

Czech Republic

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Facts of the Case

- Supreme Court, File No. 21 Cdo 4020/2017
- The claimant required that the respondent should be ordered to carry out artificial insemination using the cryopreserved sperm of her husband who had died.

Facts of the Case

- The claimant's husband had signed an informed consent on specific treatment. However, the final medical treatment did not take place, because, after the death of the husband, the claimant's health state did not allow such a therapy.
- After several months, the respondent refused the request to complete the artificial insemination process because of the absence of valid consent of the claimant's husband.

Facts of the Case

- The completion of the artificial insemination process of the claimant with the cryopreserved sperm of her deceased husband is prevented by Sec 6 of Act on Specific Health Services, according to which, artificial insemination can be carried out only if the request of the infertile couple is not older than six months.

Decision of the lower courts

- Act on Specific Health Services is a public law regulation that allows entities to act only as expressly permitted by law.
- It emphasises the necessity of the existence of the informed consent of future parents.
- If the request is older than six months, no will of the deceased can be anticipated during the treatment process and this will cannot be replaced by a court decision.

Decision of the Supreme Court

- Does the failure to complete the artificial insemination process interfere with the right to family and private life protected by Article 8 (1) of the Convention?
- The claimant's right to respect her private and family life (which includes the right to decide whether to be a parent) was undoubtedly limited if the respondent refused to carry out artificial insemination operations.
- However...

Decision of the Supreme Court

- ...this conclusion does not prejudice whether Article 8 of the Convention has actually been infringed, since the second paragraph of that provision expressly assumes situations justifying State interference with the right to private life.
- It is necessary to examine whether Sec 6 (1) of the Act on Specific Health Services, requiring a request which may not be older than six months, pursues a legitimate objective.

Decision of the Supreme Court

- Reasoning of the valid legislation:
 - A right of the child to know her parents under Article 7 of the Convention on the Rights of the Child
 - The procedure is only possible "inter vivos" (among the living); the law enables artificial insemination only in connection with medical treatment of female or male infertility.
 - The requirement of consent protects the decision-making of both parents.

Comments

- Two potential outcomes for the health care provider:
 - Provided AI - the child conceived may seek damages for impossibility of knowing his biological father as a result of the infringement of the law and administrative fines
 - Refused AI - The claimant may seek damages for breach of her constitutionally guaranteed rights under Sec 2971 of the Civil Code

Comments

- The issue of artificial insemination is not uniformly regulated in Europe.
- The alleged interference with family life in the form of the non-carrying out of artificial insemination is incapable of interfering with the claimant's family life, as it objectively does not exist.

Comments

- As regards the right to private life, the genetic material of both potential parents is an integral part of their identity and hence their right to self-determination.
- The provisions of the law protect the man, as they allow him to withdraw his consent at any time. However, the real will of the deceased husband to become a father cannot be identified or confirmed without a doubt.