Government Offices of Sweden

Ministry for Foreign Affairs
Director-General for Legal Affairs

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IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application nos. 12908/23 and 24544/23

Paic and Wernersson

v.

Sweden

OBSERVATIONS OF THE SWEDISH GOVERNMENT ON THE ADMISSIBILITY AND MERITS

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1. Introduction

1. These observations are submitted on behalf of the Swedish Government in response to letters of the European Court of Human Rights ('the Court') dated 22 and 29 September 2023, inviting the Government to submit a statement of facts and written observations on the admissibility and merits of the applications introduced by Mr Zdravco Paic ('Z.P.') and Mr Bengt Wernersson ('B.W.') respectively.

2. The Government notes the substantial similarities between the two applications, which were lodged by lawyers from the same non-profit foundation (*Centrum för rättvisa*), and that B.W. has invited the Court to join the applications under Rule 42 of the Rules of Court. The Government therefore submits these observations in respect of both applications.

3. The Government has in both cases been asked to deal with the following questions in its observations:

"1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

In particular, was lodging a domestic claim to seek compensation for alleged breaches of the Convention, either by lodging a complaint with the Chancellor of Justice or suing the State before the ordinary courts, an effective remedy within the meaning of this provision in respect of the applicant's complaint under Article 8 (see, inter alia, Ruminski v. Sweden (dec.), no. 10404/10, §§ 37-38, 21 May 2013)?

2. Has there been a violation of the applicant's right to respect for his private life, contrary to Article 8 of the Convention?"

4. The Government will limit itself accordingly.

2. The Government's statement of facts

2.1 The circumstances of the cases

5. At the outset, the Government notes that the facts relevant to the present cases date back several decades. The applicants have not initiated any proceedings

at the domestic level, in which the facts of the cases could have been established. Against that backdrop, any description of the facts involves a high degree of uncertainty.

6. The Government understands the circumstances as follows.

7. In 1985, Z.P. gave a sperm sample at Halmstad County Hospital in the context of a fertility evaluation. In January 1986, the sperm was used to inseminate a woman, and a child was born as a result thereof. Z.P. was not informed of this use of his sperm. When the child had become an adult, they searched for their biological father. However, there was no information in the hospital's records regarding the identity of the sperm donor. Through a DNA test result dated 18 November 2022, it was established that Z.P. was the biological father.

8. In 1990, B.W. gave a sperm sample at Halmstad County Hospital in the context of a fertility evaluation. In May 1990, the sperm was used to inseminate a woman, and a child was born as a result thereof. B.W. was not informed of this use of his sperm. When the child had become an adult, they searched for their biological father. Although there was information in the hospital's records on the identity of the sperm donor, the information turned out to be incorrect. Through a DNA test result dated 10 March 2023, it was established that B.W. was the biological father.

9. The applicants were informed on 18 November 2022 and 10 March 2023 that their sperm samples had been used to inseminate women at Halmstad County Hospital in 1986 and 1990 respectively. The Government is not aware of the applicants having contacted the health care services with any complaints, or having filed any claims against the responsible administration, i.e. Region Halland. Moreover, the applicants acknowledge that they have not complained before the general courts in Sweden. Nor have they initiated proceedings before the Chancellor of Justice. Instead, the applicants lodged their applications directly with the Court.

2.2 The insemination activities at Halmstad County Hospital and the investigations by Region Halland

10. The hospital at which the applicants gave sperm samples in 1985 and 1990 was a county hospital under the County Council of Halland. The County Council

of Halland was later renamed Region Halland, and Halmstad County Hospital became Halland Hospital Halmstad.[1]

11. On 23 November 2022 and 8 March 2023, the applicants' cases featured in two episodes of the Swedish investigative television programme *Uppdrag granskning*. Following the broadcast of the second episode, Region Halland announced on 8 March 2023 that it would appoint an investigation to examine the circumstances uncovered.[2] On 13 March 2023 the Region decided to initiate an internal investigation and on 17 April 2023 it appointed an external investigation. The internal and external investigations were completed on 4 September 2023 and 26 September 2023 respectively.[3]

