



Forthcoming Grand Chamber judgment in a case against Austria concerning ban on medically assisted procreation techniques

The European Court of Human Rights will be delivering a Grand Chamber judgment in the case of **S. H. and others v. Austria** (application no. 57813/00) at a public hearing in Strasbourg on **Thursday 3 November 2011 at 11 a.m.** – local time.

The case concerns the complaint by two married couples from Austria about the ban on medically assisted procreation techniques which they wish to use.

The applicants, all Austrian nationals, are two married couples who live in Austria. Suffering from infertility, they wish to use medically-assisted procreation techniques which are not allowed under Austrian law.

S.H. produces ova, but suffers from blocked fallopian tubes, which means she cannot get pregnant naturally, and her husband D.H. is infertile. Owing to their medical conditions, only *in vitro* fertilisation with the use of sperm from a donor would allow them to have a child of whom one of them is the genetic parent. H.E.-G. suffers from agonadism, which means that she does not produce ova, while her husband M.G. can produce sperm fit for procreation. Only *in vitro* fertilisation with the use of ova from a donor would allow them to have a child of whom one of them is the genetic parent. However, both of these possibilities are ruled out by the Austrian Artificial Procreation Act, which prohibits the use of sperm from a donor for *in vitro* fertilisation and ova donation in general. At the same time, the Act allows other assisted procreation techniques, in particular *in vitro* fertilisation with ova and sperm from the spouses or cohabitating partners themselves (homologous methods) and, in exceptional circumstances, donation of sperm when it is introduced into the reproductive organs of a woman.

In May 1998, S.H and H.E.-G. lodged an application with the Austrian Constitutional Court for a review of the relevant provisions of the Artificial Procreation Act. In October 1999, the Constitutional Court found that there was an interference with the applicants' right to respect for family life, but that it was justified, as the provisions aimed to avoid the forming of unusual personal relations, such as a child having more than one biological mother (a genetic one and one carrying the child). They also aimed to avoid the risk of exploitation of women, as pressure might be put on a woman from an economically disadvantaged background to donate ova, who otherwise would not be in a position to afford *in vitro* fertilisation in order to have a child of her own.

Complaints and procedure

The applicants complain that the prohibition of sperm and ova donation for *in vitro* fertilisation violates their right to respect for family life under Article 8, and that the difference in treatment compared to couples who wish to use medically-assisted procreation techniques, but do not need to use ova or sperm donation for *in vitro* fertilisation, amounts to a discriminatory treatment, in violation of Article 14.

The application was lodged with the European Court of Human Rights on 8 May 2000. In its [Chamber judgment of 1 April 2010](#), the Court held, by five votes to two, that there had been a violation of Article 14 in conjunction with Article 8 as regards the prohibition of *in vitro* fertilisation with the use of ova from a donor, which affects the couple H.E.-G

and M.G. and, by six votes to one, that there had been a violation of Article 14 in conjunction with Article 8 as regards the prohibition of *in vitro* fertilisation with the use of sperm from a donor, which affects the couple S.H and D.H. On 4 October 2010, the case was referred to the Grand Chamber at the Austrian Government's request. A Grand Chamber hearing took place on 23 February 2011 in Strasbourg.

The Governments of Italy and Germany and the following organisations were granted the right to submit written comments:

The European Centre for Law and Justice
Hera Onlus and SOS Infertilità Onlus
Aktion Leben

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.