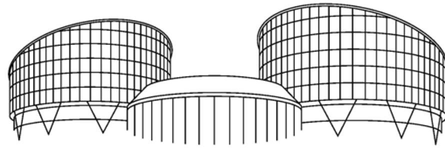

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF C.P. v. SPAIN

(Application no. 50181/22)

JUDGMENT

Art 8 • Private life • Applicant's compulsory admission to hospital to give birth pursuant to a judicial order despite her wish to give birth at home • Existence of a high risk to mother and child •Relevant and sufficient reasons • Proportionate balancing between competing interests • No indication of arbitrariness • Interference "necessary in a democratic society"
Art 5 • In case-circumstances periods from the police's arrival, without entering her home, until her admission to hospital and from then on until the child was delivered not amounting to a deprivation of liberty • No indication of coercion • Police officers were not in the ambulance and left the hospital immediately upon her admission • Applicant not isolated nor unable to contact the outside world • Incompatible *ratione materiae*

Prepared by the Registry. Does not bind the Court.

STRASBOURG

11 June 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of C.P. v. Spain,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina Šimáčková, *President*,
María Elósegui,
Gilberto Felici,
Mykola Gnatovskyy,
Vahe Grigoryan,
Sébastien Biancheri,
Nicholas Emiliou, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 50181/22) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Ms C.P. ("the applicant"), on 13 October 2022;

the decision to give notice to the Spanish Government ("the Government") of the complaints under Articles 5 and 8 of the Convention concerning the applicant's compulsory admission to hospital on 24 April 2019 to declare inadmissible the remainder of the application;

the confirmation of the French Government of 14 June 2024 that they did not wish to exercise their right to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by Association of Women Judges of Spain, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 12 May 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant's complaints under Articles 5 and 8 of the Convention about her compulsory admission to hospital on 24 April 2019 to give birth pursuant to a judicial order, despite her wish to give birth at home.

THE FACTS

2. The applicant was born in 1990 and lives in Posada Llanera. She was represented by Ms P. Torres Lopez, Ms I. Diez Velasco and Ms L.M. Martinez Losas, lawyers practising in Madrid.

3. The Government were represented by their co-Agent, Ms H. E. Nicolás Martínez.

4. The facts of the case may be summarised as follows.

I. BACKGROUND OF THE CASE

5. The applicant became pregnant in 2018. From the outset, she received care at the Asturias Central University Hospital ("the hospital") and from V., a registered midwife practising in the French public health system. V. monitored the pregnancy from the early weeks. Some obstetric tests were also performed by French healthcare professionals. The pregnancy was progressing normally.

6. In February 2019 the applicant submitted a birth plan to the hospital, indicating her wish to be accompanied by her partner throughout, and requesting that only the minimum necessary staff be present. She also specified that she did not want labour induction, epidural anaesthesia, vaginal examinations, the administration of oxytocin, an instrumental delivery or a caesarean section due to lack of progress, unless her or her child's life was in immediate danger.

7. In March 2019 the applicant informed the hospital of her intention to give birth at home with the assistance of V. According to medical reports, the applicant stopped attending recommended check-ups at the hospital from the 35th week of pregnancy onwards. She was monitored regularly by the midwife in the final weeks of her pregnancy.

II. EVENTS BETWEEN 23 AND 29 APRIL 2019

A. The applicant's medical appointment on and subsequent events of 23 April 2019

1. *The medical appointment*

8. On 23 April 2019, when the applicant was 42 weeks and two days pregnant, she went to the hospital for a medical check-up. She was examined by Doctor A., the Head of the hospital's Obstetrics Department, who had been contacted earlier by the applicant's partner.

9. A prenatal monitoring log dated 23 April 2019 described the applicant's cardiotocogram as "normal or reassuring". Several other medical documents compiled between 23 and 26 April 2019 indicated that the cardiotocogram of 23 April 2019 showed forty minutes of minimal variability with baseline changes, no spontaneous accelerations, and variable decelerations. Under the applicable protocols and guidelines, this tracing fell within *category II* (indeterminate). Dr A., relying on those protocols, considered the results insufficiently reassuring and requiring prolonged,

closer monitoring. A foetal ultrasound also suggested a possible cephalopelvic disproportion due to malposition.

10. It appears from medical documents and was subsequently established in the domestic proceedings that Dr A. informed the applicant and her partner that the pregnancy carried a risk of an adverse outcome because the foetus was post-term (42 weeks and 2 days); that the assessment of foetal well-being was indeterminate and unsatisfactory, necessitating continued and extended monitoring; and that the baby's head might be too big for the mother's pelvis. According to both parties, as well as the discharge report of 26 April 2019, Dr A. therefore proposed either bringing about the birth (*terminacíon del embarazo*) or, alternatively, continuing the monitoring and, if the results were normal, maintaining strict surveillance of the foetus's well-being.

11. The couple told the doctors they needed to consult the private professionals (that is, the midwife) and would return immediately, and left the hospital. Dr A. told the applicant and her partner that he would be waiting for them.

