



Case D -673/2011

Country: Belarus

Region: Europe

Year: 2011

Court: Constitutional Court

Health Topics: Sexual and reproductive health

Human Rights: Right to family life, Right to health

Facts

Exercising its preliminary control duties, Constitutional Court of the Republic of Belarus, considered the constitutionality of amendments to the Law of the Republic of Belarus on Auxiliary Reproductive Technologies. This law regulated various assisted reproductive treatments.

Such treatments were available to women over the age of 18 if they had full legal capacity, had undergone medical assessments, and were not medically contraindicated from the use of such technologies. Married women and unmarried women were treated equally under the Law. The Law, however, restricted the use of extra-corporal fertilization and artificial insemination for women over the age of 50, and allowed surrogate motherhood only if the woman seeking a surrogate was unable to bear the child herself. The law also provided for various other restrictions on surrogate motherhood.

Decision and Reasoning

The Court concluded that the law was in conformity with the Constitution, as it protected the right to health, the right to found a family, and reproductive rights guaranteed under Belarusian constitutional law. The defined restrictions in the Law on the availability of reproductive technologies were justified, necessary, and proportionate, and aimed to balance individual reproductive rights with the societal interest in protecting reproductive health and in genetic parenthood.

Decision Excerpts

"Human health as an integral part of the health of population and in general is one of the important conditions of its free and decent development, it facilitates the enjoyment of other human rights and the freedoms of a citizen." Translation page 1.

"The Constitutional Court notes that the defined restrictions are justified, are proportionate and needed for protection of such constitutional value as human health and also motherhood and fatherhood. They have not just private but also public interest which suggests a reasonable balance of interests of person and society. According to the opinion of the Constitutional Court implementation of the reproductive rights, which belong to individual rights, should be accompanied by protection of reproductive health and guaranteed by the State." Translation page 2.