EUROPEAN COURT OF HUMAN RIGHTS

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10.4.2007

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
EVANS v. THE UNITED KINGDOM

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment[1] in the case of ***Evans v. the United Kingdom*** (application no. 6339/05).

The Court held:

- unanimously, that there had been **no violation of Article 2** (right to life) of the European Convention on Human Rights;
- by thirteen votes to four, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention; and,
- by thirteen votes to four, that there had been **no violation of Article 14** (prohibition of discrimination) taken in conjunction with **Article 8**.

(The judgment is available in English and French.)

1. Principal facts

The applicant, Natallie Evans, is a 35-year-old British national, born in October 1971, who lives in Wiltshire (United Kingdom).

On 12 July 2000 Ms Evans and her partner J, born in November 1976, started fertility treatment at the Bath Assisted Conception Clinic. On 10 October 2000, during an appointment at the clinic, Ms Evans was diagnosed with a pre-cancerous condition of her ovaries and was offered one cycle of in vitro fertilization (IVF) treatment prior to the surgical removal of her ovaries. During the consultation held that day with medical staff, Ms Evans and J were informed that they would each need to sign a form consenting to the treatment and that, in accordance with the provisions of the Human Fertilisation and Embryology Act 1990 ("the 1990 Act"), it would be possible for either of them to withdraw his or her consent at any time before the embryos were implanted in the applicant's uterus.

Ms Evans considered whether she should explore other means of having her remaining eggs fertilised, to guard against the possibility of her relationship with J ending. J reassured her that that would not happen.

On 12 November 2001 the couple attended the clinic for treatment, resulting in the creation of six embryos which were placed in storage and, on 26 November 2001, Ms Evans underwent an operation to remove her ovaries. She was told she would need to wait for two years before the implantation of the embryos in her uterus.

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

In May 2002 the relationship between the applicant and J ended and subsequently, in accordance with the 1990 Act, he informed the clinic that he did not consent to Ms Evans using the embryos alone or their continued storage.

The applicant brought proceedings before the High Court seeking, among other things, an injunction to require J to give his consent. Her claim was refused on 1 October 2003, J having been found to have acted in good faith, as he had embarked on the treatment on the basis that his relationship with Ms Evans would continue. On 1 October 2004, the Court of Appeal upheld the High Court's judgment. Leave to appeal was refused.

On 26 January 2005 the clinic informed the applicant that it was under a legal obligation to destroy the embryos, and intended to do so on 23 February 2005.

On 27 February 2005 the European Court of Human Rights, to whom the applicant had applied, requested, under Rule 39 (interim measures) of the Rules of Court, that the United Kingdom Government take appropriate measures to prevent the embryos being destroyed by the clinic before the Court had been able to examine the case. The embryos were not destroyed.

The applicant, for whom the embryos represent her only chance of bearing a child to which she is genetically related, has undergone successful treatment for her pre-cancerous condition and is medically fit to continue with implantation of the embryos. It was understood that the clinic was willing to treat her, subject to J's consent.

2. Procedure and composition of the Court

The application was lodged with the Court on 11 February 2005. A Chamber hearing on the admissibility and merits took place in public in the Human Rights Building, Strasbourg, on 27 September 2005.

In its Chamber judgment of 7 March 2006 (press release No. 125, 2006), the Court held unanimously, that there had been no violation of Article 2 concerning the applicant's embryos; by five votes to two, that there had been no violation of Article 8 concerning the applicant; and, unanimously, that there had been no violation of Article 14 concerning the applicant.

The Court also decided to continue to indicate to the United Kingdom Government under Rule 39 that it take appropriate measures to ensure the preservation of the applicant's embryos until the Court's judgment became final or pending any further order.

The case was referred to the Grand Chamber at the applicant's request.

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

Christos **Rozakis** (Greek), ***Judge***,
Jean-Paul **Costa** (French),
Nicolas **Bratza** (British),
Boštjan **Zupančič** (Slovenian),
Peer **Lorenzen** (Danish),
Riza **Türmen** (Turkish),

Volodymyr **Butkevych** (Ukrainian)
Nina **Vajić** (Croatian),
Margarita **Tsatsa-Nikolovska** (citizen of "the former Yugoslav Republic of Macedonia"),
András **Baka** (Hungarian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Dean **Spielmann** (Luxemburger),
Renate **Jaeger** (German),
David Thór **Björgvinsson** (Icelandic),
Ineta **Ziemele** (Latvian), ***judges***,

and also Erik **Fribergh**, ***Registrar***.

3. Summary of the judgment[1]

Complaints
The applicant complained that domestic law permitted her former partner effectively to withdraw his consent to the storage and use by her of embryos created jointly by them, preventing her from ever having a child to whom she would be genetically related. She relies on Articles 2, 8 and 14 of the Convention.

Decision of the Court

Article 2
The Grand Chamber, for the reasons given by the Chamber, found that the embryos created by the applicant and J did not have a right to life within the meaning of Article 2, and that there had not, therefore, been a violation of Article 2.

Article 8
The Grand Chamber noted that the applicant did not complain that she was in any way prevented from becoming a mother in a social, legal, or even physical sense, since there was no rule of domestic law or practice to stop her from adopting a child or even giving birth to a child originally created in vitro from donated gametes. Her complaint was, more precisely, that the consent provisions of the 1990 Act prevented her from using the embryos she and J created together, and thus, given her particular circumstances, from ever having a child to whom she was genetically related. The Grand Chamber considered that that more limited issue, concerning the right to respect for the decision to become a parent in the genetic sense, fell within the scope of Article 8.