2. The parties' account of subsequent events of 23 April 2019

12. According to the applicant, she and her partner returned shortly afterwards that day, but the Patient Care Service had closed at 3 p.m. The applicant went home because she was tired and was having contractions.

13. According to the Government, there was no evidence that they had returned to the hospital. The monitoring room was next to the delivery room, which was open 24 hours a day. The hospital's information desk and emergency room were also open 24 hours a day.

14. The parties agree that the couple did not have any further contact with hospital staff on that day.

15. From the evening of 23 April 2019 onwards, the applicant experienced irregular contractions. She stayed in contact with V., who arrived at the applicant's home the following morning to assist and supervise her.

B. Report of the hospital for the duty court

16. At some point on 24 April 2019 Dr A. prepared a medical report stating that the applicant, who was then 42 weeks and three days pregnant, had been being monitored at the hospital. She had stopped attending scheduled check-ups 35 weeks and two days into the pregnancy and had later informed the hospital that she would not be continuing her follow-up there. On 23 April 2019, when she was 42 weeks and two days pregnant, a foetal wellbeing assessment had been performed at her request. The foetal biophysical profile showed a normal amount of amniotic fluid on ultrasound, but the cardiotocogram was of type II, which included a 30-minute period of minimal variability, requiring closer monitoring. Dr A. reported that he had informed the applicant that termination of the pregnancy was medically

necessary, as the gestation had been so prolonged and there were risks of foetal hypoxia and intrauterine foetal death after a gestation of 42 weeks. This recommendation was based on hospital protocol, the Ministry of Health's clinical practice guidelines and international evidence-based guidelines. The applicant had been also informed that the monitoring results were abnormal and required frequent follow-up appointments. She had requested the opinion of the midwife. The applicant had stated that she would return but had not come back. No documents were attached to the unsigned report.

17. At 1.12 p.m. on 24 April 2019 Dr P., the deputy head of surgical and critical services of Health Area IV-Oviedo (based in the hospital) sent a letter to the Oviedo Investigating Court No 1 ("the duty court"), enclosing the report of the head of obstetrics section. Referring to this report, he noted that the applicant had expressed her wish to continue her pregnancy at home and to have a natural birth assisted by midwives. All attempts by the obstetrics department staff to persuade her to be admitted to hospital for the immediate induction of labour had been unsuccessful. Because of the significant risk to the foetus's life, Dr P. referred the matter to the duty court, suggesting that a compulsory admission order be made for the immediate induction of labour.

C. Order of the duty court for the applicant to be compulsorily admitted to hospital

18. On the same day (24 April 2019) the duty court issued proceedings (*Diligencias Indeterminadas* no. 801/2019). In a report of the same date and made within those proceedings, the public prosecutor applied to the duty court for an order for the applicant's involuntary admission to hospital for the immediate induction of labour, under Articles 29 and 158 of the Civil Code in conjunction with Section 9 of the Law on Patient Autonomy and Article 15 of the Spanish Constitution. The public prosecutor concluded that, after careful consideration of the interests at stake, the best interests of the unborn child's life took precedence.

19. On the same day the duty court ordered the applicant's "compulsory admission [*el ingreso obligado*] for induction of labour, if necessary". The duty court relied on Article 9 of Law 41/2002 and Articles 29 and 158 of the Civil Code (see paragraphs 67 - 73 below). It noted that under Article 29 of the Civil Code, birth determined personality; but that an unborn child should be deemed already born for all purposes favourable to him or her. Article 158 § 6 of the Civil Code established a list of measures a judge could take, including "generally, any other provisions deemed suitable to remove the minor from danger". The duty court referred to the documents received from the hospital, which are summarised in paragraphs 16 and 17 above, and to the above hospital submissions which indicated that it was necessary for the applicant, who was 42 weeks and 3 days pregnant on the date of the court order, to be admitted to hospital for immediate induction of labour. The duty

court further found that the applicant had been informed of the risk of foetal hypoxia and intrauterine death from week 42. However, she had expressed a wish to give birth at home rather than in hospital. That could undoubtedly pose an imminent and serious danger to her child's life.

20. The court also ordered in the same order that the local police should be required to accompany (*officiese... a fin de que acompañen*) the applicant to the hospital, and to make sure (*debiendo verificarse*) that she was taken there in a medically equipped vehicle.

D. Events at the applicant's home and her being taken to the hospital

1. The official account of the events

21. A police report drafted at 5.50 p.m. on 24 April 2019 records that two police officers arrived at the applicant's address at 3.30 p.m. on that date. The ambulance team, who had arrived earlier, informed the officers that they had called the residents via the intercom, but the residents had replied that no ambulance or medical assistance had been requested for that address.

