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

FIRST SECTION

DECISION

Applications nos. 12908/23 and 24544/23
Zdravko PAIC against Sweden
and Bengt WERNERSSON against Sweden

The European Court of Human Rights (First Section), sitting on 20 May 2025 as a Chamber composed of:

Ivana Jelić*, President*,
Erik Wennerström,
Alena Poláčková,
Frédéric Krenc,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the applications nos. 12908/23 and 24544/23 lodged on 17 March 2023 and 13 June 2023 respectively,

Having regard to the observations submitted by the Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

INTRODUCTION

1. The applicants are two men who gave sperm samples at a public hospital in the context of fertility evaluations. Their sperm was subsequently used to inseminate two women and children were conceived as a result thereof. The applicants complained that the use of their sperm, without their knowledge or consent, constituted a violation of their rights under Article 8 of the Convention.

THE FACTS

2. The applicant in the first case, Mr Zdravko Paic (hereinafter "the first applicant"), is a Swedish national who was born in 1949 and lives in

Halmstad. The applicant in the second case, Mr Bengt Wernersson (hereinafter "the second applicant"), is a Swedish national who was born in 1958 and lives in Halmstad. Both applicants were represented by Mr F. Bergman Evans and Mr A. Ottosson, lawyers practising in Stockholm.

3. The Swedish Government ("the Government") were represented by their Agent, [redacted], of the Ministry for Foreign Affairs.

4. The facts of the case may be summarised as follows.

A. Facts relating to the first applicant (application no. 12908/23)

5. In 1985 the first applicant and his then wife sought medical assistance at Halmstad County Hospital (*Länssjukhuset i Halmstad*), subsequently renamed Halland Hospital Halmstad (*Hallands sjukhus Halmstad* – hereinafter "the hospital"), which was a public hospital under the County Council of Halland (*Landstinget Halland*), subsequently renamed Region Halland (*Region Halland* – hereinafter "the Region"), because the couple had experienced difficulties conceiving a child. In the context of a fertility evaluation the first applicant gave a sperm sample. In 1986 the first applicant's sperm was used to inseminate a woman and a child was born as a result thereof. The first applicant was not informed of this use of his sperm and, according to the applicant, he had not consented to it.

6. When the child had become an adult, she contacted the hospital, requesting information about the identity of her donor. However, there was no information in the hospital's records regarding his identity. With the help of investigative journalists, she began investigating her genetic background in an attempt to find her donor. This eventually led her to the first applicant. On 18 November 2022 the results of a DNA test established that the first applicant was her biological father.

7. On 6 January 2023 the first applicant submitted a complaint to the Health and Social Care Inspectorate (*Inspektionen för vård och omsorg*) regarding the use of his sperm. On 20 January 2023 the Health and Social Care Inspectorate decided not to investigate his complaint since the events in question had occurred more than two years prior to the complaint and the inspectorate, as a rule, did not investigate such an event.

B. Facts relating to the second applicant (application no. 24544/23)

8. In 1990 the second applicant and his wife sought medical assistance at the hospital because the couple had experienced difficulties in conceiving a child. In the context of a fertility evaluation the second applicant gave a sperm sample. The same year, the second applicant's sperm was used to inseminate a woman and a child was born as a result thereof. The second applicant was not informed of this use of his sperm and, according to the applicant, he had not consented to it.

9. When the child had become an adult, she contacted the hospital requesting information about the identity of her donor and was provided with information about the identity of the sperm donor from the hospital's records. However, a subsequent DNA test established that this information was incorrect. With the help of investigative journalists and a DNA genealogist, she eventually identified the second applicant. On 10 March 2023 the results of a DNA test established that the second applicant was her biological father.

C. Investigations conducted by the Region

10. On 23 November 2022 and 8 March 2023 the applicants' cases were featured in two episodes of a Swedish investigative television programme. Subsequently, the Region decided to initiate an internal and an external investigation to examine the circumstances uncovered.

11. The internal investigation aimed at describing shortcomings in the hospital's insemination activities during the period 1973-96 and identifying measures to reduce the risk of similar events taking place again. The report from the investigation was completed on 4 September 2023 and included, *inter alia*, the following observations. Donor inseminations had been conducted to a limited extent at the hospital under the direction of a doctor with specialist expertise in gynaecology until 1996, when the doctor retired. Since 1996, no donor inseminations had been performed by the Region. Several cases had recently been uncovered, through external DNA testing, where the information about the sperm donor noted in the hospital's records was incorrect. In some other cases the information was lacking. In five known cases, sperm intended for analysis in fertility evaluations had been wrongly used for donor insemination. On account of poor record-keeping, lack of documented follow-up and the fact that it was not possible to interview several employees involved in the activities, it was difficult to obtain a completely clear and objective picture of what had caused the irregularities that had come to light. However, the investigation showed failures in compliance with the legislation at the time, reflected by, *inter alia*, lacking and erroneous documentation and inadequate handling of sperm samples submitted for fertility testing. Furthermore, the available material indicated that the activities had been carried out without follow-up and quality control from the healthcare provider.

