

Communication concerning the decision of the Curia of Hungary
in civil case n° Pfv.II.21.526/2014

In a legal action for challenging the presumption of paternity, the Curia rendered a decision on the following issue of principle.

By virtue of section 43, subsection (1) of the Hungarian Family Act, the presumption of paternity over a child born through assisted reproduction may be contested if the mother's husband or partner has not given his prior consent for the use of reproductive technology.

According to section 168 of Act no. CLIV of 1997 on Health Care (hereinafter referred to as the Health Care Act), the partners involved in the assisted reproduction process shall express their consent in two separate documents: firstly, in an application form to request the start of reproduction proceedings, secondly, in a statement of informed consent in respect of their particular reproductive treatment based on oral and written information – which shall also include the description of the reproductive technology to be used – provided by the health care institution performing the above treatment.

As regards the paternity over a child born through assisted reproduction, the first instance court pointed out that the presumed father's consent given in the application form to request the start of reproduction proceedings and in his statement of informed consent excludes the rebuttal of the presumption of his paternity even if, despite having been involved as the mother's husband or partner in the reproduction proceedings, his DNA profile does not match that of the child. Supporting the first instance court's view, the second instance court, on the basis of the presumed father's statement of informed consent, did not examine whether the partners involved the reproduction process had been duly informed and whether they had been well aware of the characteristics of the reproductive technology the use of which they had agreed to.

The litigation data, however, showed that, in violation of the provisions of section 168 of the Health Care Act, the documents signed by the partners involved in the process did not contain any information either on their particular reproductive treatment or on the possible use of sperm donated by someone else. Other litigation data and the incomplete medical records, on the other hand, indicated that the presumed father, the plaintiff in the present case, had not given his consent to the use of donated sperm in the fertility treatment, since his explicit intention had been to supply his own sperm for the purposes of the reproduction process and to become a biological father. On the basis of the pieces of information that it provided orally and by conduct, the health

care institution considered the use of the plaintiff's sperm for the reproductive treatment feasible, and, according to the medical records, the viable sperm collected from the plaintiff was utilised.

Proceeding upon the plaintiff's petition for judicial review and in the light of the evidence available, the Curia overruled the decisions of the lower instance courts and reasoned as follows.

By virtue of section 43, subsection (1) of the Hungarian Family Act, the rebuttal of the presumption of paternity over a child born through assisted reproduction can be obtained only in exceptional circumstances. The content of the statement of informed consent is set forth by section 168 of the Health Care Act. In the event that the medical records show that, despite a lack of consent from the fertility treatment patient and his partner, sperm donated by a third party has been used for the purposes of the reproduction process, section 43, subsection (1) of the Hungarian Family Act offers the possibility of rebutting the presumption of paternity. In such cases, the right to reproductive self-determination of the treatment patient and his partner is violated. In the absence of the description of the particular treatment, their statement of informed consent shall not be interpreted in such a broad manner as to assume that they sought to become parents at any costs and therefore agreed to the utilisation of any and all kinds of reproductive technologies. Agreeing to undergo fertility treatment necessitates a conscious and responsible decision, the persons concerned should clearly decide on, with full knowledge of the characteristics of the reproductive technology to be used in their case, whether they explicitly insist on both becoming biological parents through assisted reproduction (as in the present legal dispute) or they also accept the use of sperm donated by someone else.

The "blank" statement of informed consent signed by the treatment patient and his partner does not meet the above requirement, since they should have explicitly agreed to the use of sperm donated by a third party, but such agreement has not been given in the present case.

Given that the first and second instance courts wrongfully rejected the plaintiff's action for challenging the presumption of his paternity, the Curia decided to quash the lower instance judgements and established that there is no father-child relationship between the plaintiff and the child born through assisted reproduction.

Budapest, the 1st of June 2015

Civil Department of the Curia of Hungary