22. V., the midwife, opened the door to the policemen. The officers did not go inside. They spoke to V. and L., the applicant's partner, and informed them about the court order. V. and L. told the officers that the applicant was inside, but could not come to them to collect the order because she was busy (she was in a birthing pool). The officers showed the court order to L. and V. The midwife took a photo of it to send to her lawyer. Twenty minutes later, V. informed the police that she was a registered professional midwife, that the applicant was having contractions, and that she was monitoring the foetus's heartbeat; everything was going well. The police communicated that information to the ambulance crew, who remained outside. They replied that a woman in labour could be in danger. The officers continued to speak with the applicant's partner, who informed the applicant of the discussions taking place. Initially, the midwife opposed the applicant's being taken to the hospital, considering it unlawful. However, after some time, L. agreed that the applicant could be taken to hospital, but she needed time to get out of the pool and prepare for the journey and for admission. The applicant was given the necessary time.

23. The applicant was then taken to the hospital in the ambulance vehicle. The applicant's partner asked the police officers for a lift to the hospital, as he was unable to drive, and travelled there in the police car.

24. The applicant was admitted to the hospital at 5.30 p.m. She arrived in the emergency room with her partner. The police officers left immediately once the applicant had been taken into the care of hospital staff.

2. *The applicant's account*

25. At 3.30 p.m. on 24 April 2019, the police and ambulance arrived at the applicant's home. The applicant questioned the lawfulness of the decision and expressed her disagreement with the court order.

26. In her *amparo* appeal dated 4 November 2019 (see below), the applicant said that the police had gone to her home to serve her with the order of the duty court. She did not provide details regarding their conduct.

27. In her observations to the Court dated 6 December 2024, the applicant said that the police officers had put pressure on her and her partner, insisting that she go to hospital. One of the officers told her that there was no room for negotiation and that she had to go immediately. He added that she should not be "going to force them to use force". After prolonged police insistence, at about 4.50 p.m. the applicant accepted that she had no other choice but to go to hospital ("resigned herself to be taken to the hospital"). She travelled there alone in the ambulance, while her partner went in a police car. She stated in her *amparo* appeal (see below) that the distance between her home and the hospital was very short.

E. The applicant's stay at the hospital and the birth of her child

1. *The applicant's account*

28. According to the applicant, she arrived at the hospital at around 5.30 p.m. She did not receive any medical attention until 7.15 p.m., when the compulsory admission form was signed and she was moved to a room directly opposite the nursing control station; her tests on admission displayed normal results and indicated that she was not in labour.

29. The nursing supervisor informed the doctors of the applicant's actions, such as her going to the toilet. At 12.20 a.m. on 25 April 2019, the nursing supervisor noted that she had asked the on-call gynaecologist to confirm in writing that the applicant did not require 24-hour custody *(ne necesita custodia 24h)* and was permitted to move around the hospital ward freely. The gynaecologist replied that, as she was being treated like any other patient and did not require supervision, it was unnecessary to document this. The nursing supervisor therefore recorded that the applicant was no longer in custody and would be treated like any other patient.

30. According to the nursing supervisor's notes, at 11.30 a.m. on 25 April 2019 the nursing supervisor accompanied the Deputy Head of Surgical Services, the Head of the Obstetrics Section and the Head of Legal Affairs from the hospital as they came to the room to speak with the applicant. They informed the applicant that she had been compulsorily admitted under the court order, and told her about the medical procedures that would also be carried out under the order.

2. *The Government's account*

31. According to the Government, the applicant was immediately received in the emergency room of the hospital on her arrival. As the monitoring results were satisfactory, she was given a single room in the hospital and the medical staff took a wait-and-see approach to the childbirth process.

3. *Documents concerning the applicant's stay in the hospital the birth of her child*

32. According to the hospital records, the applicant's admission was recorded at 5.35 p.m. on 24 April. On 24 and 25 April she underwent various tests, having each time given her explicit consent (as evidenced by material in the case file).

33. At 12.20 a.m. on 25 April 2019 the duty doctor reiterated that the applicant did not require supervision ("*queda sin custodia*"). According to a medical report of 25 April 2019, at 8.30 p.m. on that date the gynaecologist noted that the applicant did not need supervision (*vigilancia*). On 25 April 2019 the manager of Health Area IV in Oviedo notified the duty court that the applicant had been admitted to the hospital and recommended that the order should continue because the applicant's health required continuous monitoring.

34. The subsequent medical records relating to the birth of the applicant's child which have been made available to the Court, including extracts from medical records and nurses' notes and doctors' reports compiled on 25 and 26 April 2019, can be summarised as follows. Labour began spontaneously on 25 April 2019. The applicant requested pain relief and received it. At some point, cervical examinations continued to show no progress, confirming arrest of the first stage of labour. According to the hospital report, the first stage was halted due to pelvic-foetal disproportion, as well as the foetal head being in an occiput posterior position and deflexed. The gynaecologist informed the applicant and her partner that a caesarean section was medically indicated due to persistent foetal head deflexed, a prolonged latent phase and pain that was not alleviated by medication. Another medical record states that the doctors informed the applicant and her partner that a caesarean section was necessary because labour was not progressing. The applicant and her partner agreed and signed the informed consent documents. She further orally confirmed her written consent.

