

Resolution CM/ResDH(2012)88¹

Execution of the judgment of the European Court of Human Rights Ternovszky against Hungary

(Application No. 67545/09, judgment of 14 December 2010, final on 14 March 2011)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”),

Having regard to the final judgment transmitted by the Court to the Committee in the above case and to the violation established (see document [DH-DD\(2012\)22E](#));

Recalling that the respondent State's obligation under Article 46, paragraph 1, of the Convention to abide to by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- of general measures preventing similar violations;

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with its above mentioned obligation;

Having examined the action report provided by the government indicating the measures adopted in order to give effect to the judgment, including the information provided regarding the payment of the just satisfaction awarded by the Court (see document [DH-DD\(2012\)22E](#));

Having satisfied itself that all the measures required by Article 46, paragraph 1, have been adopted;

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case and

DECIDES to close the examination thereof.

¹ Adopted by the Committee of Ministers on 6 June 2012 at the 1144th Meeting of the Ministers' Deputies.

Action Report of 14 September 2011
Appl. No. 67545/09
Ternovszky v. Hungary judgment of 14/12/2010

Introductory case summary

The Court found violation of Article 8 of the Convention because the lack of regulation of home birth resulted in a situation incompatible with the notion of foreseeability and hence with that of lawfulness. Therefore the interference with the mothers' right to give birth at home was not prescribed by law.

I. Payment of just satisfaction and individual measures

Just satisfaction rewarded to the applicant (1,250 € for the costs and expenses incurred before the Court) was paid on 11 May 2011 (HUF 330,188*). Since the applicant personally has not been prevented from giving birth at home, and had in fact given birth at home by the time the judgment was delivered, no individual measures were necessary in her case.

II. General measures

Government Decree no. 35/2011 of 21 March 2011 introduced the rules governing the professional and material conditions of home birth. Mothers between the ages of 18 and 40 in the period of 37th to 41st weeks of their pregnancies free of medical complications can choose to give birth in a non-hospital environment, at home or in a home birth center. The regulation which came into effect on 1 April 2011 affecting births after 1 May 2011, lays down all the duties, responsibilities and competencies of those assisting homebirths. Professionals helping baby deliveries outside hospitals (home birth assistants) have to have the required qualification (professional obstetricians or midwives with labour room experience exceeding two years or registered assistance at minimum 50 births) as well as a license from the public health and medical officer service (ÁNTSZ). It prescribes strict hygienic rules and requires that a hospital must not be farther than a 20-minute drive away. At least two home birth assistants must be present during birth and the assistance of a paediatrician must also be secured.

The judgment has been published on the website of the Government (www.kormany.hu).

III. Conclusions of the respondent state

The Government consider that the measures adopted have fully remedied the consequences for the applicant of the violation found by the Court in this case and are sufficient to prevent further similar violations resulting from the former lack of regulation of home birth and therefore Hungary has fully complied with its obligations under Article 46, paragraph 1 of the Convention.

Budapest, 14 September 2011

* Exchange rate: 264.15