The dilemma central to the case was that it involved a conflict between the Article 8 rights of two private individuals: the applicant and J. Moreover, each person's interest was entirely irreconcilable with the other's, since if the applicant was permitted to use the embryos, J would be forced to become a father, whereas if J's refusal or withdrawal of consent was upheld, the applicant would be denied the opportunity of becoming a genetic parent. In the difficult circumstances of the case, whatever solution the national authorities might adopt would result in the interests of one of the parties being wholly frustrated

[1] This summary by the Registry does not bind the Court.

In addition, the Grand Chamber, like the Chamber, accepted that the case did not involve simply a conflict between individuals; that the legislation in question also served a number of wider, public interests, in upholding the principle of the primacy of consent and promoting legal clarity and certainty, for example.

The principal issue was whether the legislative provisions as applied in the case struck a fair balance between the competing public and private interests involved. In that regard, the Grand Chamber accepted the findings of the domestic courts that J had never consented to the applicant using the jointly created embryos alone.

The issues raised by the present case were undoubtedly of a morally and ethically delicate nature. In addition, there was no uniform European approach in the field. Certain States had enacted primary or secondary legislation to control the use of IVF treatment, whereas in others that was a matter left to medical practice and guidelines. While the United Kingdom was not alone in permitting storage of embryos and in providing both gamete providers with the power freely and effectively to withdraw consent up until the moment of implantation, different rules and practices are applied elsewhere in Europe. It could not be said that there was any consensus as to the stage in IVF treatment when the gamete providers' consent became irrevocable[1].

While the applicant contended that her greater physical and emotional expenditure during the IVF process, and her subsequent infertility, entailed that her Article 8 rights should take precedence over J's, it did not appear to the Court that there was any clear consensus on this point either.

The Court further noted that the fact that it had become technically possible to keep human embryos in frozen storage gave rise to an essential difference between IVF and fertilisation through sexual intercourse, namely the possibility of allowing a lapse of time, which might be substantial, to intervene between the creation of the embryo and its implantation in the uterus. It therefore considered it to be legitimate and desirable for a State to set up a legal scheme which took that possibility of delay into account. The Grand Chamber agreed with the Chamber that it was relevant that the Human Fertilisation and Embryology Act 1990 was the culmination of an exceptionally detailed examination of the social, ethical and legal implications of developments in the field of human fertilisation and embryology, and the fruit of much reflection, consultation and debate.

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[1]In Denmark, France, Greece, the Netherlands and Switzerland, the right of either party freely to withdraw his or her consent at any stage up to the moment of implantation of the embryo in the woman was expressly provided for in primary legislation. It appeared that, as a matter of law or practice, in Belgium, Finland and Iceland there was a similar freedom for either gamete provider to withdraw consent before implantation. A number of countries had, however, regulated the consent issue differently. In Hungary, for example, in the absence of a specific contrary agreement by the couple, the woman was entitled to proceed with the treatment notwithstanding the death of her partner or the divorce of the couple. In Austria and Estonia the man's consent could be revoked only up to the point of fertilisation, beyond which it was the woman alone who decided if and when to proceed. In Spain, the man's right to revoke his consent was recognised only where he was married to and living with the woman. In Germany and Italy, neither party could normally withdraw consent after the eggs had been fertilised. In Iceland, the embryos had to be destroyed if the gamete providers separated or divorced before the expiry of the maximum storage period.

That Schedule placed a legal obligation on any clinic carrying out IVF treatment to explain the consent provisions to a person embarking on such treatment and to obtain his or her consent in writing. It was undisputed that that occurred in the applicant's case, and that the applicant and J both signed the consent forms required by the law. While the pressing nature of the applicant's medical condition required her to make a decision quickly and under extreme stress, she knew, when consenting to have all her eggs fertilised with J's sperm, that those would be the last eggs available to her, that it would be some time before her cancer treatment was completed and any embryos could be implanted, and that, as a matter of law, J would be free to withdraw consent to implantation at any moment.

As regards the balance struck between the conflicting Article 8 rights of the parties to the IVF treatment, the Grand Chamber, in common with every other court which had examined the case, had great sympathy for the applicant, who clearly desired a genetically-related child above all else. However, given the above considerations, including the lack of any European consensus on that point, it did not consider that the applicant's right to respect for the decision to become a parent in the genetic sense should be accorded greater weight than J's right to respect for his decision not to have a genetically-related child with her.

While the applicant criticised the national rules on consent for the fact that they could not be disapplied in any circumstances, the Court did not find that the absolute nature of the law was, in itself, necessarily inconsistent with Article 8. Respect for human dignity and free will, as well as a desire to ensure a fair balance between the parties to IVF treatment, underlay the legislature's decision to enact provisions permitting of no exception to ensure that every person donating gametes for the purpose of IVF treatment would know in advance that no use could be made of his or her genetic material without his or her continuing consent. In addition to the principle at stake, the absolute nature of the rule served to promote legal certainty and to avoid the problems of arbitrariness and inconsistency. In the Court's view, those general interests were legitimate and consistent with Article 8.

The Grand Chamber considered that, given the lack of European consensus, the fact that the domestic rules were clear and brought to the attention of the applicant and that they struck a fair balance between the competing interests, there had been no violation of Article 8.

Article 14

The Grand Chamber agreed with the Chamber and the parties that it was not required to decide in the applicant's case whether she could properly complain of a difference of treatment as compared to another woman in an analogous position, because the reasons given for finding that there was no violation of Article 8 also afforded a reasonable and objective justification under Article 14. Consequently, there had been no violation of Article 14.

The dissenting opinion of Judges Türmen, Tsatsa-Nikolovska, Spielmann and Ziemele is annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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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.*