

<p>Right to life (Article 2 as it pertains to abortion/in vitro/ medical technology and contraceptive cases</p>	<p>Findings and Reasonings</p>
<p>2003 WL 22187554  Natalie Evans v. Amicus Healthcare Ltd, Howard Johnston,  High Court of Justice Family Division  Wednesday 1st October, 2003</p>	<p>Summary: Held, refusing the declarations, that the consents given in both cases were for "treatment together" with the named partner and no other purpose and thus could not be effective for sole use by the claimants. In any event, Sch. 3 para. 4(1) to the 1990 Act gave each party the unconditional right to withdraw consent at any time up until use. "Use" in the context of the instant case meant the transfer of the embryos into the women. To suggest otherwise would render it impossible for consent to ever be withdrawn once embryos had been created and stored. Schedule 3 to the 1990 Act did not infringe the right to respect for private and family life enshrined in Art. 8. There were sound policy reasons behind Sch. 3 which enabled each party to withdraw consent to treatment before use, providing the parties with equal rights to respect for their private lives. Therefore the interference by the state was lawful and proportionate. In respect of E's case, J did not give any definite assurances to E that she could use the embryos whatever happened. However, even if he had done so, promissory estoppel could not apply in E's case as there were clear provisions in the 1990 Act which gave any party the right to withdraw consent. Accordingly, J could not have promised to do what the law would not have allowed him to do.</p>
<p>2002 WL 498814, R (John Smeaton on Behalf of Society for the Protection of Unborn Children) v.</p>	<p>(finding government distribution of abortifacient contraception did not violate the Article 2 provision for a right to life as the UK has not deemed fetuses, prior or post implantation, a form of life.)</p>
<p>Whether this country's case law concurs with the opinion</p>	<p>It seems to have been in dispute in past decisions</p>

<p>Right to life (Article 2 as it pertains to abortion/in vitro/ medical technology and contraceptive cases</p>	<p>Findings and Reasonings</p>
<p>R. (on the application of Quintavalle) v Human Fertilisation and Embryology Authority R. (on the application of Quintavalle) v Human Fertilisation and Embryology Authority (CA (Civ Div)) Court of Appeal (Civil Division) 16 May 2003</p>	<p>Summary: Held, allowing the appeal, that H did have the power to issue a licence permitting IVF in conjunction with PGD for the purpose of tissue typing. If the impediment to bearing a child was concern that it might be born with a hereditary defect, treatment which enabled women to bear children free from such defects was treatment "for the purpose of assisting women to carry children". PGD fell within the meaning of treatment "designed to secure that embryos are in a suitable condition to be placed in a woman or to determine whether embryos are suitable for that purpose", under Sch. 2 para. 1(1)(d) of the Act. "Suitable" took its meaning from the context. If the purpose of the treatment was to ensure that the child would not carry a hereditary defect, an embryo would only be suitable if it was free from that defect. If the purpose of the treatment was to ensure that the child would have stem cells matching the tissue of an existing person, then an embryo would only be suitable if its tissue matched the tissue of the existing person. Therefore, PGD for the purpose of tissue typing was treatment within the meaning of Sch. 2 para. 1(1)(d) of the Act. PGD enabled a choice to be made as to the characteristics of the child to be born with the assistance of treatment. It was the intention of Parliament to place in H's hands the decision whether and for what purposes such a choice should be permitted. In accordance with the principle established in <i>Pepper v Hart</i>, it was legitimate in the instant case to have regard to Parliamentary debate on the issue because a minister had made an express statement as to Parliament's intention.</p>
<p>R. (on the application of Quintavalle) v Human Fertilisation and Embryology Authority (HL) House of Lords</p>	<p>Summary: Held, dismissing the appeal, that pre implantation genetic diagnosis and tissue typing could lawfully be authorised by H as activities to determine the suitability of the embryo for implantation within the meaning of Sch. 2 para. 1(1)(d) to the 1990 Act. Parliament had not intended to confine H's powers to unsuitability on grounds of genetic defects. Parliament had intended to leave it to H to decide whether activities such as tissue typing could be permitted. The concept of suitability included taking into account the particular wishes and needs of the mother. Therefore H could authorise tests to determine whether the embryo was in that sense suitable for implantation in her womb. H was not obliged to do so. It might consider that allowing the mother to select an embryo on such grounds was undesirable on ethical or other grounds. The breadth of the concept of suitability determined the breadth of H's discretion. Tissue typing, like pre implantation genetic diagnosis, provided information about the embryo's characteristics which was relevant to the woman's decision whether to carry the child or not. Once it was conceded that pre implantation genetic diagnosis was licensable to produce not just a viable foetus but a genetically healthy child, there could be no logical basis for construing H's power to end at that point.</p>
<p>Also held against countries with laws banning abortion</p>	