12. The external investigation was conducted by an auditing firm. The report from this investigation was completed on 26 September 2023 and included, *inter alia*, the following observations. In five identified cases, sperm which had been given by men in the context of fertility evaluations had been wrongly used for donor inseminations, without those men's consent. One doctor had been responsible for the insemination activities at the hospital during the relevant time. He was deceased by the time of the investigation. The investigation indicated that the events that had led to several men's sperm

being wrongly used for insemination were not only the result of the actions of that doctor. There had been serious shortcomings in the insemination activities carried out at the hospital and these shortcomings had been contrary to the legislation applicable at the time regarding, *inter alia*, the duty to keep specific records with information about the donor. The Region had failed in the use of its internal controls of the insemination activities. One of the consequences of these deficiencies was that it was difficult to, in retrospect, provide a picture of the causes and the extent of the incorrect handling of sperm.

13. Following the report from the internal investigation, the Region, on 14 September 2023, drew up a report, pursuant to the Patient Safety Act (*patientsäkerhetslagen*, 2010:659), addressed to the Health and Social Care Inspectorate. In this report the Region stated, *inter alia*, that sperm samples from fertility evaluations had incorrectly been used for donor inseminations. The Health and Social Care Inspectorate subsequently decided, on 18 December 2023, not to take any further action, noting that the Region had sufficiently investigated the events and taken adequate measures to prevent similar events occurring in the future.

RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

A. The status of the Convention in Swedish law

14. Sweden ratified the Convention on 4 February 1952 and thus became bound by it when it entered into force on 3 September 1953. The Convention was subsequently incorporated into Swedish law on 1 January 1995 by the European Convention for the Protection of Human Rights and Fundamental Freedoms Act (*lagen om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna*, 1994:1219). The Act provides that the Convention is to be applied as law in Sweden. At the same time, a provision was introduced in the Instrument of Government (*regeringsformen*, 1974:152*,* which forms part of the Swedish constitution), to the effect that no law or other provision may be adopted in contravention of Sweden's undertakings under the Convention.

B. Compensation for violations of the Convention

1. Civil liability of the authorities

15. The general provisions regarding public authorities' liability for damages are set out in Chapter 3 of the Tort Liability Act (*skadeståndslagen*, 1972:207).

16. Pursuant to section 2 of that chapter, the State or a municipality must provide compensation for certain damage caused by fault or negligence in the

exercise of public authority. Moreover, from 1 April 2018, there is a specific provision in Chapter 3, section 4 of the Tort Liability Act, pursuant to which the State or a municipality must provide compensation for pecuniary and non-pecuniary damage resulting from violations of the Convention to the extent that it is necessary to remedy the violation. Following amendments to that provision in August 2022, the same applies to damage resulting from violations of individuals' fundamental rights under Chapter 2 of the Instrument of Government. It follows from Chapter 3, section 1, subsection 2 of the Tort Liability Act that the term "municipality" in the above-mentioned provisions also encompasses regions.

17. The statutory right to damages for violations of the Convention, provided for in Chapter 3, section 4 of the Tort Liability Act came into effect on 1 April 2018 and only applies to violations occurring after that date. However, even before that legislation had been enacted, the Swedish Supreme Court (*Högsta domstolen*) had established a liability to that effect through its case-law.

18. From 2005 the Supreme Court developed case-law which provided that to the extent that Sweden has a duty to provide redress to victims of Convention violations through a right to compensation for damage, and that this duty cannot be fulfilled even by interpreting national tort law in accordance with the Convention (*fördagskonform tolkning*), compensation for damage may be ordered without direct support in law (see, for example, the Supreme Court's judgments NJA 2005 p. 462, NJA 2007 p. 295, NJA 2007 p. 584, NJA 2007 p. 891, and NJA 2009 N 70, which concerned the State's liability for damages for violations of the Convention, and NJA 2009 p. 463, which concerned a municipality's liability for damages for violations of the Convention). On the basis of that case-law, the Chancellor of Justice (*Justitiekanslern*) has also awarded compensation in many cases following requests from individuals (for a comprehensive summary of the domestic case-law developments and the Chancellor of Justice's practice, see. *S.J.P. and E.S. v. Sweden* (dec.), no. 8610/11, §§ 52-60, 16 December 2014).

