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# Reproductive Rights

## Medically-Assisted Procreation

### **Evans v. United Kingdom (application no. 6339/05)**

10.4.2007

Natallie Evans, who was suffering from ovarian cancer, underwent in-vitro fertilisation (IVF) with her then partner J. before having her ovaries removed. Six embryos were created and placed in storage. When the couple's relationship ended, J withdrew his consent for the embryos to be used, not wanting to be the genetic parent of Ms Evan's child. National law consequently required that the eggs be destroyed, thus preventing Ms Evans from ever having a child to whom she would be genetically related.

While sympathising with Ms Evan's plight, the European Court of Human Rights found no violation of Articles 2 (right to life), 8 (right to respect for family life) or 14 (prohibition of discrimination) of the European Convention on Human Rights: the embryos created did not have a right to life; there was no European consensus; and, the rules on consent were clear, brought to Ms Evan's attention before she underwent IVF and struck a fair balance between the competing interests.

### **Dickson v. United Kingdom (no. 44362/04)**

4.12.2007

Kirk Dickson, a prisoner with a minimum 15-year sentence to serve for murder, was refused access to artificial insemination facilities to enable him to have a child with his wife Lorraine, who, born in 1972, had little chance of conceiving after his release.

The Court held, by 12 votes to five, that there had been a violation of Article 8 of the Convention as a fair balance had not been struck between the competing public and private interests.

Measures taken following the judgment: Mr Dickson is now in an open prison and has home leave and a new policy has been introduced concerning prisoner's access to assisted conception facilities.

### **S.H. and Others v. Austria (no. 57813/00)**

1.4.2010 **not final**

The case concerns two Austrian couples wishing to conceive a child through IVF. One couple needs the use of sperm from a donor and the other, donated ova. Austrian law prohibits the use of sperm for IVF and ova donation in general.

The Court found that there was no uniform approach to medically-assisted procreation in Europe. However, the laws of States allowing medically-assisted procreation had to be coherent. The difference in treatment of the two couples, compared to other couples applying for IVF, was not justified, in violation of Articles 8 and 14. Grand Chamber hearing in the case held on 23.2.2011.

## Pending case

### [Daniela Knecht v. Romania \(no. 10048/10\)](#)

The applicant lost access to her frozen embryos when they were taken from the clinic storing them and transferred to the Institute of Forensic Medicine in connection with a criminal investigation. The legal and medical status of the embryos is uncertain. While the case is before it, the European Court of Human Rights has indicated to the Romanian Government that the embryos are not to be destroyed, under Rule 39 of the Rules of Court. The applicant relies on Articles 2 and 8.

## Prenatal Medical Tests

### [Vo v. France \(no. 53924/00\)](#)

8.7.2004

Owing to a mix-up with another patient with the same surname, the applicant's amniotic sack was punctured, making a therapeutic abortion necessary. She maintained that the unintentional killing of her child should have been classified as manslaughter.

The Court found no violation of Article 2. It was not currently desirable or possible to rule on whether an unborn child was a person under Article 2. And, there was no need for a criminal law remedy; remedies already existed allowing the applicant to prove medical negligence and to seek compensation.

### [Draon v. France \(no. 1513/03\)](#)

### [Draon & Maurice v. France \(no. 11810/03\)](#)

Both 16.10.2005

The applicants are parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal medical examinations. They brought proceedings against the hospitals concerned. A new law of 4 March 2002, introduced while their proceedings were pending, meant that it was no longer possible to claim compensation from the hospital/doctor responsible for life-long "special burdens" resulting from the child's disability. The compensation they were awarded did not therefore cover those "special burdens".

The Court found that the law in question was in violation of Article 1 of Protocol No. 1 (protection of property) to the Convention concerning proceedings which were pending when the law came into force. [Measures taken following the judgment.](#)

### [R.R. v. Poland \(no. 27617/04\)](#)

26.5.2011

A pregnant mother-of-two - carrying a child thought to be suffering from a severe genetic abnormality - was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Six weeks elapsed between the first ultrasound scan indicating the possibility that the foetus might be deformed and the results of the amniocentesis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired. Her daughter was subsequently born with abnormal chromosomes (Turner syndrome<sup>1</sup>). She submitted that bringing up and educating a severely-ill child had been damaging to herself and her other two children. Her husband also left her following the birth of their third child.

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<sup>1</sup> A genetic condition, affecting around one in every 2,500 girls, in which the sufferer does not have the usual pair of two X chromosomes. They are also usually shorter than average and infertile. Other health problems can include kidney and heart abnormalities, high blood pressure, obesity, diabetes mellitus, cataract, thyroid problems, and arthritis. Some sufferers may also have learning difficulties.

