



Grand Chamber hearing concerning Austrian ban on medically-assisted procreation techniques

The European Court of Human Rights is holding a Grand Chamber¹ hearing today **Wednesday 23 February 2011 at 9.15 a.m.** in the case of **S. H. and others v. Austria** (Application no. 57813/00)

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int).

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 also 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 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.

The applicants complained that the prohibition of sperm and ova donation for *in vitro* fertilisation violated their right to respect to family life under Article 8, and that the difference in treatment compared to couples who wished to use medically-assisted

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

procreation techniques, but did not need to use ova or sperm donation for *in vitro* fertilisation, amounted to a discriminatory treatment, in violation of Article 14.

Procedure

The application was lodged with the European Court of Human Rights on 8 May 2000.

In its [*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.²

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

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Jean-Paul **Costa** (France), *President*,
Nicolas **Bratza** (the United Kingdom),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Ireneu **Cabral Barreto** (Portugal),
Elisabeth **Steiner** (Austria),
Elisabet **Fura** (Sweden),
Danutė **Jočienė** (Lithuania),
Ján **Šikuta** (Slovakia),
Dragoljub **Popović** (Serbia),
Ineta **Ziemele** (Latvia),
Päivi **Hirvelä** (Finland),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
İşıl **Karakaş** (Turkey),
Vincent A. **de Gaetano** (Malta), *Judges*,
Guido **Raimondi** (Italy),
David **Thór Björgvinsson** (Iceland),
András **Sajó** (Hungary), *Substitute Judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

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Representatives of the parties

Government

Brigitte **Ohms**, *Deputy Agent*,
Gerhard **Doujak** and Michael **Stormann**, *Advisers*;

Applicants

Wilfried Ludwig **Weh** and Hubert F. **Kinz**, *Counsel*;
Stefan **Harg** and Christoph **Eberle**, *Advisers*.

After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

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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.