35. An emergency caesarean section was performed in the early hours of 26 April 2019. The applicant's daughter was born with normal neonatal indicators. The doctors noted that the applicant had no physical or physiological morbidity.

4. Subsequent procedural decisions

36. On 26 April 2019, the manager of Health Area IV in Oviedo informed the investigating court of the birth of the applicant's child. He provided an update on her medical situation, stating that labour had started spontaneously, but due to complications (pelvic-foetal disproportion and deflexion of the foetal head in the occiput posterior position, *desproporción pelvifetal y deflexión de la cabeza fetal en occipito sacra*), a caesarean section was required and performed.

37. On 28 April 2019 the Investigating Judge of the duty court discontinued the case (*archivo de las diligencias*), as there was no further reason to continue the proceedings.

III. DOMESTIC PROCEEDINGS BROUGHT BY THE APPLICANT

A. Proceedings concerning compulsory admission to hospital

1. The applicant's court claim and the first instance court's decision

38. On 3 May 2019 the applicant lodged an action for annulment of the Investigating Court's order of 24 April 2019. Subsidiarily, she appealed against the order, claiming that administrative and judicial actions had prevented her from defending her rights and had violated her rights to dignity, liberty, physical and moral integrity and to respect for her private and family life. She submitted that the hospital's claim of imminent danger was unfounded. She contended that the administrative and judicial actions had had no legal basis and had left her without effective judicial protection, and that she had not been heard at any point before the order had been made.

39. On 15 May 2019 the Oviedo no. 1 investigating judge dismissed the applicant's claim. The first-instance court held that the order of 24 April 2019 had been lawfully issued under Article 29 of the Civil Code, which granted the unborn child the rights of a child that had already been born for all favourable purposes, and through the procedural mechanism of Article 158(6) of the Civil Code, which covered situations involving immediately preventable danger or harm and was designed to allow urgent judicial measures to prevent danger or harm to a minor. The court emphasised that that provision had a broad, flexible scope, could be applied at any stage of any proceedings, and must prioritise the best interests of the child over any competing interest. The court further found that Article 733 of the Civil Procedure Act expressly allowed for precautionary order to be made by a court of its own motion, without hearing the affected party when urgency so required.

40. Applying that framework, the first-instance court found that in the case at hand, the imminent and serious danger to the life or health of the unborn child had been weighed against the mother's freedom to give birth at

home. As a result of that balancing, the baby's interests had been given preponderant weight. That had led to making the order sought by the hospital's specialised services, whose professionalism and thoroughness could not be legally questioned. The hospital's application, supported by the submissions of the obstetrics department, reported a pregnancy at 42 weeks and 3 days with a risk of foetal hypoxia and intrauterine death, and that the applicant had refused hospital admission. The order applied for by the hospital's medical staff had been made without consulting the applicant because of the urgent need for an immediate decision to avoid further risk.

2. Appeal proceedings

41. The applicant appealed. She argued that the duty court had made the order of 24 April 2019 in a situation in which there was no sign of an offence; that the court had not heard her and that there had been no procedural safeguards; and that the order had been one the court did not have power to make; and that it was issued without verifying the existence of an imminent risk. In the applicant's opinion, no such risk existed, and there was no conflict between her interests and the rights and interests of her child. She maintained that the court had not given reasons for its decision and had failed to adequately balance the interests at stake, and that the process had resulted in a violation of the fundamental rights referred to in her initial complaint.

42. On 31 July 2019 Section II of the Oviedo *Audiencia Provincial* dismissed the applicant's appeal, finding no reason to quash the duty court's order of 24 April 2019, as follows.

43. The appellate court found that the order had been made in accordance with law and by a competent court, which had had the power to make the disputed order because of the need for urgent action to avoid serious and irreparable damage. There had been no breach of procedural requirements, as the court was not required to hear the applicant given the urgency of the situation. The decision appealed against was based on Article 9 of Law 41/2002, which allowed essential clinical interventions without the patient's consent when necessary for the protection of life or health, and on Articles 29 and 158 of the Civil Code. Article 158 empowered judges, including where they acted of their own motion, to make any orders needed to remove minors from danger or prevent harm to them. As interpreted by the Supreme Court, such orders could be made at any stage of any proceedings. Moreover, even if it had not been cited in the duty court's order, Regulation no.1/2005 on accessory aspects of judicial proceedings (see paragraph 74 below) required duty judges to take immediate action if failing to do so could result in the violation of a specific right or cause serious and irreparable harm. The duty court had had power to make the order because Article 158 permitted an application for such an order to be made by any party or the Public Prosecutor, or allowed a court to make such an order of its own motion in any civil or criminal proceedings. The duty court could decide the

hospital's application because the situation was urgent and could not be postponed; intervention was required to prevent serious and irreparable harm.

44. The appellate court's view was that the urgency of the situation meant that the court had not been required to hear the applicant. Referring to the Preamble to Law 26/2015 of 28 July 2015 (see paragraph 69 below), it noted that a court must be flexible and prompt in making orders in precautionary proceedings which will affect a minor, so as to avoid procedural rigidity or constraints causing unnecessary harm.