19. The Court has, in several cases, had regard to this development and has highlighted the Supreme Court's judgment of 3 December 2009 (NJA 2009 N 70) which affirmed that it was now a general principle of law that compensation for violations of the Convention could be ordered without direct support in Swedish law, to the extent that Sweden has a duty to provide redress to victims of Convention violations through a right to compensation for damage. The Court has concluded that, following that judgment, there exists an accessible and effective remedy in Sweden that is capable of affording redress in respect of alleged violations of the Convention (see, for example, *Eriksson v. Sweden*, no. 60437/08, §§ 50-52, 12 April 2012; *Ruminski v. Sweden* (dec.), no. 10404/10, §§ 36, 37 and 42, 21 May 2013; and *Lindstrand Partners Advokatbyrå AB v. Sweden*, no. 18700/09, § 67, 20 December 2016).

2. Procedures for claims for compensation

20. An individual who wishes to claim compensation from the State for damage may, in general, proceed in one of two different ways: he or she may either petition the Chancellor of Justice in accordance with section 3 of the Ordinance on the Administration of Claims for Damages against the State (*förordningen om handläggning av skadeståndsanspråk mot staten*, 1995:1301), or bring a civil action against the State before a district court (*tingsrätt*), with the possibility of appealing to a court of appeal (*hovrätt*) and the Supreme Court. No appeal lies against a decision of the Chancellor of Justice. However, if the claim is rejected, the claimant still has the possibility of instituting civil proceedings before the courts.

21. An individual who wishes to claim compensation for damage from a municipality or a region may bring a civil action against that municipality or region before a district court, with the possibility of appealing to a court of appeal and the Supreme Court. The Chancellor of Justice's competence under the Ordinance on the Administration of Claims for Damages against the State does not encompass claims against municipalities or regions.

3. Limitation periods

(a) General principles

22. The general rules on limitation periods for claims are set out in the Limitations Act (*preskriptionslagen*, 1981:130). Pursuant to section 2 of that Act, a claim becomes time-barred ten years after it arises, unless the period has been interrupted before then.

23. The question of when a claim arises within the meaning of section 2 of the Limitations Act is not regulated by any legislative provision but follows from preparatory works and case-law. The general principle for non-contractual damage is that the claim arises when the harmful act occurs. Thus, as a general rule, the ten-year limitation period runs from the date of the harmful act, even if the damage occurs or materialises later. However, specific rules have been developed in case-law for certain situations. For example, in the case of damage caused by a failure to act, the limitation period runs from the latest date on which the action should have been taken, and when a harmful act is regarded as ongoing, in the sense that new and further damage occurs continuously, the limitation period begins to run gradually, day by day, while the damage is ongoing (see, for example, preparatory works to the Limitation Act, prop. 1979/80:119, p. 89; the Supreme Court's judgments NJA 2018 p. 103, § 11, and NJA 2018 p. 793, §§ 13-15; and the summary of general principles in the Chancellor of Justice's decision of 29 November 2024, dnr. 2024/6643).

24. In the preparatory works to Chapter 3, section 4 of the Tort Liability Act (prop. 2017/18:7, p. 64), it was noted that section 2 of the Limitations Act would also apply to claims for damages based on alleged violations of

the Convention and that, in practice, this meant that the limitation period would normally begin to run at the time of the harmful act. It was further noted that additional questions regarding limitation periods could arise in the application of the law and should be dealt with while taking into account how similar situations had been dealt with in the application of other provisions on tort liability. Similar considerations were made in the preparatory works to the amendments to Chapter 3, section 4 of the Tort Liability Act, which introduced a statutory liability for damages resulting from violations of individuals' fundamental rights under Chapter 2 of the Instrument of Government (prop. 2021/22:229, p. 49-50).

(b) Case-law developments

25. In a judgment of 5 March 2018 (NJA 2018 p. 103) the Supreme Court dealt with a claim for non-pecuniary damages brought by an individual against the Swedish State, following the erroneous deregistration of his citizenship, on grounds of an alleged violation of his rights under Chapter 2 of the Instrument of Government. The Supreme Court addressed, in particular, the matter of the calculation of the limitation period.

