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PRESS RELEASE

[Legal decision]

Post-mortem medically assisted reproduction: the ban imposed by French law is not incompatible with the European Convention on Human Rights

The Conseil d'État today rejected the appeal of a widow who challenged a refusal to pursue the assisted reproduction treatment she had initiated with her now deceased husband. Since the Bioethics Act of 2021, medically assisted reproduction in France is intended to respond to a "parental project" which, for a couple, is terminated if one of its members dies. The Conseil d'État ruled that the ban imposed by the French Parliament fell within the margin of discretion available to each State for the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In 2024, a widow who, before the death of her husband, had embarked on an Assisted Reproductive Technology (ART) procedure, brought an urgent case before the administrative courts, asking them to order Caen university hospital to continue the treatment in France, and then the Agence de la Biomédecine to authorise the transfer of her and her husband's embryos from France to Spain, where post-mortem assisted reproduction treatment is authorised. After both applications were rejected, the woman appealed to the Conseil d'État. In particular, she considered that the ban on post-mortem ART imposed by the 2021 Bioethics Act could not validly apply against her because it was not consistent with the principle of making ART available to single women, which would have been contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Conseil d'État pointed out that, since the law of 2 August 2021 on bioethics, medically assisted reproduction is no longer intended to remedy a couple's infertility but to respond to a couple's or a single woman's "parental project". If one of the members of a couple dies, the parental project disappears and the embryos conceived in vitro cannot be implanted.

The Conseil d'État noted that in this new context Parliament wished to maintain the ban on post-mortem ART, after extensive debate on the issue and many consultations, to take into account the difference between the situation of a woman in a couple, whose ART is a response to the couple's parental project and, therefore, depends on the on-going consent of both members of the couple and their relationship as a couple, and that of a single woman who, from the outset, has conceived a parental project on her own, at the end of which the child will only have maternal descent. Parliament sought to strike a fair balance through this law, taking into account the different issues raised by these two situations, without establishing an inconsistent framework that would in principle have disproportionately infringed widows' right to privacy and would, therefore, have been incompatible with article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which protects this right.

The Conseil d'État ruled that the ban imposed by the law on allowing embryos to be taken out of France if they are to be used abroad for purposes prohibited in France is not incompatible with the European Convention on Human Rights and Fundamental Freedoms.

Lastly, the Conseil d'État verified that the application of this legislative framework to the applicant's specific situation did not disproportionately infringe her right to privacy. It considered that this was not the case, in

particular because the applicant is a French national with no ties to Spain, and because her request to take the embryos to Spain was based solely on the desire to continue the couple's parental project post-mortem.

On these grounds, the Conseil d'État dismissed the applicant's appeals.

Decision Nos. 497830, 497323 and 498345, 28 November 2024

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