45. The appellate court observed that, essentially, the applicant was disputing the facts on which the duty court order had been based, namely the risk to the life of the foetus or mother. However, the appellate court found that the applicant's arguments contradicted the medical documents. Summarising the contents of the medical reports, the court observed that they indicated a risk of foetal hypoxia and intrauterine death at 42 weeks and 3 days of pregnancy. On 23 April 2019, the applicant was informed that the foetal cardiotocography results gave cause for concern. She was advised that birth should be accelerated because the gestation had been so prolonged and there was an increased risk of foetal hypoxia and intrauterine death after week 42. After leaving to call her midwife, she did not return. The appellate court also noted that the subsequent report of 25 April 2019 described how labour had begun spontaneously, but had not progressed. The foetus remained occiput posterior, with no descent, and the foetal heart rate deteriorated. These factors indicated the need for a caesarean section, an intervention that could not have been performed at a home birth, thus justifying the decision to admit the patient to hospital.

46. The appellate court further found that, when weighing the conflicting legal interests, the duty court had correctly given precedence to the life of the unborn child over the mother's freedom of choice. The order was justified by the risk that the pregnant woman's decision to give birth at home had posed to the life of the foetus. The appellate court found that the decision of the lower court was consistent with the Court's findings in *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, §§ 185-87, 15 November 2016. The interference (a) was provided for by law and (b) pursued the legitimate aim of protecting the life and health of the mother and her child during childbirth. Furthermore, the interference with the pregnant woman's fundamental rights was (c) proportionate to the legitimate aim pursued, given the circumstances of the case.

47. Lastly, the appellate court found that sufficient reasons had been given. The duty judge was not required to address every argument in exhaustive detail but to state clear reasons explaining the underlying legal basis for the decision. In line with the domestic doctrine, adequate reasoning could be brief, provided that the response fit the issues raised. The appellate court found that the initial order of the duty court contained succinct but

sufficient justification for the decision, and, moreover, any possible shortcoming was effectively remedied by the judgment of 15 May 2019.

3. *Proceedings before the Constitutional Court*

(a) The *amparo* appeal

48. The applicant and her family lodged an *amparo* appeal. The applicant complained that the procedure used in her case had been incorrect, pointing out that her situation on 24 April 2019 had not been urgent. On 23 April 2019, hospital staff had only recommended accelerating the birth because of the prolonged gestation. However, they had failed to contact the applicant before lodging their application for an urgent order with the duty court. The hospital had had to make its application to an administrative court rather than an investigating judge. However, the order had been issued as part of criminal proceedings. The medical report on which the compulsory admission order had been based had been brief and inadequate. She had been taken to hospital two hours after the police arrived at her home. Both the results of her tests (which were normal) and the hospital staff's conduct towards her after admission demonstrated that there had been no emergency. Therefore, the authorities erred in assessing her situation as an emergency, and thus failed to justify either the applied measure or the failure to hear the applicant. Had she given birth at home, she would have been accompanied by a qualified and competent practising midwife. She maintained that the judicial order was not sufficiently reasoned, particularly since it impacted her right to liberty and private and family life.

49. Referring to her compulsory admission and "forced interventions in the physical body in the hospital", she argued that she had been deprived of liberty without a clear legal basis. Domestic law did not provide for an order for a person's involuntary admission to hospital. The desire to give birth at home could not be considered a health risk. The order had been upheld even though it had become redundant, as the birth had taken place spontaneously.

50. The applicant further argued that when the lower courts had decided to interfere with her private life and uphold the order, they had incorrectly balanced the interests at stake, namely the life of the foetus against the liberty and integrity of the mother. The interference had been based on a flawed legal framework, and the order was issued despite there being no emergency. Various alternatives to compulsory admission were available, including wait-and-see management of the pregnancy with the monitoring of foetal well-being, communication between the hospital and the applicant and/or midwife, the appointment of an expert to assess the situation for the court and hearing the applicant, her partner or the midwife.

51. Referring to report of 31 May 2019 by an experienced gynaecologist unrelated to the Oviedo hospital, she submitted that, although the recommendation was to accelerate birth when a pregnancy exceeded

42 weeks, clinical guidelines included wait-and-see management as a valid option and left the decision to the patient; and that there was no evidence of imminent foetal hypoxia that would have justified forced intervention during labour. She stated, referring to the psychiatric expert report of 3 June 2019, that she had suffered postpartum post-traumatic stress disorder, triggered by the treatment she had received in connection with the birth of her child.

