﻿Απόφαση της Ευρωπαϊκής Επιτροπής Ανθρωπίνων Δικαιωμάτων στην υπόθεση E.L.H. και P.B.H. κατά Αγγλίας[[1]](#footnote-1):

THE FACTS

The applicants, who are married, are British nationals born in

1963 and 1959 respectively. The second applicant is serving a term of

twenty years' imprisonment in H.M. Prison Swaleside. The applicants are

represented by Mr. Simon Creighton, a solicitor of the Prisoners Advice

Service.

The facts of the case, as they have been submitted by the

applicants, may be summarised as follows:

On 20 February 1989 the second applicant was sentenced to eight

years' imprisonment. On 2 February 1992 he absconded from prison

custody.

On 27 October 1992 he married the first applicant, who was

receiving fertility treatment as she had difficulty in conceiving. In

March 1994 the first applicant underwent exploratory surgery and it was

discovered that she required major surgery on her fallopian tube. This

surgery was scheduled for January 1995.

On 9 August 1994 the second applicant was rearrested and returned

to prison custody.

On 30 August 1994 the first applicant applied to the Home

Secretary for the right to have conjugal visits. The application was

rejected by the Director General of the Prison Service on

12 October 1994.

In January 1995 the first applicant was admitted to hospital.

However, the consultant gynaecologist decided not to operate on her,

as the surgery which had been planned would have increased the prospect

of conception for only a short period of time and the two applicants

were not in a position to attempt conception as the second applicant

was in prison.

On 17 February 1995 the second applicant was given a second

sentence of 14 years' imprisonment to run consecutively with the first.

On 4 October 1995 the second sentence was reduced to twelve years, to

be served consecutively.

On 4 January 1996 the second applicant submitted an application

for conjugal visits. The first applicant submitted a further

application on 9 January 1996 and asked her Member of Parliament for

support.

On 19 January 1996 the Prison Governor refused the second

applicant's application on the basis that there was no statutory

provision for such visits to take place.

On 23 January 1996 the second applicant also asked for his M.P.'s

support.

On 4 February 1996 the Director General of the Prison Service

informed the applicants' M.P. that conjugal visits were not allowed in

England and Wales.

COMPLAINTS

1. The applicants complain under Articles 3, 8 and 12 of the

Convention, taken on their own and in conjunction with Article 14 of

the Convention, that they are not allowed conjugal visits in order to

procreate. Although artificial insemination is not ruled out in the

case of prisoners, the applicants have submitted evidence to the effect

that the Catholic Church of which both are followers does not approve

of this option.

2. The applicants also complain under Article 13 of the Convention

that they do not have an effective remedy for the alleged violation of

their Convention rights.

THE LAW

1. The Commission, having regard to the connection between the two

cases and the similar nature of the issues raised, considers it

appropriate to order the joinder of the present applications under

Rule 35 of its Rules of Procedure.

2. The applicants complain under Articles 8 and 12 (Art. 8, 12) of

the Convention that they are not allowed conjugal visits in prison.

Article 8 (Art. 8) of the Convention, insofar as relevant,

provides as follows:

"1. Everyone has the right to respect for his ... family life

...

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."

Furthermore, Article 12 (Art. 12) of the Convention provides as

follows:

"Men and women of marriageable age have the right to marry and

to found a family, according to the national laws governing the

exercise of this right."

The Commission considers that it is particularly important for

prisoners to keep and develop family ties in order to be able better

to cope with life in prison and prepare for their return to the

community. It, therefore, notes with sympathy the reform movements in

several European countries to improve prison conditions by facilitating

"conjugal visits".

However, the Commission recalls its case-law to the effect that,

although the refusal of such visits constitutes an interference with

the right to respect for one's family life under Article 8 (Art. 8) of

the Convention, for the present time it must be regarded as justified

for the prevention of disorder or crime under the second paragraph of

that provision. Moreover, according to the same case-law, an

interference with family life which is justified under Article 8 para.

2 (Art. 8-2) of the Convention cannot at the same time constitute a

violation of Article 12 (Art. 12) (No. 17142/90, Dec. 10.7.91,

unpublished).

