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Presidential Decree Could Reinstate In Vitro Fertilization in Costa Rica

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Reinstating access to in vitro fertilization (IVF) could be close to ending the lengthy and complex path it has followed in Costa Rica, as the country’s President Luis Guillermo Solís has said he is willing to sign a decree to that effect. In so doing, Solís would be overcoming almost three years of congressional delay in passing legislation ordered by the Inter-American Court of Human Rights (IACHR).

The continental tribunal told Costa Rica in 2012 to reinstate access to the medical technique, banned in 2000 through a sentence by the Sala Constitutional—also known as the Sala IV—of the country’s Corte Suprema de Justicia (CSJ).

The Costa Rica-headquartered IACHR thus ruled in favor of 23 couples harmed by the local ruling, some having sought IVF abroad, while others, lacking the resources to do so, could not access that option.

The Sala IV based its 2000 ruling on the anti-IVF position that, in its use of embryos, the medical technique violates human life, and it declared unconstitutional the 1995 decree that allowed the medical procedure to be applied (NotiCen, May 7, 2015).

In 2001, the couples took their case to the Washington-headquartered Inter-American Commission on Human Rights (IACHR), which, in the following years, set Costa Rica three successive deadlines—which the country missed—to pass legislation allowing IVF again. The commission turned the case over to the court in 2011, and in a ruling of November 2012—made public a month later—the court told Costa Rica to reverse the Sala IV action as quickly as possible.

But opposition in the Asamblea Legislativa—the country’s unicameral parliament—mainly from the 3-strong bloc of evangelical deputies, has kept legislation initiatives from being passed. Costa Rica’s legislative regulations allow passage of legislation to be easily blocked by one or more deputies introducing unlimited numbers of modification motions to a certain bill, indefinitely extending the debate and preventing a vote.

A team of lawyers is scheduled to go before the court on Sept. 3 to explain what this country has done—or not done—to comply with the 2012 ruling.

Meanwhile, six other couples also affected by the 2000 prohibition went before the IACHR in 2004, and Costa Rica could be facing its second trial—and negative ruling—at the IACHR, something the president has said could be avoided via the decree. This case could be brought, also in September, to the continental tribunal.

IVF decree challenged from outset

The origin of the situation dates back to 1995. That year, on Feb. 3, the Ministerio de Salud issued a decree authorizing IVF for married couples, setting the rules for implementing the technique,
which included a ban on marketing the germ cells as well as on manipulating the genetic code of the embryos or experimenting with them.

IVF was implemented by the Instituto Costarricense de Infertilidad, from 1995 until 2000, a period during which some 15 Costa Ricans were born as a result, according to local media.

The year the method was put into effect, a Costa Rican citizen brought an action of unconstitutionality before Sala IV, requesting, among other points, that "the decree be declared unconstitutional for violating the right to life" and that "the in vitro fertilization practice be declared unconstitutional."

Arguments made for the request included that "the percentage of malformations in general was larger than that of natural fertilization" and that "the general [IVF] practice violates human life," which "begins at the moment of fertilization." It was also stated that "the in vitro fertilization business … does not cure an illness," adding that it implies "throwing conceived … children in the garbage can."

Five years later, Sala IV ruled in favor of the action. IVF practices "clearly attempt on a human being's life and dignity," it stated in its March 15, 2000, ruling. "The human being holds the right to not be deprived of life," it said, adding that as soon as conception occurs, "a person is a person and we are before a live being, with a right to be protected by the legal system. Since the right [to life] is declared in favor of all, with no exception, it must be protected both in the being already born and in the [being] yet to be born."

"Only though formal law passed by the legislative branch according to the procedure foreseen in the Constitution for the approval of laws is it possible to regulate and … restrict fundamental rights and freedoms," thus "regulation of these rights by the executive branch is incompatible with constitutional law," the Sale IV ruling added.

Sala IV also pointed out that "the question—when does human life begin?—is of key importance in the matter hereby discussed, because it must be defined when a human being is the subject of legal protection in our system. There exist discrepancies among specialists. Some consider that human embryos are entities in a state of development in which they do not possess more than a simple potential for life. Others claim that every human being has a single beginning, which occurs at the moment of fertilization itself. They define the embryo as the being's original form."

Its conclusion was that "the human embryo is a person from the moment of its conception, thus it cannot be treated as an object for research purposes, be subjected to selection processes, kept in freezing" and that "it is not constitutionally legitimate for it to be exposed to a disproportionate risk of dying."