26. The Supreme Court noted that in the circumstances of that case it was clear that the limitation period could not be calculated solely on the basis of the erroneous decision to deregister the claimant's citizenship, which had been taken in 1989. Moreover, the State had only argued that the limitation period should be considered to have begun to run gradually, per each day that the claimant had been deprived of his citizenship. If the limitation period were calculated in this way, a part of his claim would be time-barred.

27. However, the Supreme Court found that if a claim were to become time-barred gradually in a situation where the State, through the exercise of authority, had maintained a certain approach over a long period of time, the right to compensation might become illusory. Such an application of the statutory limitation period might mean, *inter alia*, that the individual, in order to avoid the claim becoming time-barred, had to take measures which, in the light of prevailing case-law and the actions of the authorities, might reasonably be judged to be futile.

28. The Supreme Court stated that in most situations it had to be accepted that the statutory limitation period would lead to this type of consequence, since the claimant's interests, the defendant's interests and the general interest all asserted themselves simultaneously. However, in the case of a claim against the State based on a violation of a right so central and fundamental as citizenship, the reasons usually justifying limitation periods did not assert themselves with any real strength. In the case of such a claim for damages, the interests of the defendant had to be regarded as subordinate to the individual's interest in having a real opportunity to assert the claim before that claim was lost. Furthermore, the general interests behind the statutory limitation period, for example the interest in limiting evidence and

the settlement of debt relationships, could not be considered to argue in favour of a limitation with any particular strength.

29. Considering the principles above, the Supreme Court found that the limitation period in that particular case should not begin to run until there had been a real opportunity for the individual to assert his claim. Noting that there was no clear answer to the question of when there was a real possibility of asserting that type of claim, the Supreme Court concluded that the limitation period should begin to run at the time when the incorrect information had been corrected, that is when the claimant had been re-registered as a Swedish citizen. The court observed that this was essentially the same as suspending the limitation period for the duration of the violation.

30. In a subsequent judgment of 11 October 2018 (NJA 2018 p. 793), which concerned compensation under the Act on Compensation for Deprivation of Liberty and Other Coercive Measures (*lagen om ersättning vid frihetsberövanden och andra tvångsåtgärder*, 1998:714), the Supreme Court stated, *inter alia*, that the exception to the general principles on the calculation of limitation periods which had been applied in NJA 2018 p. 103 was a result of the particular circumstances related to the right to compensation for breaches of the provision concerning citizenship in the Instrument of Government. The Supreme Court further stated that the judgment could not be regarded as indicating a departure from the usual principles for determining when the limitation period should begin for claims under the Act on Compensation for Deprivation of Liberty and Other Coercive Measures.

31. In a judgment of 14 June 2024 (NJA 2024 p. 424) the Supreme Court dealt with a claim for non-pecuniary damages brought by an individual against a municipality on the basis of alleged violations of the Convention related to her stay in foster care in the 1970s. The District Court and Court of Appeal had found that her claim was time-barred.

32. The Supreme Court noted that the statutory right to damages for violations of the Convention, as set out in Chapter 3, section 4 of the Tort Liability Act, had come into effect on 1 April 2018 and only applied to violations occurring after that date. However, a right to compensation for damage in the event of a violation of the Convention had also developed in the case-law since 2005 (see paragraph 18 above), a right which thus existed without any explicit legal basis, and which applied irrespective of the temporal limitation under the statutory right to damages provided for in Chapter 3, section 4 of the Tort Liability Act. This right to compensation was based on Sweden's obligation, under Article 13 of the Convention, to provide an effective legal remedy to prevent or compensate for violations of the Convention.

33. The Supreme Court observed that, in that case, the alleged violations of the Convention had occurred in the mid-1970s, prior to the development of the above-mentioned case-law. Given the generally accepted legal view at

that time, namely that it was not possible to claim compensation directly on the basis of the Convention, the Supreme Court found that it was hardly acceptable to allow the limitation period to commence at the time when the alleged violation had occurred, that is, in principle, at the end of the foster care placement in 1974. Such application was, in the Supreme Court's view, questionable from the perspective of the Convention. Instead, a different starting point had to be sought.

34. The Supreme Court noted that the European Court of Human Rights had held that since 3 December 2009 a generally applicable principle of Swedish law permitted damages to be awarded for violations of the Convention (see paragraph 19 above). The Supreme Court considered that it therefore seemed logical to make that date the starting point for the limitation period for claims based on an earlier violation of the Convention. That was also considered most consistent with the notion that a statutory limitation provision in such cases should be applied in a way that gave the individual a legally effective opportunity to recover his or her claim. The Supreme Court concluded that the claim which the claimant had asserted had thus become time-barred ten years after 3 December 2009. Since the limitation period had not been interrupted, and the action had not been brought until December 2021, the claim was time-barred and could no longer be enforced.

