

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the four-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

58.

I. INTRODUCTION

1. Mr Bengt Wernersson (the "Applicant") is a Swedish citizen. He was born in 1958 and lives in Halmstad, Sweden. His case turns on two legal issues.

2. VIOLATION. Article 8 of the Convention protects personal autonomy and physical integrity. In 1990, the Applicant left sperm at a public hospital for a fertility evaluation. Without his knowledge or consent, the hospital later used his sperm to inseminate a woman. Has Sweden violated the Applicant's rights under Article 8?

3. REMEDIES. Under Article 35(1) of the Convention, only effective remedies must be exhausted. The public hospital's theft of the Applicant's sperm was first uncovered in 2023 when his biological daughter found him with the use of DNA research. The Applicant was not aware that his rights had been violated until then. In any event, there has never been any remedy by which any of the victims of the sperm theft could obtain redress. Is the Applicant, therefore, entitled to bring his case directly before the Court?

4. In the following subsections, the Applicant will set out the facts of the case, his complaints and compliance with the admissibility criteria in more detail.

II. THE APPLICANT UNDERGOES A FERTILITY EVALUATION

5. In 1990, the Applicant and his wife sought out medical assistance at Halland Hospital in Halmstad, as the couple experienced difficulties conceiving a child. As part of the hospital's fertility evaluation, a sperm sample from the Applicant was tested and he was informed by the hospital that it did not have any defects. The couple became parents of a daughter in August 1991.

III. MULTIPLE CASES OF SPERM THEFT ARE UNCOVERED BY MISSION INVESTIGATE

6. The television programme Mission Investigate (sv. Uppdrag granskning) is Sweden's premier programme for investigative journalism and airs on Sweden's national public television channel SVT.

7. In late 2022, Mission Investigate uncovered that certain Swedish hospitals had failed to comply with the statutory requirement to store information about the identity of donors whose sperm had been used for insemination. Halland Hospital was one of the hospitals.

8. The journalists also revealed that sperm samples of men who had turned to Halland Hospital to undergo fertility evaluation had been repeatedly used by the hospital in its insemination procedures during the eighties and nineties. In all cases, insemination had taken place without informing the men and without obtaining their consent.

9. After the revelations on Mission Investigate, the sperm theft at Halland Hospital became a headline scandal in national media and several people who had been affected came forward to share their story (see some examples in bundle pp. 48–51).

IV. ██████████ WATCHES MISSION INVESTIGATE

10. ██████████ watched the sperm donor episode of Mission Investigate with her mother and two siblings. ██████████ was born in January 1991 and was conceived at Halland Hospital with the use of what her mother reasonably expected to be legally donated sperm.

11. Under Swedish law, a person who has been conceived with the help of a donor has the right to receive information about the identity of their donor from the hospital where the treatment took place. Upon watching the Mission Investigate

Statement of the facts (continued)

59. episode, ██████████ decided to request information about her donor from Halland Hospital, as she started to question whether her mother's insemination had been performed in accordance with the statutory requirements. The hospital provided information about the identity of her donor shortly thereafter.

V. ██████████ RESEARCHES HER GENETIC HERITAGE

12. To confirm the genetic bond between herself and the donor, ██████████ requested a DNA test. The test results revealed that there was no genetic bond between her and the supposed sperm donor according to the hospital's records.

13. With the help of journalists at Mission Investigate and a DNA genealogist, ██████████ was able to identify the family of the real sperm donor. When speaking to the Applicant, who was a member of that family, the DNA genealogist learned that while the Applicant had never donated sperm at Halland Hospital, he had undergone a fertility evaluation at the hospital in 1990.

VI. THE APPLICANT'S PATERNITY IS CONFIRMED

14. Following the initial contact between the Applicant and ██████████ he underwent a DNA test to find out whether there was a genetic bond between them. On 10 March 2023, after receiving the results of the DNA test (see bundle p. 52), the Applicant was conclusively made aware of the fact that his sperm sample from the fertility evaluation at Halland Hospital in 1990 had been used for the insemination of ██████████ mother in May 1990 without his knowledge or consent, and that the insemination had resulted in the birth of ██████████ his biological daughter.

15. In a second episode of Mission Investigate in March 2023, the Applicant was interviewed, and he articulated both his upset over the violation of his autonomy and integrity and his regret for being deprived of over 30 years with his biological child.