<p>Right to life (Article 2 as it pertains to abortion/in vitro/ medical technology and contraceptive cases</p>	<p>Findings and Reasonings</p>
<p>Open Door Counselling Ltd v Ireland (A/246) (ECHR) European Court of Human Rights 29 October 1992</p>	<p>Abstract: On a complaint from the Society for the Protection of the Unborn Child, the Irish Attorney General applied for an injunction to prevent two counselling organisations from assisting clients to have abortions in England. Their actions, it was claimed, infringed the Irish constitution which protects the unborn's right to life. The counsellors challenged the injunction insofar as it specifically prevented them from giving information that might help clients contact abortion clinics. This, they claimed, infringed the European Convention on Human Rights 1950 Art. 10 which guaranteed freedom of expression. The government argued that the exception to Art. 10 applied in that the injunctions were necessary in a democratic society to protect morals.</p> <p>Summary: Held: The ban constituted an infringement of Art. 10. The court accepted that because the constitutional protection reflected majority opinion about abortion, the legal basis of the injunctions was the protection of morals but although governments had a wide discretion in this area they could not necessarily take any actions they saw fit. Freedom of expression included information which offended the majority. The ban was too general, allowing no exception. The counsellors proposed to confine the information given to an explanation of available options, and as the information on abortion was available elsewhere in Ireland without supervision to protect women's health, the result of denying information could constitute a risk to health. For all these reasons the ban exceeded what could be described as "necessary", and so infringed Art. 10</p>
<p>Tysi�c v. Poland44No. 5410/03, to be reported in ECHR 2007</p>	<p>which concerned a refusal to carry out a therapeutic abortion despite the risk that the mother's eyesight would deteriorate seriously if she continued with the pregnancy, the Court examined how the legal framework governing the use of therapeutic abortion in Poland had been applied in the applicant's case and how it had addressed her concerns about the possible negative impact of pregnancy and birth on her health. It concluded that the State had failed to comply with the positive obligation to safeguard the applicant's right to respect for her private life within the context of a dispute concerning her entitlement to a therapeutic abortion.</p>

<p>Right to life (Article 2 as it pertains to abortion/in vitro/ medical technology and contraceptive cases</p>	<p>Findings and Reasonings</p>
<p>Vo v. France</p>	<p>the applicant, who had had to undergo a therapeutic abortion as a result of medical negligence, had lodged a criminal complaint concerning both the damage she herself had suffered (an offence which later benefited from an amnesty) and the homicide of her unborn child. The Court of Cassation had held, however, that causing the death by medical negligence of a human foetus in utero which was not yet viable did not constitute the offence of involuntary homicide, since under French law the foetus was not a person entitled to the protection of the criminal law. The Grand Chamber did not rule on the question whether the unborn child was protected by Article 2 of the Convention but, noting that the interests of the foetus and the mother overlapped, it concluded that the availability of a civil action for damages against the authorities on account of medical negligence was sufficient to satisfy the State's positive obligations, even assuming that Article 2 did apply.</p>
<p>D. - Ireland/Irlande (No 26499/02) Decision/Décision 27.6.2006 [Section IV] - No 88</p>	<p>Abortion laws obliging applicant to have an abortion abroad despite accepted fatal foetal abnormality: inadmissible (non-exhaustion of domestic remedies).</p>
<p>Pretty v. the United Kingdom, no. 2346/02, to be reported in ECHR 2002-III.</p>	<p>The case concerned the wish of a woman suffering from motor neurone disease to be able to determine the time of her death. To that end, her husband had unsuccessfully sought an undertaking from the Director of Public Prosecutions that he would not be prosecuted if he assisted the applicant to commit suicide. As the applicant was in the final stages of the illness, the Court accorded priority to the case, which was introduced in December 2001. A hearing was held in March 2002 and judgment was delivered at the end of April, the Court having opted to deal with admissibility and merits together (Article 29 § 3 of the Convention). The Court concluded that no right to die could be derived from either Article 2 or Article 3 of the Convention and that a blanket prohibition on assisted suicide was not a disproportionate interference with the right to respect for private life under Article 8 of the Convention. Pretty, already referred to in the context of the right to life, was also examined in the light of the right to respect for private life under Article 8 and freedom of thought and belief under Article 9. The Court, while accepting that the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 and that it is under that provision that "notions of the quality of life take on significance", concluded that the interference could be regarded as necessary in a democratic society for the protection of the rights of others. It also found no violation of Article 9.</p>

<p>Right to life (Article 2 as it pertains to abortion/in vitro/ medical technology and contraceptive cases</p>	<p><a href="#">Findings and Reasonings</a></p>
<p>BOSO - Italie/Italy (N° 50490/99)  Décision/Decision 5.9.2002 [Section I] - No 46</p>	<p><a href="#">Mention may also be made of a case concerning the unsuccessful attempts by a husband to stop his wife having an abortion. The applicant's complaints under Articles 2, 8 and 12 of the Convention were declared inadmissible. Under Article 2, the Court considered, without taking a stand on the question whether a foetus could have rights under that provision, that the terms of the applicable law, which permitted abortion in order to protect the health of the woman, secured a fair balance between the protection of the foetus and the interests of the mother. It concluded that the State had not, in the circumstances of the case, exceeded its margin of appreciation</a></p>
<p>HALLER and Others/et autres - Austria/Autriche (No 57813/00)  Decision/Décision 15.11.2007 [Section I] - No 102</p>	<p><a href="#">Prohibition under domestic law on the use of ova and sperm from donors for in vitro fertilisation: admissible</a></p>
<p>R.R. - Poland/Pologne (No 27617/04)  [Section IV] - No 97</p>	<p><a href="#">Failure to perform timely prenatal tests, barring access to abortion and resulting in birth of a child suffering from genetic illness: communicated.</a></p>