12. The internal investigation took the form of a 'root cause analysis' (*händelseanalys*) aimed at describing shortcomings in the hospital's insemination activities during the period 1973–1996 and identifying measures to reduce the risk of similar events taking place again. The investigation report includes the following observations. Donor insemination was conducted to a limited extent at Halmstad County Hospital under the direction of a doctor with specialist expertise in gynaecology and obstetrics. The insemination activities started in the 1970s and continued until 1996, when the doctor retired.[4] Since 1996, no donor inseminations have been performed by the County Council of Halland or Region Halland. It has recently been uncovered, through external DNA-testing, that in some cases the information about the sperm donor noted in the specific records was incorrect. It appears that in five of these cases, sperm that was used for donor insemination had been given by men as part of their fertility evaluations at Halmstad County Hospital. The internal investigation shows failures in compliance with the legislation at the time, reflected *inter alia* by lacking and erroneous documentation. Furthermore, the available material suggests that the activities were carried out without follow-up and quality control from the care

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[1] A 'region' is a self-governing local authority governed by a regional assembly (*regionfullmäktige*). Constitutionally, however, Sweden is a unitary State with a single Government. In the area of health care, the State is responsible for overall health care policy, which includes legislation, state grants and the activities of government agencies. Regions are responsible for providing health care, and for ensuring that the care provided meets the requirements set by the legislation and is compatible with applicable ethical requirements.

[2] The chair of the Halland regional executive board stated in an interview of 8 March 2023 that Region Halland would appoint an external investigation (https://www.svt.se/nyheter/lokalt/halland/efter-spermiestolderna-region-halland-tillsatter-extern-utredning). Subsequently, Region Halland stated in a press release of 23 March 2023 that it had decided to initiate an internal and an external investigation (https://www.regionhalland.se/nyheter/atgarder-och-extern-granskning-av-tidigare-fertilitetsverksamhet/).

[3] See press releases of 5 September 2023 (https://www.regionhalland.se/pressmeddelanden/intern-utredning-visar-pa-stora-brister-i-inseminationsverksamhet/) and 26 September 2023 (https://www.regionhalland.se/pressmeddelanden/extern-utredning-av-inseminationsverksamheten-pekar-pa-brister-och-rekommenderar-atgarder/).

[4] The doctor has since passed away.

provider. Since the investigation, Region Halland has decided on a number of measures. For instance, information and conclusions of the investigation will be communicated to concerned groups and disseminated to care providers, a clear routine for handling requests for information will be established, and an action plan will be established if further shortcomings are uncovered. Furthermore, the incidents will be reported in accordance with Chapter 3, Section 5 of the Patient Safety Act (see para. 22 below).

13. The external investigation was conducted by the auditing firm PwC and focused on describing what happened during the time when insemination activities were carried out at Halland County Hospital, and why. The investigation report includes the following observations. There were shortcomings in the insemination activities carried out at the hospital, and these shortcomings were contrary to the legislation applicable at the time regarding *inter alia* the duty to keep specific records with information about the donor. The Region has failed in its internal controls of the insemination activities.

14. In a press release following the conclusion of the external investigation, Region Halland stated that the investigation report would be handed over to the hospital and would be part of the wider ongoing process of implementing measures and handling requests from individuals concerned. It noted that it now needed to consider the conclusions and recommendations, and make an overall assessment of how it will proceed to handle these issues, taking into account *inter alia* ethical and legal perspectives.[5]

2.3 Relevant domestic law

2.3.1 Donor insemination

15. The events of relevance to the present applications occurred between 1985 and 1990. At that time, insemination activities were regulated by the Insemination Act (*lagen 1984:1140 om insemination*), which entered into force on 1 March 1985 and was the first law regulating artificial insemination in Sweden. The Act was applicable both when a woman was inseminated with sperm from her husband or cohabiting partner, and when she was inseminated with sperm from a donor. The Insemination Act was repealed in 2006.

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[5] Press release of 26 September 2023 (see footnote 3 above).