COMPLAINTS

35. The applicants complained that the use of their sperm for insemination, without their knowledge or consent, constituted a violation of their rights under Article 8 of the Convention.

THE LAW

36. The applicants relied on Article 8 of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Joinder of the applications

37. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Whether domestic remedies have been exhausted

1. The parties' submissions

(a) The Government

38. The Government argued that the applications should be declared inadmissible for failure to exhaust domestic remedies. Lodging a domestic claim to seek compensation for alleged breaches of the Convention by suing the State or the Region before the ordinary courts was an effective and available remedy and there were no reasons to exempt the applicants from the requirement to make use of that remedy.

39. The Government submitted that the fact that the relevant acts had occurred before the Convention had been incorporated into Swedish law (see paragraph 14 above) did not render this remedy ineffective. In several of the cases where the Supreme Court had found that damages could be awarded, the acts constituting violations of the Convention had occurred before the incorporation. For instance, in the case NJA 2007 p. 584 (see paragraph 18 above), the impugned decision had been taken in 1993. The Supreme Court's judgment in NJA 2024 p. 424 had also confirmed that the right to compensation for violations of the Convention extended to violations which had occurred before the Convention had been incorporated into Swedish law (see paragraphs 31-34 above).

40. As to the impact of limitation periods, the Government submitted that in civil proceedings the question of whether a claim was time-barred had to be raised by the defendant and could not be examined by a court of its own motion. Therefore, it was not evident that the issue of the statutory limitation period was relevant to the question of exhaustion of domestic remedies. In any event, the Government asserted that the applicants' prospects of having a claim examined in substance by a Swedish court were sufficient to conclude that they were required to make use of that remedy even if the issue of the statutory limitation period were to be raised by the defendant.

41. The Government acknowledged that, as a general rule, the ten-year limitation period started to run when the harmful act was performed. However, having regard to domestic preparatory works and case-law, there was, in the Government's view, room for considering that the applicants' claims were not time-barred. It was not unreasonable to consider that the Swedish courts, if given the possibility of examining the matter, would reach such a conclusion.

42. The Government emphasised that in the preparatory works to Chapter 3, section 4 of the Torts Liability Act the courts had been given an explicit responsibility to appropriately develop what should apply as regards limitation periods in respect of damages for violations of the Convention. Domestic courts were also obliged to interpret Swedish law in the light of the Convention and the Court's case-law. In addition, the Supreme Court's case-

law allowed for exceptions to the general rule on the starting point of the limitation period in certain situations. In this regard, the Government referred to NJA 2018 p. 103 (see paragraphs 25-29 above) and NJA 2024 p. 424 (see paragraphs 31-34 above) and argued that those judgments showed that there was room for bringing an action before the domestic courts and succeeding with an argument that the limitation period did not start to run until the individual had a real possibility of raising his or her claim.

43. The Government further emphasised the subsidiary nature of the machinery of protection established by the Convention and argued that even if the applicants doubted the effectiveness of the indicated remedy because a certain issue had not yet been explicitly dealt with by domestic case-law, this was not a reason to exempt them from the requirement to use the remedy. On the contrary, the applicants should bring the matter before the domestic courts and give them the possibility of examining whether, by interpreting Swedish law in conformity with the Convention, the State could fulfil its Convention obligations.

(b) The applicants

44. The applicants submitted that there were no effective remedies available to them that they were required to make use of and that the Government's preliminary objection must, therefore, be dismissed.

45. They argued that the Government had not shown, with reference to demonstrably established, consistent case-law in cases similar to the applicants', that there had been, at the time of lodging the applications, effective domestic remedies available to the applicants, both in theory and in practice, which had offered reasonable prospects of success. A claim for damages before the ordinary courts would have had no prospects of success, and thus had been ineffective for exhaustion purposes, for two reasons.

46. Firstly, it was uncertain whether damages could be awarded for violations that had occurred before the Convention had been incorporated into Swedish law (see paragraph 14 above). The Supreme Court's case-law on the right to damages (see paragraph 18 above) was based on the assumption that the Convention constituted Swedish law. Given that Sweden was a dualist state, there were compelling reasons against awarding damages solely on the basis of an international treaty. While the Supreme Court's judgment in NJA 2024 p. 424 (see paragraphs 31-34 above) implied that the right to compensation encompassed violations that had occurred before the incorporation, that judgment had been delivered after the applicants had lodged their applications with the Court and, therefore, lacked relevance for the purposes of exhaustion of domestic remedies.

