



## Case 750B/1990

**Country:** Hungary

**Region:** Europe

**Year:** 1991

**Court:** Constitutional Court

**Health Topics:** Aging, Child and adolescent health, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to family life

### Facts

The petitioner, Dr. Zsuzsanna GÃ¡bor, challenged the constitutionality of Hungary's law that required women to be married and under forty years of age in order to undergo artificial insemination. The law was challenged on the grounds that it discriminated based on age and marital status, which was prohibited under Article 70 of Hungary's constitution.

### Decision and Reasoning

The Court held that the law was not unconstitutional because there was no fundamental right to artificial insemination that all were entitled to without discrimination and because the preconditions of age and marital status were necessary to protect the well-being of the child.

The Court found that the age restriction was justified because evidence shows that babies born to women over forty are significantly more likely to develop physical or mental disabilities.

The Court held that the precondition of marital status was justified because it was desirable for children to be born in a two-person household with a mother and father. Furthermore, the Court found that this precondition was consistent with Article 15 of Hungary's Constitution, which protected the institution of marriage and the family because artificial insemination was used by couples who cannot naturally have children to strengthen marriages and establish proper, "complete families."

### Decision Excerpts

"There exists no such human or civil fundamental right to artificial insemination that everyone is entitled to without any discrimination. This form of insemination is an institutional therapy; its aim is to help those people who cannot conceive a child or in cases where there is a high probability that the couple might not have a healthy, natural-born child after their marriage. Artificial insemination, as a health care service, can have preconditions, provided that these preconditions correspond with constitutional principles." (Page 1)

"It is desirable that children are, as far as possible, born in complete families, as not only maternal care but also the father and his care have outstanding importance in the development of the child." (Page 2)

"Setting an age-limit is justified by the fact that according to the state-of-art medical sciences, a relatively bigger proportion of children born to older mothers carry some physical or mental disabilities and they start their life at a disadvantage, that is, with unequal opportunities. Setting preconditions for artificial insemination can be considered as provisions where the legislator aims to eliminate unequal opportunities with Article 70/A Section 3 of the Constitution." (Page 2)