



Legal uncertainty prevented mother from giving birth at home

In today's Chamber judgment in the case [Ternovszky v. Hungary](#) (application no. 67545/09), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

Principal facts

The applicant, Anna Ternovszky, is a Hungarian national who was born in 1979 and lives in Budapest. She was pregnant when she lodged her application with the Court.

She intended to give birth at her home, rather than in a hospital or a birth home, but alleged she had not been able to do so because health professionals were effectively dissuaded by law² from assisting her as they risked being convicted. It appeared that at least one such prosecution had taken place in recent years.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 8 (right to respect for private and family life), the applicant alleged that the fact that she had not been able to benefit from adequate professional assistance for a home birth in view of the relevant Hungarian legislation – and as opposed to those wishing to give birth in a health institution – had amounted to discrimination in the enjoyment of her right to respect for her private life.

The application was lodged with the European Court of Human Rights on 15 December 2009.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy), *Judges*,

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² section 101(2) of Government Decree no. 218/1999

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Court observed that “private life” incorporated aspects of an individual’s physical and social identity including the right to respect for both the decisions to become and not to become a parent, hence the right of choosing the circumstances of becoming a parent. Although Ms Ternovszky had not been prevented as such from giving birth at home, there had been an interference with the exercise of the right to respect for her private life given that legislation arguably dissuaded health professionals from providing the requisite assistance.

The relevant legislation might reasonably be seen as contradictory. While the Health Care Act 1997 recognised patients’ right to self-determination, including the right to reject certain interventions, a Government decree sanctioned health professionals carrying out activities within their qualifications in a manner incompatible with the law or their licence.

The Hungarian Government recognised the necessity of regulating this matter; however no specific decree to that end had been enacted yet. It had moreover not been disputed that, in at least one case, proceedings had been instituted against a health professional for home birth assistance.

The Court therefore concluded that the matter of health professionals assisting home births was surrounded by legal uncertainty prone to arbitrariness. Because of the absence of specific and comprehensive legislation and of the permanent threat posed to health professionals inclined to assist them, the applicant was effectively not free to choose to deliver at home. Consequently, there had been a violation of Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Hungary was to pay the applicant 1,250 euros (EUR) in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.