



Case 94-343/344 DC

C. C., n°94-343/344 DC, 27 July 1994

Country: France

Region: Europe

Year: 1994

Court: Conseil constitutionnel [Constitutional Council]

Health Topics: Health care and health services, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to bodily integrity, Right to family life, Right to life, Rights to the benefits of culture

Facts

The Speaker of the National Assembly and sixty-eight deputies lodged a constitutional challenge in the Conseil Constitutionnel against several controversial provisions in the field of reproductive health. These were articles 8, 9, 10, 12 and 14 of law n°75-17, Loi relative au respect du corps humain et loi relative au don et à l'utilisation des éléments et produits du corps humain, à l'assistance médicale à la procréation et au diagnostic prénatal (Law concerning respect for the human body and law relating to the donation and use of the products and elements of the human body, to medically assisted procreation and prenatal diagnosis).

Article 8 inserted a new chapter into the Public Health Code entitled "Medically Assisted Reproduction". The chapter enabled in vitro conception, transfer of embryos and artificial insemination and any technique with the equivalent effect of enabling procreation outside the natural process. It also established qualifications for couples seeking medically assisted reproduction and provided for the preservation of embryos for the use of other couples who have not been able to conceive, even with medical assistance (Article 9). It further made provision for limited scientific study of embryos with the consent of the couple.

Article 10 inserted a new chapter in the Civil Code entitled "Medically Assisted Reproduction" which prohibited a relationship being established between the donor and the child and provided that no action for remedies could be brought against the donor.

Article 12 inserted a section providing for prenatal diagnosis for the purpose of detecting a particularly serious illness in the embryo or foetus in utero. Article 14 inserted a section establishing a process for biological diagnosis made from cells removed from the embryo in vitro.

Decision and Reasoning

The Constitutional Council upheld the validity of all of the challenged provisions.

The Constitutional Council held that articles 8 and 9 of law n°75-17 did not violate the right to life of embryos. It ruled that the legislature had determined that embryos did not need to be conserved in all circumstances for an indefinite period of time. The legislature also determined that the principle of respect for all human beings from the inception of life did not apply to embryos. As such, the principle of equality of treatment between the born and unborn was also not applicable. The Constitutional Council did not consider that it was its place to question these determinations.

For the same reason, the Constitutional Council held that articles 8 and 9 of law n°75-17 did not violate the principle of equality by discriminating between embryos created before and embryos created after the enactment of the law, or by allowing different treatment for embryos that are selected for implantation or donated to third party couples and those that were not. The legislature had determined that the principle of respect for all human beings from the inception of life did not apply to embryos. As such, the principle of equality of treatment was not applicable, and it was not the place of the Constitutional Council to question these determinations.

The Constitutional Council held that articles 8 and 9 of law n°75-17 allowing the selection of embryos did not violate the constitutional principle of the protection of the genetic heritage of humanity, because there was no constitutional provision or principle enshrining the protection of the genetic heritage of humanity.

Likewise, the Constitutional Council held that articles 8 and 9 of law n°75-17 allowing for the creation of children whose biological parent is a "third party donor" did not undermine the rights of the family as envisioned and guaranteed by the Preamble to the Constitution of 1946. No part of the Preamble to the Constitution of 1946 precluded the creation of families via donation of gametes embryos.

The Constitutional Council held that the denial by articles 8 and 9 of law n°75-17 of children who are born via in vitro fertilization involving a "third party donor" to access to information about the identity of that donor did not violate the right to health of the child and the free development of his or her personality. Preventing of children from learning the identity of their biological parent(s) could not be regarded as affecting the health protections guaranteed by the Preamble to the Constitution of 1946.

The Constitutional Council held that articles 8 and 9 of law n°75-17 did not violate the principle of separation of powers by allowing the legislature to determine the composition of the National Commission of Medicine and Biology or Reproduction and Prenatal Diagnosis. The legislature did not overstep the limits of its power by creating an administrative commission, following general guidelines set by article L.184-3 of the Public Health Code designed to ensure respect for the embryo.

The Constitutional Council held that article 10 of law n°71-17, prohibiting the establishment of a parental bond between a gamete donor and the resulting child, did not violate the fundamental principle recognized by the law of the Republic of 16 November 1912 permitting a child, under certain conditions, to discover the identity of his biological father outside of marriage. Article 10 has neither the purpose nor the effect of determining paternity in cases of medically assisted procreation. Furthermore, no constitutional provision was violated by the prohibition on the establishment of a filial relationship between gamete donor and child.

The Constitutional Council held that article 10 of law n°71-17 did not violate the principle of personal responsibility articulated by article 1382 of the Civil Code. No constitutional provision required a gamete donor to take personal responsibility for the resulting child.

The Constitutional Council held that article 12 of law n°75-17, allowing the use of prenatal diagnosis did not violate the right to life. A law allowing the in utero use of prenatal diagnosis on an embryo or a fetus to detect serious deformities does not expand the scope of cases in which an abortion can be legally performed.

The Constitutional Council held that article 14 of law n°75-17, allowing the biological diagnosis of cells removed from in vitro embryos, did not violate the right to life. The law only concerned diagnosis of the cells of in vitro embryos and thus was irrelevant to the issue of abortion.

The Constitutional Council held that the new laws, read together, did not violate the principle of human dignity. These laws established a set of principles including the primacy of the human, respect for human life from inception, the sanctity, integrity and non-commercial nature of the human body, integrity of the human species, which were intended to uphold constitutional principle of human dignity.

Decision Excerpts

§9 - The legislature secured various forms of protection in the event of the conception, implantation and conservation of embryos fertilised in vitro; but it did not see the need to provide for the conservation of all embryos once formed for all time and in all circumstances; it considers that the principle of respect for human life from its inception is not applicable to them; and that the principle of equality is accordingly likewise inapplicable to such embryos;

§10 - It is not for the Constitutional Council, which does not have the same decision-making powers as Parliament, to question provisions enacted by Parliament in the light of developments in knowledge and techniques;

§11 - Contrary to what is asserted by the applicants, there are no provisions or principles of constitutional status applicable to embryo selection that are directed to the protection of the human genetic inheritance; there is nothing in the preamble to the 1946 Constitution that precludes the development of the human family via gamete or embryo donations on the terms provided by the Act; the ban imposed by the Act on any means whereby a child might ascertain the donor's identity cannot be regarded as an attack on health protection as secured by the preamble; as regards individual decisions concerning studies for medical purposes, it was not ultra vires for the legislature to impose the requirement for assent by an administrative board constituted in accordance with rules determined by the new section L184-3 of the Public Health Code to ensure that the embryo's interests are not jeopardised;

â€œÂ§14 - Section L162-16, concerning prenatal diagnosis in utero, does not authorise any new case of termination; section L162-17 relates only to diagnoses made from cells removed from the embryo in vitro; the claim therefore fails as a matter of fact;â€•

â€œÂ§17 - The Act has neither the object nor the effect of regulating issues of paternity in cases of medically assisted reproduction; no provision or principle of constitutional status forbids the prohibitions laid down by Parliament on establishing a relationship between child and donor and on bringing actions for remedies against donors; the applicantsâ€• claims must therefore be dismissed;â€•

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