(b) Judgment of the Constitutional Court of 2 June 2022

52. On 2 June 2022 the Constitutional Court, sitting as a panel eleven judges, dismissed the *amparo* appeal. Having referred to the Court's case-law concerning home birth (*Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, 15 November 2016; *Ternovszky v. Hungary*, no. 67545/09, 14 December 2010; *Pojatina v. Croatia*, no. 18568/12, 4 October 2018; and *Kosaitė-Čypienė and Others v. Lithuania*, no. 69489/12, 4 June 2019), the Constitutional Court found that childbirth itself, as well as the manner and location in which it took place, was an essential aspect of the right to privacy. The decision to give birth at home formed part of the right to private life, relating to human dignity, specifically with regard to women and maternity; and was also connected to the right to physical integrity, as set out in Article 15 of the Constitution. In the present case, the life and health of the foetus had to be balanced against the fundamental rights asserted by the applicant.

53. Regarding the legal basis for compulsory admission to hospital, the Constitutional Court noted that there was no specific legal basis for ordering compulsory admission to hospital for a birth classified as posing a risk to the life of the foetus.

54. The duty court was legally required to respond to the hospital's request concerning the fundamental right to life under Article 15 of the Constitution. Importantly, the constitutional provisions on fundamental rights were directly applicable. Therefore, despite the absence of a specific statutory rule authorising compulsory hospital admission in the circumstances of the present case, the duty court had had to resolve the conflict between the mother's rights and the protection of the unborn child. The court had carried out interpretation of the domestic legal provisions in their context and had relied on legal provisions that it believed could legitimately support the order. Those provisions were usually used when parents' decisions put a child in danger, and the duty court had treated the applicant's case as analogous to that situation. The Constitutional Court observed that while according to the European Court of Human Rights' case-law there is generally no conflict of interest between the mother and child in such cases, certain choices made by mothers regarding the place, conditions or method of delivery may be found to pose an increased risk to the health and safety of newborns, whose mortality rate is not negligible, despite all the progress made in medical care (they relied on *Dubská and Krejzová*, cited above, § 185).

55. The Constitutional Court further noted that the duty court had found that conflict had arisen between the mother's decision to give birth at home with the assistance of a midwife and the risk this posed to the unborn child, given that the pregnancy had reached 42 weeks and three days, and that the hospital had reported a risk of foetal hypoxia and intrauterine death. To justify the order, the judge had referred to Article 29 of the Civil Code, which treated an unborn child as if it had been born for all purposes that were favourable to it. This allowed the court to treat the foetus as a "minor" for the purposes of Article 158(6) of the Civil Code and Article 9(6) of Act No. 41/2002. In the Constitutional Court's view, the duty court could also have relied on Section 17(9) of Institutional Law 1/1996 on the legal protection of minors, which provides for preventive and protective measures in cases of possible prenatal risk (see paragraph 71 below). In any event, the hospital considered a home birth would pose an imminent and serious threat to the life of the unborn child, and the application for an order for compulsory transport and admission to hospital meant that the judge had to act despite the absence of a specific legal provision. Although such situations were unusual, the Constitutional Court emphasised that they could not be ruled out.

56. The Constitutional Court found that the duty court had used the contested domestic provisions to address a legislative gap and resolve the conflict between the mother's desire to give birth at home and the need to safeguard the health of the unborn child, which medical professionals had identified as being at risk. That approach was acceptable because the duty court did not use the contested provisions to bypass constitutional guarantees but rather saw them as a legitimate tool to address a conflict among fundamental rights and constitutional values, all of which required protection. The duty judge had to take a decision since the Constitution itself required the protection of both the mother's rights and the life and health of the unborn child. The Constitutional Court therefore accepted that the duty court had used the available legal framework to provide a "constitutionally adequate response".

57. The Constitutional Court came to the following conclusions on the issue of the lawfulness of the duty court's decision: "from this ... interpretative approach, we ... conclude that the normative framework [relied on by the duty court], in the absence of an express legal provision, nevertheless offered reasonable legal coverage [...] to carry out a balancing exercise of the fundamental rights of the pregnant woman and the constitutionally protected legal right to life of the unborn child, insofar as it embodies ... the fundamental value of human life" guaranteed by Article 15 of the Constitution.

58. The Constitutional Court further rejected the applicant's argument that the duty court had gone beyond its powers. It also held that, although she should in principle have been heard, and her complaint was generally well-founded, the extreme urgency of the situation justified an exception, that is,

making an order without hearing the applicant. The duty court had received a medical report warning of a serious and imminent risk to the foetus. The hospital had properly informed the duty court of the applicant's clinical situation and the serious danger to both her and the baby (*tanto ella como bebé*). The duty court relied on the evidence of the medical professionals who were monitoring the pregnancy. It noted that the applicant had already been warned of the life-threatening circumstances and had been advised of the imminent danger, including the risk of foetal hypoxia. In these conditions, the duty court had been justified in acting immediately without hearing the applicant, as an urgent response was required to protect the life of the unborn child.