"The Sala's main objection is that implementation of the technique implies a high loss of embryos, which cannot be justified by the fact that its aim is to accomplish a human being, provide a couple with a child that they could not have otherwise," it added. "What is essential is that the embryos whose life is first sought and later frustrated are human beings, and the constitutional system does not admit any distinction between them."
Strong objections on religious grounds

That is precisely the line of reasoning presented by legislators, as well as Catholic and evangelical leaders and other Costa Ricans, opposed to IVF.

During a massive Christian march held on Aug. 8 in San José, the Costa Rican capital, Denis Félix de la Cruz, a Catholic priest from the densely populated district of Cinco Esquinas de Tibás, on the city’s northern outskirts, told the local online daily CrHoy, "Life if a gift from God, it isn’t a right. For us Christians, there’s life from the moment the sperm fertilizes the egg cell. When there’s fertilization, there’s life, and interrupting, killing that reality is murder."

"That’s what we defend. We defend life, from a starting point way way before what they [IVF promoters] say, that 'so many weeks after, there’s life'. Not to us," added De la Cruz. "The Christian concept of life is totally a concept of life … based on faith, based on truth, and also science-based."

The priest said that an option to "killing to obtain life is to adopt a life that’s already present. How many children need—children already born—a family to receive them, need a family to love them, to give them a home? Yes, there’s a way to have life, there’s a way to have a family, there’s a way to have children."

As opponents and promoters of IVF clash over when life actually begins and whether the technique is the same as murder or a legitimate creation of life, legislation initiatives have crashed against radical opposition mainly from minority evangelical deputies and their allies—including civil-society sectors.

A bill presented by the government in 2010 came under fierce attack from anti-IVF deputies, and was eventually dismissed.

A new text is being debated by the congressional Comisión de Asuntos Sociales, and, although it contains elements of discrimination, it could be approved by the work group and presented for plenary debate. Article 2 of the text limits access to IVF only to women who are married or in a relationship of more than three years, according to a proposal by Partido Unidad Social Cristiana (PUSC) Deputy Jorge Rodríguez.

Evangelical Partido Restauración Nacional (PRN) Deputy Fabricio Alvarado, a staunch opponent of IVF, even with that limitation, said it must be "a last resource for women to try to conceive a child."

Legislation now under consideration a compromise

Nevertheless, committee members who oppose selected access to the technique are willing to go along with the text as long as a law is passed in compliance with the ruling by the IACHR. "I’m convinced it’s discriminatory, but … one understands that not everything that’s best is politically viable," Partido Liberación Nacional (PLN) Deputy Ronny Monge, who heads the committee, told reporters on Aug. 12. "If, finally, to comply with the Inter-American Court of Human Rights, we have to give in, we will."

Ten days later, committee member and PLN Deputy Sandra Piszk said that, taking into account the Christian legislators’ stern position, it is best to yield. "I think that if we don’t accept that condition, the bill gets stuck again," she told local media. "I think that our responsibility as deputies is to accept that changes in this country must come about little by little."
"As far as I’m concerned, much as I regret it, I’ll have to accept that decision" to avoid obstruction by opposing legislators, Piszk said. "I was telling my fellow women deputies on the committee who say they’re not going to accept what the Christian [legislators] request that people are going to complain that we’re leaving women out, but it would also be a big mistake for the technique not to be allowed to anyone."

In Piszk’s view, the Christian legislators' position is political blackmail. In Congress, "there are thousands of blackmail situations every day, and IVF has been subjected to that," she said.

But Mario Redondo, the only Alianza Demócrata Cristiana (ADC) legislator and a former head of Congress, said many do not understand that the deputies opposed to IVF are "defending lives. We’re talking about human embryos, which are human lives, and … if Sandra sees defending lives from being sacrificed as blackmail, well, I feel sorry for her."

Meanwhile, seeing the congressional delay in passing a law on reinstating access to IVF, Solís has repeatedly said in the past several months that he is willing to sign a decree that would put the country in compliance with the IACHR ruling. He has also said that it must be cautiously analyzed to avoid an eventual questioning from Sala IV.

As early as March 6, Solís told reporters, "I’m in the process of seeing whether it can be done some other way besides passing a law. … We’re analyzing it technically. I’m evaluating it" with the presidential legal team, to determine "if it’s possible. We have to comply with the continental court’s ruling. It’s a commitment for the country."

On July 22, Solís pointed out that the decree would have to be signed before the Sept. 3 hearing at the IACHR, because "it wouldn’t make any sense if the decree came out after we’re condemned for the second time. I’m willing to prevent Costa Rica from being sanctioned for the second time for an international noncompliance of this magnitude."

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