47. Secondly, their claims for damages had become time-barred under domestic law. A ten-year limitation period had started to run when their sperm had been used for insemination. Their claims had therefore become time-barred in 1996 and 2000 respectively, which was more than twenty years

before they had become aware of the violation of their rights. There was no established domestic case-law permitting an exception to the ten-year limitation period with reference to a claimant's unawareness of the existence of the claim. Consequently, the time-limit had rendered the right to damages ineffective in their cases.

48. The applicants acknowledged that an objection that a claim was time-barred had to be raised by the defendant but asserted that nothing indicated that the Region would waive the statutory time-limit. They further argued that the Government's contention that the domestic courts could allow an exception to the general rules concerning the calculation of limitation periods was theoretical and lacked a basis in domestic law as it currently stood.

49. The applicants submitted that the Supreme Court's judgment in NJA 2018 p. 103 (see paragraphs 25-29 above) was distinguishable from their situation and did not support a departure from the general rule on limitation periods in relation to violations of the Convention. They emphasised that the exception applied in that case had been found to be justified in view of the exceptional circumstances of the case and the prominent position that the right to citizenship held in the Swedish constitution. The unique nature of the exception had also been confirmed in subsequent case-law (see paragraph 30 above) and in subsequent preparatory works and legal doctrine.

50. Furthermore, the applicants submitted that the Supreme Court's judgment in NJA 2024 p. 424 (see paragraphs 31-34 above), had not improved their prospects of success. Under that new case-law their claims for compensation would have become time-barred on 3 December 2019, about three years before either of them had been made aware that their rights had been violated. This precedent did not allow for an exception to the limitation period with regard to a claimant's unawareness of the existence of a claim. In any event, case-law developments that had occurred after they had submitted their applications to the Court lacked relevance for the purposes of exhaustion of domestic remedies.

2. The Court's assessment

(a) General principles

51. The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In

this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV; *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-70, 25 March 2014; and *Lindstrand Partners Advokatbyrå AB v. Sweden*, no. 18700/09, § 65, 20 December 2016).

52. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others*, cited above, § 66; *Vučković and Others*, cited above, § 71; and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 139, 27 November 2023).

53. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see, among other authorities, *Vučković and Others*, cited above, § 74; *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 85-86, 9 July 2015; and *Communauté genevoise d'action syndicale (CGAS)*, cited above, §§ 139 and 142). Indeed, where legal systems provide constitutional protection of fundamental human rights and freedoms, it is in principle incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (see *Vučković and Others*, cited above, § 84; *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 159; and *Mansouri v. Italy* (dec.) [GC], no. 63386/16, § 99, 29 April 2025).

54. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances exempting him or her from this requirement (see, among other authorities, *Vučković and Others*, § 77, and *Communauté genevoise d'action syndicale (CGAS)*, § 143, both cited above).

55. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see, among other authorities, *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99

and 7 others, § 87, ECHR 2010; *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 158; and *Lindstrand Partners Advokatbyrå AB*, cited above, § 68).

56. Lastly, the Court reiterates that the application of the rule of exhaustion of domestic remedies must make due allowance for the context. Accordingly, the Court has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see, for example, *Akdivar and Others*, § 69; *Selmouni*, § 77; and *Gherghina*, § 87, all cited above; see also *Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, nos. 24159/22 and 25751/22, § 43, 16 April 2024).

(b) Application of the above principles to the present case

57. The Court reiterates that it has repeatedly held, with reference to case-law established by the Swedish Supreme Court and the practice of the Chancellor of Justice, that there exists an effective remedy in Sweden that is capable of affording redress in respect of alleged violations of the Convention (see paragraphs 18-19 above). Consequently, the Court has found that potential applicants may, as a general rule, be expected to lodge a domestic claim for compensation for alleged breaches of the Convention before applying to the Court (see, for example, *Eriksson v. Sweden*, no. 60437/08, §§ 50-52, 12 April 2012; *Ruminski v. Sweden* (dec.) no. 10404/10, §§ 36-37, 21 May 2013; and *Lindstrand Partners Advokatbyrå AB*, cited above, § 67).

