Press Release

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EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT
EVANS v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its 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 concerning the applicant's embryos;
- by five votes to two, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicant; and,
- unanimously, that there had been **no violation of Article 14** (prohibition of discrimination), concerning the applicant.

The Court decided to continue to indicate to the United Kingdom Government under Rule 39 (interim measures) of the Rules of Court that it was desirable in the interests of the proper conduct of the proceedings that the Government take appropriate measures to ensure that the applicant's embryos were preserved until the Court's judgment became final or pending any further order.

(The judgment is available in English and in French.)

1. Principal facts

The applicant, Natallie Evans, is a 34-year-old British national who lives in Wiltshire (United Kingdom).

On 12 July Ms Evans and her partner J 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 her partner 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.

[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.

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.

In May 2002 the relationship between the applicant and J ended and subsequently, in accordance with the 1990 Act, he withdrew his consent to the continued storage of the embryos or use of them by the applicant.

The applicant brought proceedings before the High Court seeking, among other things, an injunction to require J. to restore 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 Court, to whom the applicant had applied, requested, under Rule 39 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 Bath clinic was willing to treat her, subject to J's consent.

2. Procedure and composition of the Court

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

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorran), ***President***,
Nicolas **Bratza** (British),
Matti **Pellonpää** (Finnish),
Rait **Maruste** (Estonian),
Kristaq **Traja** (Albanian),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Ján **Šikuta** (Slovakian), ***judges***,

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

3. Summary of the judgment[2]

Complaints
The applicant complained that requiring the father's consent for the continued storage and implantation of the fertilised eggs was in breach of her rights under Articles 8 and 14 of the Convention and the rights of the embryos, under Article 2.

Decision of the Court

Article 2

The Court recalled that the issue of when the right to life began came within the margin of appreciation of the State concerned. Under English law an embryo did not have independent rights or interests and could not claim—or have claimed on its behalf—a right to life under Article 2. The Court therefore found that there had not been a violation of Article 2.

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

Article 8

The Court accepted that J acted in good faith in embarking on IVF treatment with the applicant, and that he did so only on the basis that their relationship would continue.

The Court observed that there was no international consensus with regard to the regulation of IVF treatment or to the use of embryos created by such treatment, and that the United Kingdom was not the only Member State of the Council of Europe to give a right to either party freely to withdraw his or her consent at any stage up to the moment of implantation of the embryo. Since the use of IVF treatment gave rise to sensitive moral and ethical issues against a background of fast-moving medical and scientific developments, and since the questions raised by the case touched on areas where there was no clear common ground in Europe, the Court considered that the margin of appreciation to be afforded to the State had to be a wide one which had, in principle, to extend both to its decision to intervene in the area and, once having intervened, to the detailed rules it laid down in order to achieve a balance between the competing public and private interests.

The Court next observed that the legislation at issue in the applicant's case 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. The United Kingdom was particularly quick to respond to the scientific advances in that field. Four years after the birth of the first child conceived by IVF, an expert Committee of Inquiry was appointed under the chairmanship of Dame Mary Warnock DBE. After the Committee had reported, its recommendations, so far as they related to IVF treatment, were set out in a Green Paper issued for public consultation. After receipt of representations from interested parties, they were included in a White Paper and were eventually embodied in the 1989 Bill which became, after Parliamentary debate, the 1990 Act. Central to the Committee's recommendations and to the policy of the legislation was the primacy of the continuing consent to IVF treatment by both parties to the treatment. It was true that neither the Warnock Report nor the Green Paper discussed what was to happen if the parties became estranged during treatment. However, the White Paper emphasised that donors of genetic material would have the right under the proposed legislation to vary or withdraw their consent at any time before the embryos were used and the policy of the Act was to ensure continuing consent from the start of treatment to the point of implantation in the woman.

Thus, Schedule 3 to the 1990 Act placed a legal obligation on any clinic carrying out IVF treatment to explain to a person embarking on such treatment that either gamete provider had the freedom to terminate the process at any time prior to implantation. To ensure further that that position was known and understood, each donor had by law to sign a form setting out the necessary consents. In the applicant's case, while the pressing nature of her medical condition required that she and J reach a decision about the fertilisation of her eggs without as much time for reflection and advice as might ordinarily be desired, it was undisputed that it was explained to them both that either was free to withdraw consent at any time before any resulting embryo was implanted in the applicant's uterus.

The Court reiterated that it was not contrary to the requirements of Article 8 for a State to adopt legislation governing important aspects of private life which did not allow for the weighing of competing interests in the circumstances of each individual case. The Court found that strong policy considerations underlay the decision of the legislature to favour a clear or "bright-line" rule which would serve both to produce legal certainty and to maintain public confidence in the law in a highly sensitive field. As the Court of Appeal had observed, to have made the withdrawal of the male donor's consent relevant but not conclusive, or to have granted a power to the clinic, to the court or to another independent authority to override the need for a donor's consent, would not only have given rise to acute problems of evaluation of the weight to be attached to the respective rights of the parties concerned, particularly where their personal circumstances had changed in the period since the outset of the IVF treatment, but would have created "new and even more intractable difficulties of arbitrariness and inconsistency".

The Court was not persuaded by the applicant's argument that the situation of the male and female parties to IVF treatment could not be equated and that a fair balance could in general be preserved only by holding the male donor to his consent. While there was clearly a difference of degree between the involvement of the two parties in the process of IVF treatment, the Court did not accept that the Article 8 rights of the male donor would necessarily be less worthy of protection than those of the female; nor did it regard it as self-evident that the balance of interests would always tip decisively in favour of the female party.

The Court, like the national courts, had great sympathy for the plight of the applicant who, if implantation did not take place, would be deprived of the ability to give birth to her own child. However, like the national courts, the Court did not find that the absence of a power to override a genetic parent's withdrawal of consent, even in the exceptional circumstances of the applicant's case, was such as to upset the fair balance required by Article 8. The personal circumstances of the parties had changed and, even in the applicant's case, it would be difficult for a court to judge whether the effect on the applicant of J's withdrawal of consent would be greater than the impact the invalidation of that withdrawal of consent would have on J.

The Court accepted that a different balance might have been struck by Parliament, by, for instance, making the consent of the male donor irrevocable or by drawing the "bright-line" at the point of creation of the embryo. However, the central question in terms of Article 8 was not whether a different solution might have been found by the legislature which would arguably have struck a fairer balance, but whether, in striking the balance at the point at which it did, Parliament exceeded the margin of appreciation afforded to it under that article. In determining that question, the Court attached some importance to the fact that the United Kingdom was by no means the only country in Europe to grant both parties to IVF treatment the right to withdraw consent to the use or storage of their genetic material at any stage up to the moment of implantation of the resulting embryo. The Court further noted a similar emphasis on the primacy of consent reflected in the relevant international instruments concerned with medical interventions.

The Court therefore found that, in adopting in the 1990 Act a clear and principled rule, which was explained to the parties to IVF treatment and clearly set out in the forms they both signed, whereby the consent of either party might be withdrawn at any stage up to the point of implantation of an embryo, the United Kingdom did not exceed the margin of appreciation afforded to it or upset the fair balance required under Article 8. There had not therefore been a violation of Article 8.

Article 14

The Court 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 it considered that the reasons given for finding that there was no violation of Article 8 also afforded a reasonable and objective justification under Article 14. Consequently, the Court held that there had been no violation of Article 14.

Judges Traja and Mijović expressed a joint dissenting opinion which 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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