



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

Information Note on the Court's case-law 188

August-September 2015

***Parrillo v. Italy* [GC] - 46470/11**

Judgment 27.8.2015 [GC]

Article 8

Article 8-1

Respect for private life

Prohibition of embryo donation for scientific research stemming from an *in vitro* fertilization: *no violation*

Facts – In 2002 the applicant had recourse to assisted reproduction techniques, undergoing *in vitro* fertilisation (IVF) treatment with her partner at a centre for reproductive medicine (“the centre”). The five embryos obtained from the IVF treatment were placed in cryopreservation, but the applicant’s partner died before the embryos could be implanted. After deciding not to have the embryos implanted, the applicant sought to donate them to scientific research and thus contribute to promoting advances in treatment for diseases that are difficult to cure.

To this end the applicant made a number of unsuccessful verbal requests for release of the embryos at the centre where they were being stored. In a letter of 14 December 2011 the applicant asked the director of the centre to release the five cryopreserved embryos so that they could be used for stem-cell research. The director refused to comply with her request on the grounds that this type of research was banned and punishable as a criminal offence in Italy under section 13 of Law no. 40 of 19 February 2004 (“the Law”).

The embryos in question are currently stored in the centre’s cryogenic storage bank.

Law – Article 8 of the Convention

(a) *Applicability* – The Court was called upon for the first time to rule on the question whether the right to respect for private life guaranteed by Article 8 of the Convention could encompass the right invoked before it by the applicant to make use of embryos obtained from *in vitro* fertilisation for the purposes of donating them to scientific research.

The subject matter of the case concerned the restriction of the right asserted by the applicant to decide the fate of her embryos, a right which at the very most related to “private life”. In the cases examined by the Court that had raised the particular question of the fate of embryos obtained from assisted reproduction, the Court had had regard to the parties’ freedom of choice. The Italian legal system also attached importance to the freedom of choice of parties to IVF regarding the fate of embryos not destined for implantation.

In the instant case the Court also had to have regard to the link existing between the person who had undergone IVF and the embryos thus conceived, and which was due to the fact that the embryos contained the genetic material of the person in question and accordingly represented a constituent part of that person's genetic material and biological identity.

Accordingly, the applicant's ability to exercise a conscious and considered choice regarding the fate of her embryos concerned an intimate aspect of her personal life and accordingly related to her right to self-determination. Article 8 of the Convention, from the standpoint of the right to respect for private life, was therefore applicable in the present case.

(b) *Merits* – The ban on donating to scientific research embryos obtained from an *in vitro* fertilisation and not destined for implantation constituted an interference with the applicant's right to respect for her private life. At the time when the applicant had had recourse to IVF there had been no legal provisions regulating the donation of non-implanted embryos obtained by that technique. Consequently, before the Law came into force the applicant had not in any way been prevented from donating her embryos to scientific research.

The Court acknowledged that the "protection of the embryo's potential for life" could be linked to the aim of protecting morals and the rights and freedoms of others. However, this did not involve any assessment by the Court as to whether the word "others" extended to human embryos, in the terms in which this concept was meant by the Government, namely, according to which, in the Italian legal system, the human embryo was considered as a subject of law entitled to the respect due to human dignity.

Whilst the right invoked by the applicant to donate embryos to scientific research was important, it was not one of the core rights attracting the protection of Article 8 of the Convention as it did not concern a particularly important aspect of the applicant's existence and identity. Consequently, and having regard to the principles established in its case-law, the Court considered that the respondent State should be afforded a wide margin of appreciation in the present case.

Furthermore, the question of the donation of embryos not destined for implantation clearly raised "delicate moral and ethical questions". There was no European consensus on the subject, with some States permitting human embryonic cell lines, others expressly prohibiting it and others permitting this type of research only under certain strict conditions, requiring for example that the purpose be to protect the embryo's health or that the research use cells imported from abroad.

The international instruments confirmed that the domestic authorities enjoyed a broad margin of discretion to enact restrictive legislation where the destruction of human embryos was at stake. The limits imposed at European level aimed rather to temper excesses in this area.

The drafting of the domestic Law in question had given rise to substantial discussion that had taken account of the different scientific and ethical opinions and questions on the subject. It had been the subject of several referendums, which had been declared invalid for failure to reach the required threshold of votes cast. Accordingly, during the drafting process of the Law the legislature had already taken account of the different interests at stake, particularly the State's interest in protecting the embryo and that of the persons concerned in exercising their right to individual self-determination in the form of donating their embryos to research.

The applicant alleged that the Italian legislation on medically assisted reproduction was inconsistent, in support of her submission that the interference complained of was

disproportionate. The Court's task was not to review the consistency of the Italian legislation in the abstract. In order to be relevant for the purposes of the Court's analysis, the inconsistencies complained of by the applicant had to relate to the subject of the complaint that she raised before the Court, namely, the restriction of her right to self-determination regarding the fate of her embryos.

With regard to the research carried out in Italy on imported embryonic cell lines taken from embryos that had been destroyed abroad, whilst the right asserted by the applicant to decide the fate of her embryos related to her wish to contribute to scientific research, that could not however be seen as a circumstance directly affecting the applicant. Furthermore, the embryonic cell lines used in Italian laboratories for research purposes were never produced at the request of the Italian authorities. Accordingly, the deliberate and active destruction of a human embryo could not be compared with the use of cell lines obtained from human embryos destroyed at an earlier stage.

Even supposing that there were inconsistencies in the legislation as alleged by the applicant, these were not capable of directly affecting the right invoked by her in the instant case.

Lastly, the choice to donate the embryos in question to scientific research emanated from the applicant alone, since her partner was dead. There was no evidence certifying that her partner, who had had the same interest in the embryos in question as the applicant at the time of fertilisation, would have made the same choice. Moreover, there were no regulations governing this situation at domestic level.

Accordingly, the Government had not overstepped the wide margin of appreciation enjoyed by them in the present case and the ban in question had been necessary in a democratic society.

Conclusion: no violation (sixteen votes to one).

Article 1 of Protocol No. 1: With regard to the applicability of Article 1 of Protocol No. 1 to the facts of the case, the parties had diametrically opposed views on the matter, especially regarding the status of the human embryo *in vitro*. However, it was not necessary to examine here the sensitive and controversial question of when human life began as Article 2 of the Convention was not in issue in the instant case.

With regard to Article 1 of Protocol No. 1, it did not apply to the present case. Having regard to the economic and pecuniary scope of that Article, human embryos could not be reduced to "possessions" within the meaning of that provision. This part of the application was therefore rejected as incompatible *ratione materiae*.

Conclusion: inadmissible (unanimously).