The Court found a violation of Article 3 (prohibition of inhuman and degrading treatment) as the applicant, who was in a very vulnerable position, had been humiliated and “shabbily” treated, the determination of whether she should have had access to genetic tests, as recommended by doctors, being marred by procrastination, confusion and lack of proper counselling and information. The Court also found a violation of Article 8 because Polish law did not include any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion. Given that Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus’ health be made available to pregnant women. The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. Women sought access to such tests for many reasons. In addition, States were obliged to organise their health services to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled.

## Protecting Pregnant Women’s Health

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### **Tysi c v. Poland (no. 5410/03)**

20.3.2007

Alicja Tysi c was refused a therapeutic abortion, after being warned that her already severe myopia could worsen if she carried her pregnancy to term. Following the birth of her child, she had a retinal haemorrhage and was registered severely disabled.

The Court found that Ms Tysi c had been denied access to an effective mechanism capable of determining whether the conditions for obtaining a legal abortion had been met, in violation of Article 8. Measures taken following the judgment.

### **A.B. and C. v. Ireland (no. 25579/05)**

16.12.2010

Three women living in Ireland, who became pregnant unintentionally, complained that, because of the impossibility of obtaining a legal abortion in Ireland, they had to go to the United Kingdom for an abortion and that the procedure was humiliating, stigmatising and risked damaging their health. Having or helping anyone to have an abortion is a criminal offence in Ireland. However there is a constitutional right to an abortion where there is a real and substantial risk to the life of the mother. One of the applicants, in remission from a rare form of cancer and unaware that she was pregnant, underwent checkups contraindicated in pregnancy. She understood that her pregnancy could provoke a relapse and believed that it put her life at risk.

The Court found that Ireland had failed to implement the constitutional right to a legal abortion. There had therefore been a violation of Article 8 (right to respect for private and family life) concerning the applicant in remission from cancer (no violation concerning the other two), because she was unable to establish her right to a legal abortion either through the courts or the medical services available in Ireland. The Court noted the uncertainty surrounding the process of establishing whether a woman’s pregnancy posed a risk to her life and that the threat of criminal prosecution had a “significant chilling” effect both on doctors and the women concerned.

### Pending case

#### [Z. v. Poland \(no. 46132/08\)](#)

Z. claims that her pregnant daughter, who was suffering from ulcerative colitis, died after being denied necessary diagnostic tests and treatment because her doctor was concerned about harming the foetus. Z. specifically challenges the way in which the law governing conscientious objection is regulated.

## Forced Sterilisation

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#### [K.H. and Others v. Slovakia \(no. 32881/04\)](#)

28.04.2009

Eight Slovak women of Roma ethnic origin found they were unable to conceive after having caesareans. Suspecting that they were sterilised without their knowledge during the operations, they sued the two Slovak hospitals concerned.

The Court found that the impossibility for the applicants to obtain photocopies of their medical records was in violation of Articles 8 and 6 § 1 (access to court). Measures taken: the Public Health Act, which came into effect on 1 January 2005, covers informed consent & access to medical files.

#### [I.G., M.K. and R.H. v. Slovakia \(no. 15966/04\)](#)

22.9.2009 (decision)

Three Slovak women of Roma origin, two of whom were minors at the relevant time, claim they were segregated in so-called "gypsy rooms" and sterilised without their knowledge or consent while having a caesarean section in an East Slovak hospital. They also claim a loss of social status, problems with their partners and serious medical side effects as a result.

The Court has declared the case admissible.

### Pending cases

#### [V.C. v. Slovakia \(no. 18968/07\)](#)

The applicant, of Roma ethnic origin, claims she was sterilised following the birth of her second child without her full and informed consent and that she was segregated from non-Roma women in hospital. European Court of Human Rights Chamber hearing on 22.03.2011.

#### [Gauer and Others v. France \(61521/08\)](#)

Five young girls with mental disabilities were sterilised without their knowledge or consent, which was not required. They complain that the operations damaged their physical integrity, their right to found a family and that they suffered discrimination due to their disabilities, relying on Article 3 (prohibition of degrading treatment), Article 8 (right to a family life), Article 12 (right to marry) and Article 14 (prohibition of discrimination).

## Home Birth

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#### [Ternovsky v. Hungary \(67545/09\)](#)

The applicant complained about being denied the opportunity to give birth at home, arguing that midwives or other health professionals were effectively dissuaded by law

from assisting her, because they risked being prosecuted. (There had recently been at least one such prosecution.)

The Court found that the applicant was in effect not free to choose to give birth at home because of the permanent threat of prosecution faced by health professionals and the absence of specific and comprehensive legislation on the subject, in violation of Article 8 right to respect for private and family life).

### **Pending Case**

#### **Gereb v. Hungary (64516/10)**

Agnes Gereb, an internationally-recognised home birth expert and highly experienced gynaecologist and midwife, was arrested on October 2010 while helping a mother in labour. She is accused of negligent malpractice, for failing to provide the necessary conditions for avoiding an incidental birth complication in a planned home birth, in breach of professional rules, and endangering the life and well-being of the mother and child. The applicant complains that she was arrested without any evidence justifying the suspicions against her.

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