

Decision 750B/1990

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of the petition by Dr. Zsuzsanna Gábor (Villám street 23, Debrecen) aimed at the subsequent examination and annulment of the unconstitutionality of the legal rule, the Constitutional Court has adopted the following

Decision:

The Constitutional Court rejects the petition seeking the unconstitutionality of and to annul Decree No. 12/1981 (IX. 29.) of the Minister of Health on artificial insemination.

Reasoning

1.

According to the petitioner the Decree of the Minister of Health regulating artificial insemination allows artificial insemination, however, marriage and age limit are preconditions. According to the petitioner the Constitution prohibits the discrimination of the citizens on any basis, including gender, age, or marital status (Article 70/§ Paragraphs 1 and 2).

2.

According to the answer of the Ministry of Welfare the age limit of 40 was included in the law, because at present childbirth over the age of 40 involves increased dangers both for the mother and the fetus. Over the age of 40, neither artificial nor natural inseminations is desirable. Being married is also a precondition of artificial insemination as the family, the mother and the father together can insure the proper growth of the child.

3.

The Constitutional Court took into consideration the following while adopting its decision:

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.

According to Article 15 of the Constitution, the Republic of Hungary shall protect the institution of marriage and the family. Promoting childbirth with artificial insemination in cases where the married couple cannot have a child in the natural way strengthens the institution of marriage and allows the establishment of the proper family (married

couples with children). 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.

The restriction specified in the Decision challenged by the petition protects the rights of the children to be born through artificial insemination, including the rights in Article 67 of the Constitutions, stating that all children have the right to receive the protection and care of their family, and of the State and society, which is necessary for their satisfactory physical, mental and moral development.

Based on these the Constitutional Court establishes that the preconditions regarding artificial insemination – i.e. a health care service - specified in the Decree No. 12/1981 (IX. 27.) of the Minister of Health are not unconstitutional, hence rejected the petition seeking the annulment of the above Decree.

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.

The Constitutional Court has adopted its decision acting upon Section 1 point b, Section 20, Section 22 paragraphs 1 and 2, Section 25 and Section 31 of the Act XXXII of 1989 on the Constitutional Court and will send it to the petitioner and the Ministry of Welfare.

Budapest, February 27, 1991

Dr. Antal Ádám
Judge of the Constitutional Court

Dr. András Szabó
Judge of the Constitutional Court

Dr. Géza Herczeg
Lecturer Judge of the Constitutional Court