59. Regarding the legitimate aim and proportionality of the disputed measure, the Constitutional Court noted that the duty court's order of 24 April 2019 had stated, albeit succinctly, that the aim was to protect the life and health of the unborn child and of the mother, and that hospital admission was necessary to ensure a safe delivery. The duty court had relied on the facts stated in support of the application, namely the risk of foetal hypoxia and intrauterine death from week 42 onwards, as reported by the hospital that was monitoring the pregnancy. The duty court ordered the applicant's admission to hospital because she had refused to go to hospital for the birth voluntarily. The duty court explained that admission was necessary given the prolonged pregnancy, which made a home birth unsafe, even with the assistance of a midwife. A "strict proportionality" assessment was carried out, limiting the intervention to transfer and admission to the hospital. As the Constitutional Court noted, that process ended in a caesarean section, with the appropriate medical assistance and material resources. The duty court had applied the proportionality test in line with established doctrine, restricting the mother's rights to personal freedom and privacy only to the extent required to protect the life and health of the unborn child, which took precedence given that the birth was high risk. The court had given due weight to the urgency of the decision to order Ms C.P.'s involuntary admission to hospital, based on the medical diagnosis of a risk to the foetus's life and health.

60. The Constitutional Court therefore concluded that the domestic courts had proportionately limited the applicant's fundamental rights to liberty and to respect for her private and family life, taken together with her right to judicial protection.

61. Five of the eleven judges gave separate opinions based on different arguments. Three of those were dissenting opinions which referred to the failure to hear the applicant and the lack of a specific legal provision allowing for the interference with her rights, as well as the lack of adequate safeguards in the absence of such a provision. The dissenting judges also questioned the proportionality of the interference.

62. On 15 June 2022 the applicant was notified of the Constitutional Court's ruling.

B. Other proceedings brought by the applicant

63. The applicant lodged a separate contentious-administrative appeal against the actions of the hospital's medical services. After her claim was rejected by the domestic courts, the Plenary Constitutional Court rejected her *amparo* appeal by a final ruling of 23 February 2023. The Constitutional Court found that hospital personnel's actions did not constitute discriminatory treatment on the grounds of sex, nor did they violate her right to physical and moral integrity, privacy, and freedom of opinion. The hospital personnel's actions did not contravene the applicant's wishes as set out in her birth plan. As the doctors of the hospital had opted for a wait-and-see approach, labour had been monitored without any induction (which had never been performed) until doctors had determined that an emergency caesarean section was required. The applicant had consented to the medical procedures which were then carried out. In addition to being carried out with the applicant's consent, the actions of the medical staff were appropriate to the circumstances, taking into account the need to safeguard the life of the pregnant woman and the unborn child.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE SPANISH CONSTITUTION

64. Under Article 15 of the Spanish Constitution, everyone has the right to life and to physical and moral integrity, and may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment.

65. Article 17(1) provides that every person has a right to liberty and security. No one may be deprived of his or her freedom except in accordance with the provisions of that article and in the situations and in the manner provided by the law.

66. Article 18 provides that the right to one's reputation, to personal and family privacy and to one's own image is guaranteed.

II. THE CIVIL CODE AND LAW NO. 26/2015 OF 28 JULY 2015

67. Under Article 29 of the Civil Code, "birth determines personality, but a child who has been conceived shall be deemed already born for all purposes favourable to him", provided that he or she is then born meeting the conditions stated in Article 30 of the Code. That provides that legal personality is acquired at the time of a live birth, once complete detachment from the mother's womb has taken place.

68. Article 158 § 6 of the Civil Code, as in force at the time of the applicant's compulsory admission to the hospital, sets out a list of orders the court must make, of its own motion or at the request of the child, of any

relative or of the Public Prosecutor, including, "generally, other provisions deemed suitable, to remove the minor from danger" or to prevent any damage to his family environment or to third parties. All the measures set out in Article 158 may be taken within any civil or criminal proceedings, or in non-contentious proceedings.

69. Law no. 26/2015 of 28 July 2015 on the modification of the child and adolescent protection system introduced certain amendments into Article 158 of the Civil Code in 2015 (that is, prior to the events in this case). According to Part III of the Preamble to the Law, Article 158 was amended to avoid unnecessary harm that could arise from procedural rigidity or constraints, on the basis of the principle that in precautionary proceedings affecting minors action should be flexible and prompt.

III. THE CODE OF CIVIL PROCEDURE

70. Article 733 (1)-(2) of the Code of Civil Procedure provides that the court must hear the defendant before deciding on an application for an injunction. However, if the applicant requests it and provides evidence of urgency or that an *inter partes* hearing would jeopardise the effectiveness of the injunction, the court may grant the injunction immediately by order within five days. The court must explain the reasons for granting the injunction without hearing the defendant.

IV. THE INSTITUTIONAL LAW 1/1996 OF 15 JANUARY 1996 ON THE LEGAL PROTECTION OF MINORS

71. Under Section 17(9) (Actions in Situations of Risk) of Institutional Law 1/1996 of 15 January on the Legal Protection of Minors, the relevant public administration, in collaboration with the health services, must take appropriate steps to prevent, intervene in and monitor possible situations of prenatal risk, in order to avoid the newborn being declared at risk or vulnerable at a later stage. A prenatal risk situation is defined as a situation in which a pregnant woman is receiving inadequate physical care or consuming harmful addictive substances. It also includes any other action by the woman, or by third parties with her consent, that harms the normal development of the foetus or may cause physical, mental, or sensory illnesses or anomalies in the newborn. Health services and professionals are required to notify such situations to the relevant public administration and the Public Prosecutor's Office.