16. As regards donor insemination, Section 3 of the Insemination Act provided that the doctor was to assess whether it was appropriate that insemination be performed. Furthermore, the doctor was to choose an appropriate sperm donor, and information regarding the donor was to be noted in a specific record (*särskild journal*) which was to be kept for at least 70 years.

17. In the legislative history of Section 3, the following is noted regarding the donor. The expression 'appropriate sperm donor' means a man without any detectable disease which, when his sperm is used for insemination, could jeopardise the health of the woman or the prospective child. Certain medical examinations must therefore be performed. The donor's appropriateness from a psychosocial point of view should also be taken into consideration. It is of great importance that, prior to engaging the donor, the doctor ensures that the donor is aware of the possible consequences of his participation. It is important that the donor understands that a child whom he has begotten has the right to know who he is, and that it cannot be excluded that the child may contact him several years after their birth. The donor must also be prepared to participate in blood testing, should such testing be required later, and perhaps also to be contacted if the child acquires a hereditary disease. Overall, this means that only a man with a sufficiently mature and insightful approach to donor insemination and its purpose should be considered as a donor (Govt Bill 1984/85:2, p. 25).

18. Section 4 of the Insemination Act provided that a child begotten through insemination under Section 3 had, if they had reached sufficient maturity, the right to access information about the sperm donor noted in the record at the hospital where the insemination had been performed.

19. On 27 March 1987, the National Board of Health and Welfare (*Socialstyrelsen*) issued regulations and general advice on insemination (*Socialstyrelsens föreskrifter och allmänna råd om inseminationer*, SOSFS 1987:6) concerning the application of the Insemination Act. The regulations and general advice were applicable until 1 January 2003.

20. The regulations provided *inter alia* that the doctor was to ascertain that the donor did not suffer from any detectable disease which could jeopardise the health of the woman or the prospective child, and that the donor was to undergo HIV tests. Furthermore, the doctor was to inform the donor that a child begotten by him had the right to know who the donor was, and that it might be necessary to contact him later for a blood test or other types of examinations. The donor's eye

colour, hair colour, weight and height were to be noted in his record. Moreover, the regulations provided that a sperm bank was to be kept in a locked space, and that sperm samples were to be coded in such a way that the donor's identity could not be revealed to unauthorised persons. The explanatory text of the regulations included statements corresponding to those made in the legislative history of the Insemination Act (para. 17 above). In addition, the following was noted. In connection with insemination, the donor's approach to contact with children who might potentially seek him later should be discussed. If the donor no longer wishes that his sperm be used, he should inform the hospital of this, and his sperm must not be used thereafter.

21. On 1 July 2006, the Insemination Act was repealed and the Genetic Integrity Act (*lagen 2006:351 om genetisk integritet*) entered into force. Since 1 April 2016, the Genetic Integrity Act contains a provision in Chapter 6, Section 1a, under which the donor must provide written consent to the use of his sperm for insemination. The Genetic Integrity Act is supplemented by regulations and general advice issued by the National Board of Health and Welfare (SOSFS 2009:30 and SOSFS 2009:32).

2.3.2 Reports under the Patient Safety Act

22. The Patient Safety Act (*patientsäkerhetslagen 2010:659*) aims to promote high patient safety within health care and comparable activities. Under Chapter 3, Section 5 of the Act, the health care provider must, with certain exceptions, report to the Health and Social Care Inspectorate (*Inspektionen för vård och omsorg, IVO*) any incidents that have caused or could have caused serious iatrogenic harm. The primary purpose of the duty to report is for the Health and Social Care Inspectorate to be informed of serious health care-related risks so that it can disseminate information regarding those risks to other health care providers, and also use the information in its supervising and nomination role. If necessary, the Health and Social Care Inspectorate can *inter alia* order health care providers to take corrective action or, as a last resort, prohibit them from conducting the activity in question.

2.3.3 Liability for damages of public authorities

23. Non-contractual liability for damages of public authorities can be established under the Tort Liability Act (*skadeståndslagen 1972:207*).

