



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 103

December 2007

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***Dickson v. the United Kingdom [GC] - 44362/04***

Judgment 4.12.2007 [GC]

**Article 8**

**Article 8-1**

**Respect for family life**

**Respect for private life**

Refusal to grant artificial insemination facilities to enable a serving prisoner to father a child: *violation*

*Facts:* The applicants are a married couple who met through a prison correspondence network while serving prison sentences. The husband was convicted of murder and is not scheduled for release before 2009. He has no children. His wife has completed her sentence and has three children from other relationships. The applicants requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given the husband's earliest release date (2009) and his wife's age (she was born in 1958). The Secretary of State refused their application, explaining that under his general policy 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 the first applicant's sentence were being circumvented if he were allowed to father a child by artificial insemination while in prison. The applicants appealed unsuccessfully.

*Law:* Article 8 was applicable in that the refusal of artificial insemination facilities concerned the applicants' private and family lives, which notion incorporated the right to respect for their decision to become genetic parents. Convention rights were retained on imprisonment, so that any restriction had to be justified, either on the grounds that it was a necessary and inevitable consequence of imprisonment or that there was an adequate link between the restriction and the prisoner's circumstances. A restriction could not be based solely on what would offend public opinion. The core issue was whether a fair balance had been struck between the competing public and private interests.

(a) *The conflicting interests* – As to the applicants' interests, it was accepted domestically that artificial insemination remained the applicants' only realistic hope of having a child together, given the wife's age and the husband's release date. It was evident that this was a matter of vital importance to them. Three justifications for the

policy were cited by the Government, namely, that losing the opportunity to beget children was an inevitable and necessary consequence of imprisonment, that public confidence in the prison system would be undermined if prisoners guilty of serious offences were allowed to conceive children, and that the lengthy absence of a parent would have a negative impact on both the child and society as a whole. On the first point, the Court noted that while the inability to beget a child was a consequence of imprisonment, it was not an inevitable one as it had not been 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. As to the question of public confidence in the prison system, while accepting that punishment remained one of the aims of imprisonment, the Court 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. Lastly, although the State had obligations to ensure the effective protection of children, that could not go so far as to prevent parents from attempting to conceive in circumstances like those in the applicants' case, especially as the wife was at liberty and could have taken care of any child conceived until her husband was released.

(b) *Balancing the conflicting interests and the margin of appreciation* – This was an area in which the Contracting States could enjoy a wide margin of appreciation as, while the Court had expressed its approval for the evolution in several European countries towards conjugal visits, which could obviate the need for artificial insemination facilities, it had not yet interpreted the Convention as requiring Contracting States to make provision for such visits. Nevertheless, the policy as structured effectively 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 applicants for artificial insemination as they had to demonstrate both that the deprivation of artificial insemination facilities might prevent conception altogether and that the circumstances of their case were “exceptional” within the meaning of certain criteria. The policy thus set the threshold so high that it did not allow a balancing of the competing interests or an assessment of the proportionality of the restriction by the Secretary of State or the domestic courts. Nor did it appear that such a balancing exercise or assessment of proportionality had been carried out when the policy was originally fixed. The fact that only a few persons might be affected by it made no difference here. The absence of such an assessment had to be seen as falling outside any acceptable margin of appreciation so that a fair balance had not been struck between the competing public and private interests involved.

*Conclusion:* violation (twelve votes to five).

Article 41 – EUR 5,000 jointly in respect of non-pecuniary damage.

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