VII. THE APPLICANT TURNS TO THE STRASBOURG COURT

16. The Applicant submits that the use of his sperm without his knowledge or consent constitutes a violation of his rights under Article 8 of the Convention. As the events took place before the entry into force of the act incorporating the Convention under Swedish law, and because the Applicant's claim had become time-barred before he had an opportunity to assert his rights before the domestic courts, there are no effective remedies available to him in Sweden. The Applicant therefore turns directly to the Strasbourg Court and invites the Court to find that Sweden has violated his rights under Article 8 of the Convention.

17. Lastly, the Applicant wishes to draw the Court's attention to the fact that prior to his complaint, another victim of the sperm theft at Halland Hospital submitted a complaint before the Court on 17 March 2023 (Paic v. Sweden, no. 12908/23). The undersigned representatives of the Applicant also represent the applicant in that case. The facts of the present case and Paic's case are substantially the same. The Applicant, therefore, respectfully invites the Court to order the joinder of the two applications under Rule 42 of the Rules of Court.

Statement of the facts (continued)

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F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

<p>61. Article invoked</p> <p>Article 8</p>	<p>Explanation</p> <p>18. This case pivots around central issues of human rights and biomedicine and in particular the right to control the use of one's genetic material. The violation occurred in 1990, but the relevance of the ethical and legal challenges it presents will only increase in step with the rapid advances in medicine and biology. The Applicant is neither the first nor the last person to have his genetic material used for illegitimate purposes by public hospitals or other state agents. His case gives the Court an opportunity to emphasise the importance of respect for personal autonomy and physical integrity in the biomedical field.</p> <p>VIII. SWEDEN HAS INTERFERED WITH ARTICLE 8 OF THE CONVENTION</p> <p>19. The Applicant submits that the use of his sperm for insemination without his knowledge or consent constitutes an interference with his rights under Article 8 of the Convention. The Court has long held that Article 8 protects the physical integrity of a person (see <i>X and Y v. the Netherlands</i>, 26 March 1985, § 22, Series A no. 91), that “the notion of personal autonomy is an important principle underlying the interpretation of [the Article 8] guarantees” (see <i>Pretty v. the United Kingdom</i>, no. 2346/02, § 61, ECHR 2002-III); and that Article 8 “incorporates the right to respect for both the decisions to become and not to become a parent” (see <i>Evans v. the United Kingdom [GC]</i>, no. 6339/05, § 71, ECHR 2007-I). The use of the Applicant's sperm for insemination without his knowledge or consent disrespects his physical integrity, disregards his personal autonomy and deprives him of the right to decide whether or not to become a parent.</p> <p>IX. THE INTERFERENCE WAS NOT IN ACCORDANCE WITH LAW</p> <p>20. The Applicant submits that the interference with his rights under Article 8 of the Convention was not in accordance with law. The relevant legal provision in force at that time – Section 3(3) of the Act on Insemination (sv. Lag om insemination, 1984:1140) – stated that the doctor chooses a suitable sperm donor. But the Applicant never donated his sperm to Halland Hospital. This is evident for two reasons.</p> <p>21. First, the Applicant provided a sperm sample in the context of a fertility evaluation. This fertility evaluation was the sole purpose of his and his wife's interaction with Halland Hospital. The Applicant did not provide his sperm in the context of insemination and was not a sperm donor in the meaning of Section 3(3) of the Act on Insemination.</p> <p>22. Second, the Applicant did not undergo the legally required procedures for sperm donors. Under the applicable regulations of the National Board of Health and Welfare (sv. Socialstyrelsen), the donor had to be well-informed about the implications of his sperm donation and it had to be shown that the donor possessed a mature and discerning attitude towards the insemination and its purpose (see bundle pp. 9–10). The donor also had to consent to the use of his sperm and the sperm had to be destroyed by the hospital if the donor requested that the sperm should no longer be used (see bundle p. 11). None of these procedures were followed in the Applicant's case. He was not, therefore, a sperm donor in the meaning of Section 3(3) of the Act on Insemination.</p> <p>23. For these reasons, the interference suffered by the Applicant was not in accordance with law. That being so, the Court is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued.</p> <p>24. The Applicant accordingly invites the Court to find that Sweden has violated his rights under Article 8 of the Convention and to afford him just satisfaction under Article 41 of the Convention.</p>
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G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the four-month time-limit.