24. As the Court is aware, public authorities' liability for damages resulting from violations of the European Convention on Human Rights ('the Convention') had been established and confirmed in the case-law of the Supreme Court even before a specific provision in that respect was introduced in the Tort Liability Act (see, for example, the Supreme Court's cases NJA 2005 p. 462, NJA 2007 p. 295, NJA 2007 p. 584, NJA 2009 p. 463 and NJA 2009 N 70). Firstly, the Supreme Court had held that compensation for damages based on a violation of the Convention is, in the first instance, to be examined under the Tort Liability Act. When making that assessment, the provisions of the Act are to be interpreted in conformity with the Convention, which may imply that certain restrictions in legislative history, case-law or legal doctrine cannot be upheld (see, for example, NJA 2003 p. 217, NJA 2005 p. 462, NJA 2007 p. 295 and NJA 2007 p. 584). Furthermore, the Supreme Court confirmed that if Sweden has an obligation to compensate violations of the Convention through a right to damages, and the obligation cannot be fulfilled by applying domestic legislation even interpreting the law in conformity with the Convention, the obligation must be fulfilled by ordering damages without an explicit legislative basis (see, in particular, NJA 2009 N 70). Case NJA 2009 N 70 concerned actions of a state authority, but the Supreme Court's position on the Convention commitments is equally valid in relation to Convention violations committed by other parts of the public sector, such as municipalities and regions. Thus, up until the introduction of the specific provision mentioned below, the liability of the State, a municipality, or a region for damages could be established through a direct application of the Convention.

25. On 1 April 2018, a specific provision was introduced in Chapter 3, Section 4 of the Tort Liability Act, according to which the State or a municipality must provide compensation for damages resulting from violations of the Convention. The term 'municipality' in the Act also encompasses regions (see Chapter 3, Section 1, second paragraph).

26. The legislative history of Chapter 3, Section 4 of the Tort Liability Act, notes the following. The new provisions on compensation will be applicable to damages occurring after entry into force. This follows from general legal principles and does not need to be regulated in specific transitional provisions. In substance, this should not imply a restriction of the right to compensation for damages occurring before its entry into force. A right to compensation for damages resulting from a violation of the Convention already exists under the case-law of the Supreme Court (Govt Bill 2017/18:7, p. 52).

27. Finally, the Government would also like to mention that on 1 August 2022, a new provision was introduced in Chapter 3, Section 4 of the Tort Liability Act, whereby the State or a municipality must provide compensation for damages resulting from violations of individuals' fundamental rights under Chapter 2 of the Instrument of Government (*regeringsformen*). There is significant overlap between the rights in Chapter 2 of the Instrument of Government and those under the Convention.

2.3.4 Statutes of limitation regarding claims for damages

28. The general rules on limitation periods are set out in the Limitations Act (*preskriptionslagen 1981:130*). The provisions in the Limitations Act are applicable unless otherwise specifically provided. They can only be considered in civil court proceedings if they are invoked by the defendant.

29. Under Section 2 of the Limitations Act, claims become statute-barred ten years after they arise. The question of when a claim arises within the meaning of Section 2 is not regulated by any legislative provision but follows from legislative history and case-law. The general principle for non-contractual damage is that the claim arises when the harmful act occurs (see Govt Bill 1979/80:119, p. 89). Thus, the main rule is that the ten-year limitation period starts to run when the act giving rise to the damage occurs.

30. However, specific rules have been developed in case-law for certain situations. For example, in the case of continuous damages, claims become statute-barred gradually as the damage continues (see, for example, NJA 2018 p. 103, para. 11 and NJA 2018 p. 793, paras. 12–15). Moreover, as regards claims against the State based on violations of certain fundamental rights, the Supreme Court has found that the statutory limitation period does not start to run until the individual has had a real possibility to raise the claim (NJA 2018 s. 103, para. 17).