58. The codification of the Supreme Court's case-law through the introduction of a statutory right to damages for violations of the Convention, in Chapter 3, section 4 of the Tort Liability Act (see paragraph 16 above), reinforces the Court's previous conclusions in this regard.

59. The Court further reiterates that when the option of lodging a claim for compensation with the Chancellor of Justice exists alongside the possibility of suing the State before the domestic courts, an applicant may in principle choose which of the two avenues to take (see *Ruminski*, cited above, § 38; *Marinkovic v. Sweden* (dec.), no. 43570/10, §40, 10 December 2013; and *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014).

60. However, in the present case the Government have not asserted that lodging a claim with the Chancellor of Justice would be an effective remedy and the Court notes that the Chancellor of Justice is not competent to deal with claims against a region (see paragraph 21 above). Moreover, the

Government have not asserted that reports or complaints to the Health and Social Care Inspectorate (see paragraphs 7 and 13 above) are relevant for the purposes of exhaustion of domestic remedies. The only remedy advanced by the Government in the present case is a civil claim before the ordinary courts against the Region or the State to seek compensation for alleged violations of the Convention.

61. Accordingly, it needs to be determined whether bringing a civil action for compensation for damage before the domestic courts can be considered to be an effective remedy offering reasonable prospects of success in the present case, considering, in particular, (i) that the relevant acts had occurred before the Convention was incorporated into Swedish law and (ii) the domestic legislation and practice concerning limitation periods.

62. As to the fact that the relevant acts had occurred before the Convention was incorporated into Swedish law, the Court cannot find support for the applicants' contention that this would exclude the possibility of obtaining damages. On the contrary, the Court observes that in the Supreme Court's judgment NJA 2007 p. 584, referred to by the Government, the State was ordered to pay damages for a violation of Article 8 of the Convention where the impugned decision had been taken in 1993, that is, two years before the incorporation of the Convention into Swedish law. That finding is sufficient for the Court to conclude that the fact that the relevant acts had occurred before the Convention was incorporated into Swedish law does not render the proposed remedy ineffective, without needing to rely on the Supreme Court's judgment in NJA 2024 p. 424, which provides further support for this conclusion but was delivered after the applicants had lodged their applications with the Court.

63. As to the matter of limitation periods, the Court, at the outset, notes that it is not its task to determine whether the applicants' claims are time-barred pursuant to domestic law and reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among other authorities, *McFarlane v. Ireland* [GC], no. 31333/06, § 113, 10 September 2010, and *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 159). Furthermore, the Court is not, in the present case, called upon to determine whether a potential conclusion by the domestic courts that the applicants' claims were time-barred would be compliant with the Convention (contrast, for example, *Stubbings and Others v. the United Kingdom*, nos. 22083/93 and 22095/93, 22 October 1996; *Howald Moor and Others v. Switzerland*, nos. 52067/10 and 41072/11, 11 March 2014; *Sanofi Pasteur v. France*, no. 25137/16, 13 February 2020; and *Jann-Zwicker and Jann v. Switzerland*, no. 4976/20, 13 February 2024). Rather, in the present case, the Court's task is to determine whether, in the light of the parties' submissions, the proposed remedy was a remedy which the applicants were required to pursue before applying to the Court.

64. The Court observes that it is clear from the relevant legislation, preparatory works and domestic case-law (see paragraphs 22-24 above) as well as the parties' submissions (see paragraphs 41 and 47 above), that the general rule pursuant to Swedish law is that a claim for damages becomes time-barred ten years after the harmful act occurs, irrespective of when the claimant became aware of the harm caused (see also the Court's findings regarding limitation periods and the possibility of claiming compensation from the Swedish State for alleged violations of the Convention in *Eskilsson v. Sweden* (dec), no 14628/08, 24 January 2012; *Eriksson*, cited above, § 47; *Ruminski*, cited above, § 45; and *Marinkovic*, cited above, § 42).

65. Pursuant to the above-mentioned general rule, the applicants' claims for damages based on the alleged violations of the Convention relating to the use of their sperm would have become time-barred in 1996 and 2000 respectively. This would prevent them from being able to obtain damages in civil proceedings, provided that that objection was raised by the defendant.

66. The possibility that that objection might not be raised by the defendant, as the Government submitted (see paragraph 40 above), does not, in the Court's view, entail that the applicants can be considered to have reasonable prospects of success in obtaining damages, since this would be entirely up to the discretion of the defendant. There is, furthermore, no example in the material before the Court of a situation where the State or a region has refrained from raising such an objection.

