

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT
DICKSON v. THE UNITED KINGDOM**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Dickson v. the United Kingdom* (application no. 44362/04).

The Court held, by 12 votes to five, that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants, jointly, 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 21,000 (less EUR 2,148.09 in legal aid paid by the Council of Europe) for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The applicants, Kirk and Lorraine Dickson, are British nationals who were born in 1972 and 1958 respectively. Mr Dickson is in Dovergate Prison, Uttoxeter (United Kingdom) and Mrs Dickson lives in Hull (United Kingdom).

In 1994 Mr Dickson was convicted of murder and sentenced to life imprisonment with a tariff (the minimum period to be served) of 15 years. He has no children. In 1999 he met Lorraine via a prison pen pal network while she was also imprisoned. In 2001 they married. Mrs Dickson already had three children from other relationships.

The couple requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given Mr Dickson's earliest release date and Mrs Dickson's age. The Secretary of State refused their application, explaining his general policy, according to which requests for artificial insemination by prisoners could only be granted in "exceptional circumstances". The grounds given for refusal were: that the applicants' relationship had never been tested in the normal environment of daily life; that insufficient provision had been made for the welfare of any child that might be conceived; that mother and child would have had only a limited support network; and, that the child's father would not be present for an important part of her or his childhood. It was also considered that there would be legitimate public concern that the punitive and deterrent elements of Mr Dickson's sentence were being circumvented if he were allowed to father a child by artificial insemination while in prison.

The applicants appealed unsuccessfully.

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

2. Procedure and composition of the Court

The application was lodged with the Court on 23 November 2004.

In its Chamber judgment of 18 April 2006, the Court declared the case admissible and held, by four votes to three, that there had been no violation of Articles 8 or 12.

On 13 September 2006 the panel of the Grand Chamber granted the applicants' request to have their case referred to the Grand Chamber under Article 43¹ (referral to the Grand Chamber). A hearing before the Grand Chamber was held on 10 January 2007.

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

Christos **Rozakis** (Greek), *President*,
Luzius **Wildhaber** (Swiss),
Nicolas **Bratza** (British),
Boštjan M. **Zupančič** (Slovenian),
Peer **Lorenzen** (Danish),
Françoise **Tulkens** (Belgian),
Ireneu **Cabral Barreto** (Portuguese)
Corneliu **Bîrsan** (Romanian),
Karel **Jungwiert** (Czech),
John **Hedigan** (Irish),
András **Baka** (Hungarian),
Snejana **Botoucharova** (Bulgarian),
Antonella **Mularoni** (San Marinese),
Alvina **Gyulumyan** (Armenian),
Khanlar **Hajiyev** (Azerbaijani),
Egbert **Myjer** (Dutch),
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,

and also Vincent **Berger**, *Jurisconsult*.

3. Summary of the judgment²

Complaints

The applicants complained about the refusal of access to artificial insemination facilities, relying on Article 8 (right to respect for private and family life) and Article 12 (right to marry and found a family) of the Convention.

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.

² This summary by the Registry does not bind the Court.

Decision of the Court

Article 8

The Grand Chamber considered that Article 8 was applicable to the applicants' complaints in that the refusal of artificial insemination facilities concerned their private and family lives, which included the right to respect for their decision to become genetic parents.

The core issue was whether a fair balance had been struck between the competing public and private interests involved.

As to the applicants' interests, it was accepted domestically that artificial insemination remained the only realistic hope of the applicants, a couple since 1999 and married since 2001, of having a child together, given Ms Dickson's age and Mr Dickson's release date. The Grand Chamber considered it evident that the matter was of vital importance to the applicants.

While the inability to beget a child might be a consequence of imprisonment, it was not an inevitable one, it not being suggested that the grant of artificial insemination facilities would have involved any security issues or imposed any significant administrative or financial demands on the State.

The Grand Chamber then considered whether public confidence in the prison system would be undermined if the punitive and deterrent elements of a sentence would be circumvented by allowing prisoners guilty of certain serious offences to conceive children. Like the Chamber, it reiterated that there was no place under the Convention system, where tolerance and broadmindedness were the acknowledged hallmarks of a democratic society, for automatic forfeiture of rights by prisoners based purely on what might offend public opinion. However, it could accept, as did the Chamber, that the maintaining of public confidence in the penal system had a role to play in the development of penal policy. However, and while accepting that punishment remained one of the aims of imprisonment, it underlined the evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence.

The Grand Chamber was prepared to accept as legitimate, that the authorities, when developing and applying the policy in question, should concern themselves, as a matter of principle, with the welfare of any child: conception of a child was the very object of the exercise. Moreover, the State had obligations to ensure the effective protection of children. However, that could not go so far as to prevent parents from attempting to conceive a child in circumstances like those in the applicants' case, especially as Ms Dickson was at liberty and could have taken care of any child conceived until her husband was released.

The Grand Chamber reiterated that 30 of the States which had ratified the European Convention on Human Rights allowed for conjugal visits for prisoners (subject to a variety of different restrictions)¹, a measure which could be seen as obviating the need for the

¹ Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Iceland, Latvia, Lithuania, Luxembourg, Malta, Moldova, Norway, Poland, Serbia, Slovenia, Spain, Switzerland, Sweden, the Netherlands, "the former Yugoslav Republic of Macedonia" and Ukraine.

authorities to provide additional facilities for artificial insemination. However, while the Court had expressed its approval for the evolution in several European countries towards conjugal visits, States were not required to make provision for such visits.

The Grand Chamber considered that the policy which applied to the applicants excluded any real weighing of the competing individual and public interests, and prevented the required assessment of the proportionality of a restriction, in any individual case. In particular, it placed an inordinately high “exceptionality” burden on the applicants when requesting artificial insemination facilities. In addition, there was no evidence that, when fixing the policy, the Secretary of State sought to weigh the relevant competing individual and public interests or assess the proportionality of the restriction. Further, since the policy was not embodied in primary legislation, the various competing interests were never weighed, nor were issues of proportionality ever assessed, by Parliament

The Court therefore found that a fair balance had not been struck between the competing public and private interests involved, in violation of Article 8.

Article 12

The Grand Chamber considered, as did the Chamber, that no separate issue arose under Article 12.

Judge Sir Nicolas Bratza expressed a concurring opinion, and Judges Wildhaber, Zupančič, Jungwiert, Gyulumyan and Myjer expressed a joint dissenting opinion, the texts of which are annexed to the judgment.

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.