31. The case of NJA 2018 p. 103 concerned a claim for non-pecuniary damage based on the Instrument of Government, following the erroneous deregistration of the claimant's citizenship. The Supreme Court noted that in the circumstances of the case, it was clear that the limitation period could not start to run when the erroneous decision on deregistration had been taken. Furthermore, if the claim were to become statute-barred as the damage continued (cf. para. 30 above), the right to compensation would be illusory. The Supreme Court held that in most situations, it must be accepted that the institution of limitation periods leads to

these types of consequences. This is because the claimant's interests, the defendant's interests and the general interest all assert themselves simultaneously. However, when a claim is directed against the State based on a violation of a right so central and fundamental as citizenship, the reasons usually justifying limitation periods are not applicable with any particular weight. In such situations, the defendant's interests must be considered subordinate to the individual's interests in having a real possibility of invoking a claim before it is lost. Moreover, the general interests underlying the institute of statutory limitation, such as limiting evidence, likewise cannot be said to support limitation with any particular weight. The Supreme Court thus concluded that the limitation period did not start to run until the individual had had a real possibility to invoke his claim.

32. In legal doctrine, it has been stated that exceptions to the main principle that the limitation period starts to run from the act giving rise to the damage should be considered without a specific basis in legislation when significant reasons for a postponement are at hand, although the circumstances should be exceptional (see, for example, Stefan Lindskog, *Preskription: Om civilrättsliga förpliktelsers upphörande efter viss tid,* Juno 2021, p. 424 f. and Torkel Gregow, *Preskription och preklusion av fordringar*, Juno 2020, p. 53 f.).

33. As regards the limitation of claims based on Convention violations pursuant to Chapter 3, Section 4 of the Tort Liability Act, the legislative history of the provision notes the following. A claim for damages will become statute-barred under Section 2 of the Limitations Act. A limitation period of ten years from the point where the claim arises thus applies. In practice, this means that the limitation period normally begins when the damaging act occurs. If an act has been ongoing for a longer period of time, the limitation period begins to run when measures to prevent the damage could at the latest have been taken. Some damage is such that new and additional damage occurs continuously, and claims regarding such damage become statute-barred gradually as the damage continues. Additional questions as to limitation periods may arise in the application of the law, and should be handled taking into consideration how similar situations have been handled in the application of other provisions on tort liability (Govt Bill 2017/18:7, p. 64). Similar considerations were made in respect of claims for damages based on Chapter 2 of the Instrument of Government (see Govt Bill 2021/22:229, p. 50).

34. Finally, the Government notes that the Supreme Court recently decided to grant leave to appeal in a case regarding the issue of when the limitation period

starts to run when the claim is based on a violation of the Convention (see the Supreme Court's decision of 18 December 2023 in case T 2760-23).

3. On the admissibility

35. It is undisputed that the applicants have not exhausted any domestic remedies and that they have turned directly to the Court. The Government holds that there were effective remedies available to them in respect of their complaints under Article 8 of the Convention, which they were required to exhaust. The Government's position is therefore that the cases should be declared inadmissible for failure to exhaust domestic remedies under Article 35 § 1 of the Convention.

36. It is well-established that there is an accessible and effective remedy in Sweden that is capable of affording redress in respect of alleged violations of the Convention. Individuals have the possibility to file a lawsuit before a general court against the State, a municipality, or a region allegedly responsible for a violation of the Convention. The Court has therefore held that potential applicants may, as a general rule, be expected to lodge a domestic claim to seek compensation for alleged breaches of the Convention before applying to the Court (see *Eriksson v. Sweden*, no. 60437/08, § 52, 12 April 2012, and *Ruminski v. Sweden* (dec.), no. 10404/10, § 37, 21 May 2013).

37. The Government finds no reason to depart from the above general rule in the present cases, and holds that the applicants have the possibility to lodge a claim with a general court in Sweden. In their applications, the applicants argue that there were no effective remedies available to them that they were required to exhaust. The Government holds that the arguments raised by the applicants in that respect do not exempt them from the requirement to exhaust the aforementioned remedy.

38. Firstly, the applicants claim that damages could not be awarded at the domestic level because the alleged violations occurred before the Convention was incorporated into Swedish legislation. The Government recalls that the Convention entered into force in respect of Sweden in 1953, and that the Swedish State was therefore bound by the obligations under the Convention as of that point, notwithstanding the fact that the provisions in the Convention were incorporated into Swedish legislation later.

