



27 February 2024

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Applications nos. 12908/23 and 24544/23

PAIC AND WERNERSSON

("Applicants")

v.

SWEDEN

("Government")

THE APPLICANTS' OBSERVATIONS
ON THE FACTS

I. INTRODUCTION

1. The President of the Section has invited the Applicants to carefully check the Government's version of the facts and to present, in a separate document, any challenges to the Government's version by 28 February 2024. Accordingly, they respectfully submit the following observations on the facts.
 - A. **There is no uncertainty about the relevant facts**
2. The Government opens its statement of facts with the assertion that there is a "high degree of uncertainty" regarding the facts and that "the applicants have not initiated any proceedings at the domestic level in which the facts of the case could have been established" (see Observations of the Swedish Government on the admissibility and merits of 8 January 2024, "Government's observations", para 5). The thrust of this opening seems to be the implication that the Applicants' decision to turn directly to the Court has thwarted one of the pillars of the rule of exhaustion: that the Court should have the benefit of the views of the national courts. That is not the case, however. There is in fact no uncertainty about the relevant facts. Also, the available remedies were ineffective (see the Applicants' observations on the admissibility and merits of 27 February 2024, "Applicants' observations", paras 9–26) and would have yielded neither adequate relief for the Applicants nor any benefit for the establishment of the relevant facts. The Government's opening is therefore misleading.
3. The relevant facts of this case are that the Applicants' sperm was used for insemination at a public hospital without their knowledge or consent and that children were born as a result of the inseminations. This is well documented and established by the domestic investigations carried out by Region Halland (see Halland Hospital's Health Care Irregularity Report, *Lex Maria-anmälan*, p. 1, enclosure 1; Region Halland: Examination of inseminations carried out

at Halmstad hospital [PwC], *Region Halland: Granskning av inseminationsverksamhet på Länssjukhuset i Halmstad* [PwC], p. 19, [enclosure 2](#); Region Halland: Root Cause Analysis, *Region Halland: Händelseanalys*, p. 11, [enclosure 3](#); and Mission Investigate, [Uppdrag Granskning](#), 8 March 2023). The Government does not dispute these facts, with one possible exception: the Applicants' lack of consent.

B. The Government should clarify if it disputes the Applicants' lack of consent

4. It follows from the Government's statement of facts that the hospital used the Applicants' sperm without their *knowledge* (see Government's observations, paras 7–8). The Applicants presume that the Government does not dispute that the Applicants' sperm was used for inseminations without their *consent*. Clearly, it is not possible to consent to a procedure without being aware of it. If the Government does in fact dispute the lack of consent, it ought to clarify its position accordingly.

C. The Government's statements on the domestic proceedings and complaints are incomplete and partially irrelevant

5. The Government states that it is not aware of the Applicants having contacted the health care services with any complaints (see Government's observations, para 9). The Applicants therefore wish to clarify that Zdravko Paic submitted a complaint to the Health and Social Care Inspectorate (*Inspektionen för vård och omsorg*, IVO, "the Inspectorate") following the disclosure of the unlawful use of his sperm (see Zdravko Paic's complaint to the Health and Social Care Inspectorate of 6 January 2023, [enclosure 4](#)). The Inspectorate did, however, not take any action in response. The reason was that the events underlying the complaint had occurred more than two years prior to the complaint. The complaint was therefore considered to be out of time (see the Health and Social Care Inspectorate's decision 20 January 2023, [enclosure 5](#)). Having spoken with Zdravko Paic's daughter, Bengt Wernersson knew that

Zdravko Paic's complaint had been rejected for being out of time. Consequently, he saw no reason to submit his own complaint with the Inspectorate, given the similarities of the two cases. When Bengt Wernersson was made aware of the violation, the hospital had also initiated both an internal and an external investigation of the events. In this context, both Applicants were interviewed by the hospital, and voiced their complaints.

6. The Government further notes that the Applicants have not initiated any proceedings at the domestic level, such as lodging a complaint with the general courts or with the Chancellor of Justice (see Government's observations, para 9). The Applicants acknowledge that they have not complained before the general courts (which did not constitute an effective remedy, see Applicants' observations, paras 9–26). Proceedings before the Chancellor of Justice are irrelevant in this context, because the Chancellor of Justice could not have dealt with the Applicants' cases. The Chancellor of Justice only deals with complaints against the Government and is precluded from dealing with violations caused by a region – such as Region Halland – or a municipality (see Section 2 of the Ordinance with Instruction for the Chancellor of Justice, *förordning med instruktion för Justitiekanslern*; 1975:1345).

D. The Government's description of the official investigations is incomplete and misleading

7. The Applicants wish to draw the Court's attention to a number of omitted facts in the Government's description of the internal and external investigations that were initiated by Region Halland, following the disclosures of the Swedish investigative television programme *Uppdrag granskning* (see Government's observations, paras 11–14).
8. First, both investigations conclude more than mere "shortcomings in the insemination activities [...] contrary to the legislation applicable at the time" to which the Government refers in its statement of facts (see Government's

observations, paras 12–13). Both investigations clearly established that inseminations were carried out with sperm that was not intended for insemination and without the consent of the men whose sperm was used (see Region Halland: Examination of inseminations carried out at Halmstad hospital [PwC], p. 19, enclosure 2 and Region Halland: Root Cause Analysis, p. 11, enclosure 3). The Government’s description is therefore an understatement of what the official investigations show with regard to the unlawful use of the Applicants’ sperm.

9. Second, the Government’s account of the actions taken by the Region following the internal and external investigations is not up to date. The Government refers to the Region’s claim that it would report the incidents to the Inspectorate in accordance with Chapter 3, Section 5 of the Patient Safety Act (*patientsäkerhetslagen*; 2010:659) (see Government’s observations, para 12). The Applicants wish to update the Court in this regard: the Region did indeed report the matter to the Inspectorate on 14 September 2023. In its report, the Region conceded that sperm samples from fertility evaluations “incorrectly” had been used for insemination (see Halland Hospital’s Health Care Irregularity Report, *Lex Maria-anmälan*, p. 1, enclosure 1). The Inspectorate then concluded that the Region had sufficiently investigated the events and taken adequate measures to prevent similar breaches in the future (see the Health and Social Care Inspectorate’s decision of 18 December 2023, enclosure 6). In this context, it is relevant to note that Halland Hospital has not performed any inseminations since 1996.
10. In conclusion, several official investigations have examined the events that took place and confirmed the facts relevant to this case, including the core of the matter: the unlawful use of the Applicants’ sperm. The Region itself has also conceded as much. This should be reflected in the statement of facts.



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