<p>63. Complaint</p> <p>Article 8</p>	<p>Information about remedies used and the date of the final decision</p> <p>25. The Applicant submits that he is entitled to bring his case directly before the Court, without seizing the domestic courts first for three reasons.</p> <p>26. First, the Applicant's rights were violated in 1990. At that time, he could not have raised his complaint through any remedy, not even in substance. It did not exist an effective remedy whereby the Applicant could have sought to assert his rights under Article 8 of the Convention until the right to damages for Convention violations was established by the Supreme Court in 2005 (see bundle pp. 34–47; see also <i>Andersson and Others v. Sweden</i>, no. 29878/09, § 61, 25 September 2014). By then, the right to damages had, however, become time-barred. Under Swedish law, a ten-year limitation period started to run in May 1990 when the Applicant's sperm was used for insemination without his knowledge or consent and his claim for damages arose (see Section 2 of the Swedish Act on Limitation [sv. <i>Preskriptionslag</i>, 1981:130]).</p> <p>27. Second, to assert his rights with a claim for damages, the Applicant was required to interrupt the limitation period before May 2000 – 23 years before he became aware that his rights under Article 8 of the Convention had been violated. Consequently, the time-bar renders the right to damages ineffective in the Applicant's case (see <i>mutatis mutandis Loste v. France</i>, no. 59227/12, § 77s, 3 November 2022). There is no established domestic case-law permitting an exception from the ten-year limitation period with regard to a claimant's unawareness of the existence of the claim.</p> <p>28. Third, even if the claim would not be considered time-barred, damages could likely not be awarded for violations that occurred before the Convention was incorporated into Swedish law on 1 January 1995. The Supreme Court's case-law on the right to damages is based on the assumption that the Convention constitutes Swedish law. To date, there is no case in which compensation has been awarded for a Convention violation that occurred before the incorporation.</p> <p>29. For these reasons, the Applicant submits that there are no effective remedies whereby he could obtain redress now, and there were no effective remedies available even before the claim became time-barred. The four-month time-limit thus started to run on 10 March 2023 when the Applicant became aware that his sperm had been used in 1990 to conceive a child by way of insemination without his knowledge or consent (see bundle p. 52; see also <i>inter alia Varnava and Others v. Turkey</i> [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009, where the Court held that the time-limit, where there are no available and effective domestic remedies, may start on the date of the applicant's knowledge of the violation). The Applicant lodged the present complaint on 13 June 2023, and has thus complied with the four-month time-limit.</p>
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64. Is or was there an appeal or remedy available to you which you have not used?

Yes

No

65. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

30. For the reasons explained in section G above, the Applicant has not sought damages for the violation of his rights under Article 8 of the Convention. As set out above, he was not required to do so under Article 35 § 1 of the Convention. A claim for damages is an ineffective remedy due to the absence of law or case-law demonstrating that compensation for the violation could be awarded notwithstanding that (i) the ten-year limitation period expired before the Applicant became aware of the violation and could avail himself of the remedy, and (ii) the violation occurred before the incorporation of the Convention into Swedish law.

H. Information concerning other international proceedings (if any)

66. Have you raised any of these complaints in another procedure of international investigation or settlement?

Yes

No

67. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given)

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68. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

Yes

No

69. If you answered Yes above, please write the relevant application number(s) in the box below


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I. List of accompanying documents

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- arrange the documents in order by date and by set of proceedings;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

70. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found

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| 1. | Regulation on inseminations, SOSFS 1987:6, National Board of Health and Welfare, 27.07.1987 | p. | 1 |
| 2. | Judgment of the Supreme Court in case T 72-04, NJA 2005 p. 462, 09.06.2005 | p. | 34 |
| 3. | News article from Expressen, "Sjukvården stal spermier – minst fem barn föddes" [The health care system stole sperm – at least five children were born], 08.03.2023 | p. | 48 |
| 4. | News article from SVT, "Avslöjar: Läkare stal spermier från barnlängtande män – fem barn föddes" [Reveals: Doctor stole sperm from men longing for children – five children were born], 09.03.23 | p. | 49 |
| 5. | Result of DNA test confirming the genetic bond between the Applicant and  10.03.2023 | p. | 52 |
| 6. | | p. | |
| 7. | | p. | |
| 8. | | p. | |
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