principle**, and permit it only in very restricted cases (Germany, Austria, Italy, Slovakia); four **countries which expressly prohibit any research** on embryonic stem cells (Andorra, Croatia, Latvia and Malta); 16 countries **with no regulations on this subject**: Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Ireland, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Poland, Romania, Russia, San Marino, Turkey and Ukraine (the practice in Turkey and Ukraine restrictive on the whole, and is generally permissive in Ireland and Russia, where research on embryos is carried out).

<sup>10</sup> These countries require that research on embryonic cells be intended to protect the health of the embryo or is carried out on cell lines imported from abroad.

<sup>11</sup> See §§ 54 and 55 of the *Parrillo* Grand Chamber judgment.

<sup>12</sup> See §§ 56 - 66 of the *Parrillo* Grand Chamber judgment.

<sup>13</sup> As, for example, the ban on creating human embryos for scientific research – Article 27 of the "Oviedo Convention" (Council of Europe Convention on Human Rights and Biomedicine) of 4 April 1997 - or on patenting scientific inventions where the development process involves the destruction of human embryos – judgment of the Court of Justice of the European Union in *Oliver Brüstle v. Greenpeace*, 18 October 2011 (see §§ 59 – 61 of the *Parrillo* Grand Chamber judgment).

## Other Articles

The Court considered that it was not necessary to examine the sensitive and controversial question of the status of the human embryo *in vitro* and when human life begins, given that Article 2 (right to life) was not in issue in this case. With regard to Article 1 of Protocol No. 1 (protection of property), the Court considered that it did not apply to the present case, since human embryos could not be reduced to “possessions” within the meaning of that provision. This complaint was accordingly dismissed.

## Separate opinions

Judges Pinto de Albuquerque and Dedov each expressed a concurring opinion. Judges Casadevall, Raimondi, Berro, Nicolaou and Dedov expressed a partly concurring opinion. Judges Casadevall, Ziemele, Power-Forde, Yudkivska and de Gaetano expressed a partly dissenting opinion. Judge Nicolaou expressed a partly dissenting opinion, and Judge Sajó expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and 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.