



## Evans v. United Kingdom

Evans v. United Kingdom [GC], App. No. 6339/05, 46 Eur. H.R. Rep. 34 (2008).

**Country:** United Kingdom

**Region:** Europe

**Year:** 2007

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Health care and health services, Medicines, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to family life, Right to life

### Facts

Applicant had her eggs extracted for the purposes of in vitro fertilization in 2001. Her ovaries were thereafter removed due to the presence of tumors. Six embryos were created using her eggs and the sperm of her partner 'J.'. Schedule 3 of the Human Fertilization and Embryology Act of 1990 allowed for the withdrawal of consent by either party prior to "use" (implantation in the uterus) of the embryos. Both applicant and "J." informed of the Act's consent provisions and signed consent forms stipulating the ability to withdraw consent. In 2002, the relationship between the applicant and "J." dissolved and "J." withdrew his consent to the applicant to use the embryos and requested the clinic destroy the embryos.

Applicant sought an injunction requiring consent be restored, arguing under articles 2, 8, and 14 of the Convention. She argued under article 2 that the embryo was entitled to a right to life. Under article 8 that the Act's allowance for the withdrawal of consent prior to implantation of the embryos under Schedule 3 would violate her right to respect for her private and family life because she would be deprived of any opportunity to produce genetically related children. She also argued that Schedule 3 of the Act would subject her to discrimination in violation of article 14 when evaluated in conjunction with article 8 because women who have children through intercourse are not subject to the father's withdrawal of consent post fertilization.

The trial judge dismissed the applicant's claim. The Court of Appeals also dismissed her claim, finding that the Act intended the continuing consent of both parties until the time of implantation. The House of Lords refused the applicant leave to appeal. The Chamber of the European Court of Human Rights found no violation of articles 2, 8 or 14. The Court's Grand Chamber granted review.

### Decision and Reasoning

The Grand Chamber held that the embryo was not entitled to a right to life under article 2. Because there is no European consensus as to when the right to life becomes active prior to birth, the Grand Chamber looked to domestic law. Under the law of the United Kingdom, there is no right to life for embryos, therefore no article 2 violation occurred.

Additionally, the Grand Chamber found that the Act did not violate the applicant's article 8 right to respect her private and family life. The Grand Chamber agreed with the Chamber in that article 8 encompasses the decision to become a parent and accepted the domestic court's finding that J.'s consent was limited to joint use of the embryo. Because there is no consensus in Europe as to when one may be unable to revoke consent prior to the implantation of the embryo, a wide margin of appreciation was given to domestic law. The Grand Chamber found that the Act struck a fair balance of competing interests and that applicant was aware of the Schedule 3 provision allowing for the withdrawal of consent prior to embryo implantation. The Grand Chamber found the Act's lack of exceptions to the Schedule 3 provision served a certainty function and was consistent with article 8. The Grand Chamber also found that because there was no violation of the applicant's article 8 rights, there was no violation of her article 14 rights in conjunction with article 8.

### Decision Excerpts

¶81. In conclusion, therefore, since the use of IVF treatment gives 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 touch on areas where there is no clear common ground amongst the member States, the Court considers that the margin of appreciation to be afforded to the respondent State must be a wide one. • Page 25.

90. As regards the balance struck between the conflicting Article 8 rights of the parties to the IVF treatment, the Grand Chamber, in common with every other court which has examined this case, has great sympathy for the applicant, who clearly desires a genetically related child above all else. However, given the above considerations, including the lack of any European consensus on this point (see paragraph 79 above), it does not consider that the applicant's right to respect for the decision to become a parent in the genetic sense should be accorded greater weight than J.'s right to respect for his decision not to have a genetically related child with her. Page 27.