67. However, the Government also submitted that, having regard to domestic preparatory works and case-law, there was room for considering that the applicants' claims were not time-barred, and that it was not unreasonable to consider that the Swedish courts, if given the opportunity to examine the matter, would reach such a conclusion. In particular, the Government argued that there was room for bringing an action before the Swedish courts and succeeding with an argument that the limitation period did not start to run until the individual had a real possibility of raising his or her claim (see paragraphs 41-42 above).

68. In this regard the Court notes that the applicants had apparently been unaware of the use of their sperm until they were contacted by the now adult children and their biological paternity was confirmed by DNA tests in 2022 and 2023 respectively. It is therefore arguable that they had been unable to raise their claims prior to this. The investigations carried out on behalf of the Region, which identified shortcomings in the insemination activities at the hospital, were, additionally, conducted at an even later date.

69. The Court further observes that the domestic courts are able to develop, through case-law, the rules governing limitation periods in specific situations. Moreover, in two judgments referred to by the Government (NJA 2018 p. 103, and NJA 2024 p. 424), the Swedish Supreme Court made exceptions to the general rule concerning the calculation of limitation periods with reference to, *inter alia*, the interest of applying the limitation period in a

way which gave the individual a real and effective opportunity to assert his or her claim (see paragraphs 25-29 and 31-34 above). The Court recognises that those judgments do not concern situations which are identical to the applicants' situation since, *inter alia*, they do not concern claimants who had been unaware of the alleged violation of their rights. However, the lack of domestic case-law dealing with situations like that of the applicants could be explained by the fact that this particular context has not yet arisen before the domestic courts (see, *mutatis mutandis*, *Mansouri*, cited above, § 99). The Court finds that even so, and even if regard is only had to the first of those judgments because the second was delivered after the applicants had lodged their applications with the Court, the Court is of the view that that domestic case-law supports the Government's contention that there is room for bringing an action before the Swedish courts and succeeding with an argument that the limitation period does not start to run until the individual has had a real possibility of raising his or her claim.

70. Moreover, the Court observes that, as emphasised by the Government (see paragraph 42 above), the Swedish courts are obliged to interpret domestic law in the light of the Convention and the Court's case-law. The Swedish courts have also demonstrated, for example, in the above-mentioned case-law concerning compensation for violations of the Convention (see paragraph 18 above), that they are willing to interpret Swedish law in the light of the Convention and that they may even opt for a solution without explicit support in domestic legislation when it is considered necessary in order to fulfil the State's obligations under the Convention. The Court reiterates that, in reviewing whether the rule of exhaustion of domestic remedies has been observed, it must, among other things, take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate (see paragraph 56 above, with case-law references).

71. Lastly, the Court emphasises its fundamentally subsidiary role (see, among other authorities, *Demopoulos and Others*, § 69; *Vučković and Others*, §§ 69-70; and *Communauté genevoise d'action syndicale (CGAS)*, §§ 138 and 160, all cited above) and reiterates that in a legal system providing constitutional protection of fundamental human rights and freedoms, it is in principle incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (see paragraph 53 above, with case-law references, and see also *Fabris v. France* [GC], no. 16574/08, § 72, ECHR 2013 [extracts] where the Court reiterated that, as a corollary to the principle of subsidiarity, the domestic courts are required to examine pleas relating to the "rights and freedoms" guaranteed by the Convention with particular rigour and care).

72. Having regard to the foregoing, the Court considers that the applicants were obliged to avail themselves of the civil-law remedy indicated by the Government. Even if the applicants may have certain doubts about the

prospects of success of this remedy it cannot be considered to be obviously futile, and the Court does not find that there were any special reasons for dispensing them from the requirement to make use of it.

73. On the contrary, had the applicants availed themselves of this remedy, it would have given the national courts the opportunity to fulfil their fundamental role in the Convention protection system, namely to prevent or put right potential Convention violations through their own legal system, the role of the Court being subsidiary to theirs (see *Vučković and Others*, § 90; *Communauté genevoise d'action syndicale (CGAS)*, § 164; and *Mansouri*, § 110, all cited above). Moreover, the applicants still have the possibility of pursuing this remedy, and, should it ultimately prove unsuccessful, they have the possibility of lodging a new complaint with the Court, which would then have the benefit of the views of the national courts (see, *mutatis mutandis*, *Vučković and Others*, cited above, § 90, with further references, and *Mansouri*, cited above, § 112).

74. It follows from the considerations above that the Government's objection must be accepted and the applications be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 12 June 2025.

Ilse Freiwirth Section Registrar	Ivana Jelić President