The Commission considers that the same conclusions should be

reached under Articles 8 and 12 (Art. 8, 12) of the Convention in the

present case, despite the exceptional circumstances invoked by the

applicants. Thus, although the first applicant requires major surgery

to be able to conceive and this surgery can only be performed when the

couple are in a position to attempt conception, domestic law, as the

applicants themselves accept, does not exclude artificial insemination

in the case of prisoners. Moreover, although the applicants claim that

the artificial insemination option is not open to them because they are

practising Catholics, the Commission recalls that Article 9 (Art. 9)

of the Convention, which protects the freedom to manifest one's

religious beliefs, does not guarantee the right to be exempted from

rules which apply generally and neutrally, such as rules prohibiting

"conjugal visits" in prisons (cf., mutatis mutandis, No. 10358/83, Dec.

15.12.83, D.R. 37 p. 142).

The Commission, therefore, considers that no appearance of a

violation of Articles 8 and 12 (Art. 8, 12) of the Convention is

disclosed. As a result, this part of the application is manifestly ill-

founded and must be rejected as inadmissible, in accordance with

Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants complain that the refusal to allow conjugal visits

in prison amounts to treatment prohibited under Article 3 (Art. 3) of

the Convention.

However, the Commission recalls that, in order to fall within the

scope of this provision, the matter complained of must attain a minimum

level of severity (No. 10142/82, Dec. 8.7.85, D.R. 42, p. 86). This has

not occurred in the circumstances of the present case. It follows that

this part of the application is manifestly ill-founded and must be

rejected as inadmissible, in accordance with Article 27 para. 3

(Art. 27-3) of the Convention.

4. The applicants complain of discrimination in the enjoyment of

their rights under Articles 3, 8 and 12 (Art. 3, 8, 12) of the

Convention contrary to Article 14 (Art. 14) thereof.

Insofar as the applicants can be deemed to complain that they

have less possibilities to procreate than persons who are not detained,

the Commission considers that the difference in treatment in question

is the direct result of a lawfully imposed prison sentence and, as a

result, has a reasonable and objective justification. Moreover, it has

not been shown that there exists no reasonable proportionality between

the means employed and the aim sought to be realised, since the

applicants have the possibility to apply for artificial insemination

facilities.

Insofar as the applicants can be deemed to complain that they are

de facto discriminated against because of their religious beliefs, the

Commission finds that it is within a State's margin of appreciation for

its authorities to consider that the particularly exacting demands of

discipline and order in prison require that no distinctions should be

made between prisoners insofar as "conjugal visits" are concerned. As

a result, the difference in treatment between prisoners whose religious

beliefs allow for artificial insemination and those whose religious

beliefs do not has an objective and reasonable justification and no

lack of reasonable proportionality has been established.

It follows that no appearance of a violation of Article 14 of the

Convention taken in conjunction with Articles 3, 8 and 12

(Art. 14+3+8+12) is disclosed. This part of the application is,

therefore, manifestly ill-founded and must be rejected as inadmissible,

in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicants complain under Article 13 (Art. 13) of the

Convention that they do not have an effective remedy for the alleged

violation of their Convention rights.

The Commission recalls that, in accordance with its case-law, the

right to an effective remedy before a national authority under

Article 13 (Art. 13) of the Convention can only be claimed by someone

who has an "arguable claim" to be a victim of a violation of a right

recognised by the Convention (No. 10427/83, Dec. 12.5.86, D.R. 47, p.

85). However, this is not the applicants' case.

It follows that no appearance of a violation of Article 13

(Art. 13) of the Convention is disclosed. This part of the application

is, therefore, manifestly ill-founded and must be rejected as

inadmissible, in accordance with Article 27 para. 2 (Art. 27-2) of the

Convention.

For these reasons, the Commission,

DECIDES TO JOIN APPLICATIONS N° 32094/96 AND N° 32568/96;

by a majority,

DECLARES THE APPLICATIONS INADMISSIBLE.

M.-T. SCHOEPFER G.H. THUNE

Secretary President

to the Second Chamber of the Second Chamber

1. Απόφαση της 22.10.1997 [↑](#footnote-ref-1)