39. Furthermore, it follows from the case-law of the Supreme Court that compensation for damage resulting from a violation of the Convention which

cannot be based on the provisions in the Tort Liability Act can be awarded without a specific legislative basis, if it is necessary to fulfil Sweden's obligations under the Convention (see para. 24 above). In these cases, the Supreme Court has ordered damages through a direct application of the Convention as an instrument of international law, referring *inter alia* to Sweden's obligations under Article 13 of the Convention.

40. It should also be noted that when introducing a specific provision for damages based on Convention violations in the Tort Liability Act, the legislator did not find it necessary to enact transitional provisions, and that this was not considered to entail a restriction in substance of the right to damages (see para. 26 above).

41. The Government therefore holds that the circumstance that the relevant acts occurred before the Convention was incorporated into Swedish law, cannot lead to the conclusion that the applicants lacked effective and available remedies under Article 35 § 1 of the Convention.

42. Secondly, the applicants submit that a possible claim for damages has become statute-barred under Section 2 of the Limitations Act. They state that there is no established domestic case-law permitting an exception to the ten-year limitation period in view of a claimant's unawareness of the existence of the claim.

43. In that regard, the Government notes, initially, that in civil court proceedings, the question of whether a claim is statute-barred must be raised by the defendant and cannot be examined by a court *ex officio*. Therefore, it is not evident that the issue of statute of limitations is relevant to the question of exhaustion of domestic remedies.

44. In any event, the Government holds that the applicants' prospects of having a claim examined in substance by a general court are sufficient to conclude that they were required to exhaust that remedy, even if the issue of statute of limitations were to be raised by the defendant.

45. The applicants submit that the acts which they allege gave rise to a violation of Article 8 of the Convention, i.e. the use of the their sperm, occurred in 1986 and 1990 but that they were not informed of those acts until 2022 and 2023.

46. As a general rule, the ten-year limitation period in Section 2 of the Limitations Act starts to run when the damaging act is performed. However, as outlined above, this general rule on when a claim is considered to arise is not set out in a specific provision but follows from legislative history and case-law.

47. In addition, the Supreme Court has in its case-law allowed exceptions for certain situations, including when a claim is raised against the State based on violations of certain fundamental rights, whereby the statutory limitation period does not start to run until the individual has had a real possibility to raise his or her claim (see para. 31 above). The Government notes that the exception is justified by the fact that in such situations, the reasons and the general interests underlying the institution of statutory limitation do not apply with any particular weight, and the defendant's interests must be seen as subordinate to the individual's interests in having a real possibility to assert his or her claim before it is lost. The interests of the claimant can thus be considered to weigh heavier in such cases than they usually do.

48. Furthermore, as regards damages based on the Convention or the Instrument of Government under Chapter 3, Section 4 of the Tort Liability Act, the legislator has considered that a specific provision on limitation periods should not be enacted for this type of claim, and that it is more appropriate that such questions be dealt with in case-law (see para. 33 above). It has, in that context, been acknowledged that further issues as regards statutory limitation can arise in practice, and that these will be handled taking into account how corresponding situations have been handled in the application of other provisions on damages. In these circumstances, it may be said that the legislator has given the courts an explicit responsibility to appropriately develop what should apply as regards limitation periods for damages based on violations of the Convention.

49. Moreover, the Government notes that domestic authorities must interpret Swedish law in light of the Convention and the Court's case-law. The Supreme Court has in several cases underlined that when examining a claim for damages based on Convention violations, Swedish law must be interpreted in conformity with the Convention, which may imply that certain restrictions in legislative history, case-law or doctrine cannot be upheld (see para. 24, cf. para. 34 above).

50. Having regard to the above, and to the circumstances of the applicants' cases, the Government holds that the applicants cannot be exempted from the requirement under Article 35 § 1 of the Convention to exhaust domestic remedies

with reference to the provisions on statutory limitation. The fact that the issue of limitation periods regarding claims based on Convention violations has not yet been addressed in the case-law of the Supreme Court should not lead to the conclusion that the applicants lacked effective remedies. On the contrary, the developments in Swedish case-law indicate that the Limitations Act could be interpreted so as to avoid results contrary to the Convention. Thus, the applicants have sufficient opportunities to complain before the general courts, which could reach the conclusion that their claims are not statute-barred.

51. In this connection, the Government notes that under the Court's case-law, mere doubts on the part of the applicants regarding the effectiveness of a particular remedy which is not obviously futile will not absolve them from the obligation to try them (see, for example, *Akdivar and Others v. Turkey*, no. 21893/93, § 71, 16 September 1996; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others v. Serbia (preliminary objection)* [GC], no. 17153/11 and others, § 74, 25 March 2014).

52. In summary, the applicants have not shown any reasons to depart from the general rule mentioned earlier whereby individuals in Sweden are required to lodge a domestic claim for compensation before applying to the Court (para. 36). The Government holds that lodging a domestic claim to seek compensation for alleged breaches of the Convention, by suing the State or the Region before a general court, was an effective and available remedy within the meaning of Article 35 § 1 of the Convention in respect of the applicants' complaints under Article 8. The Government's position is therefore that the applications should be declared inadmissible for failure to exhaust domestic remedies under Article 35 § 1 of the Convention.

4. On the merits

53. The applicants complain that the use of their sperm for insemination without their knowledge or consent constituted an interference with their rights under Article 8 of the Convention, and that the interference was not in accordance with the law.

54. The Government notes that 'private life' within the meaning of Article 8 of the Convention is a broad term, encompassing *inter alia* the physical and psychological integrity of a person, as well as the right to personal autonomy (*Pretty v. the United Kingdom*, no. 2346/02, § 61, 29 April 2002; *S. and Marper v. the United*

Kingdom [GC], no. 30562/04 and 30566/04, § 66, 4 December 2008; and *Parrillo v. Italy* [GC], no. 4647/11, § 153, 27 August 2015). The Court has acknowledged that private life incorporates the right to respect for both the decisions to become and not to become a parent (*Evans v. the United Kingdom* [GC], no. 6339/05, §§ 71 and 72, 10 April 2007).

55. The Government furthermore notes that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, there may, in addition to this primarily negative undertaking, be positive obligations inherent in an effective respect for private and family life, involving the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (*Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, 4 December 2007).

56. In the present cases, the Government notes that the acts of which the applicants complain occurred a considerable number of years ago, namely in 1986 and 1990. As noted initially, there are inevitably significant uncertainties as to the exact circumstances surrounding those acts, and the applicants have not initiated any domestic proceedings in which the circumstances could have been examined.

57. Nonetheless, the Government notes that at the time when the applicants' sperm was used for insemination, insemination was regulated by the Insemination Act. In B.W.'s case, the Act was supplemented by the National Board of Health and Welfare's regulations and general advice on insemination. The legislation applicable at the time provided that the doctor was to choose an appropriate sperm donor, and that information about the donor was to be noted in a specific record which was to be kept for at least 70 years.

58. The Government notes that at the time, there was no requirement to obtain the donor's written consent prior to insemination. However, there were statements in the legislative history of the Insemination Act and, in B.W.'s case, also in the supplementary regulations and general advice, regarding the information to be given to the donor and the tests to be performed.

59. The Government furthermore notes that following the disclosure of the relevant facts in the Swedish media, Region Halland appointed both an internal and an external investigation, in order to shed light on the circumstances surrounding the insemination activities at Halmstad County Hospital. Region Halland adopted a number of measures as a result of the shortcomings disclosed,

and has announced that it will report the incidents under the Patient Safety Act. There are also indications that the Region intends to take additional measures.

60. Moreover, the Government notes that under the legislation currently in force, a donor is required to submit written consent to insemination and can withdraw his consent at any time.

61. As to the question of whether there has been a violation of the applicants' rights under Article 8 of the Convention, the Government leaves it to the Court to decide, should the Court conclude that the applications are admissible.

5. Conclusion

62. In conclusion, the position of the Government regarding the **admissibility** is that the cases should be declared inadmissible for failure to exhaust domestic remedies under Article 35 § 1 of the Convention.

63. As regards the **merits**, the Government leaves it to the Court to decide whether there has been a violation of the Convention.