V. LAW 41/2002 OF 14 NOVEMBER 2002 REGULATING PATIENT AUTONOMY

72. According to section 8 (Informed consent) of Act No. 41/2002 of 14 November 2002 regulating patient autonomy and rights and obligations regarding clinical information and documentation, any action relating to a patient's health requires the free and voluntary consent of the affected person, provided they have received the relevant information and assessed the appropriate options for their case. Consent is generally verbal, but must be given in writing for surgical interventions, invasive diagnostic and therapeutic procedures, and procedures involving risks or inconveniences with a notable and foreseeable negative impact on the patient's health. The patient's written consent is required for each of the afore-mentioned actions. This consent must include sufficient information on the procedure to be carried out and its risks. Annexes and other general data may be added. The patient may revoke their consent in writing at any time.

73. Section 9 of the Act (Limits to informed consent and consent by representation) reads as follows:

> "[...] 2. Doctors may carry out essential clinical interventions to protect a patient's health without obtaining consent in the following cases:
>
> a) When there is a risk to public health for reasons established by law. In any event, any measures involving compulsory admission must be communicated to the relevant judicial authority within 24 hours, in accordance with Basic Law 3/1986.
>
> (b) when there is an immediate and serious risk to the patient's physical or mental integrity and it is not possible to obtain their authorisation. If circumstances permit, family members or persons closely connected to the patient shall be consulted.
>
> 3. Consent by representation shall be given in the following cases:
>
> (a) When the patient is assessed as unable to make decisions by the attending physician, or when their physical or mental condition prevents them from understanding their situation. In the absence of a legal representative, consent shall be given by family members or persons closely connected to the patient.
>
> (b) When the patient has been judicially declared incapable, as stated in a court ruling.
>
> (c) When the patient is a minor who is intellectually or emotionally incapable of understanding the implications of the intervention. In this case, a legal representative may consent after hearing the minor's views, in accordance with Basic Law 1/1996 on the Legal Protection of Minors.
>
> [...]
>
> However, in cases involving grave risk to the minor's life or health, as determined by the attending physician, the legal representative may consent after considering the minor's views.
>
> 5. [...] For the voluntary termination of a pregnancy of a minor or a person who has been declared legally incapable, the consent of both the person and their legal representative is required.

6. When consent must be given by a legal representative or persons closely connected to the patient, decisions must prioritise the patient's best interests. Any decisions contrary to these interests must be referred to the relevant judicial authority for resolution, unless there is an urgent situation that prevents this. In such cases, the medical professionals must act to safeguard the patient's life or health, in accordance with the principles of duty and necessity.

7. Any consent given by representatives must be proportionate to the patient's needs and align with the circumstances, respecting their dignity. Patients should participate in decision-making processes wherever possible. If the patient has a disability, appropriate support must be provided to enable them to give consent."

VI. REGULATION 1/2005 OF 15 SEPTEMBER 2005 ON ACCESSORY ASPECTS OF JUDICIAL PROCEEDINGS

74. Sections 38 to 49 of Regulation (*Reglamento*) no. 1/2005 of 15 September 2005 "On Accessory Aspects of Judicial Proceedings" concerns duty judges. In particular, duty judges should hear urgent cases that cannot be adjourned which are assigned to senior judges as defined in Article 70 of the Code of Civil Procedure (Section 43(5) of the Regulation). The president and presiding judges of local courts and higher courts may make urgent orders in unassigned cases at the request of a party Article 70 of the Code of Civil Procedure if failure to do so might violate a specific right or cause serious and irreparable damage.

VII. RELEVANT CASE-LAW

75. In the judgment no.53/1985 of 11 April 1985 the Constitutional Court found as follows: "[in the light of the above], it can be assumed that if the Constitution protects life [...], it must also protect it at the stage [of] development. Therefore, [...] unborn life embodies the fundamental value of human life, as guaranteed in Article 15 of the Constitution, and constitutes a legal right protected by that fundamental constitutional precept."

VIII. COOPERATION BETWEEN POLICE AND HEALTH SERVICES

76. According to various local joint police–healthcare operational protocols (such as the 2018 operational manual for joint action procedures by the police and health services applied in Madrid), out-of-hospital emergency teams collaborate with state security forces in various scenarios, retaining their own roles and responsibilities but acting in coordination with each other. For instance, in cases involving hospitalisation in mental health institutions, police may be required to intervene if a patient is being compulsorily admitted pursuant to a court order, where a patient may become violent or dangerous, and/or where the safety of the medical team cannot be guaranteed. Police intervenes where a person is violent or armed. The police are responsible for

protecting of the medical personnel, particularly in situations involving individuals with mental illness or suicidal intent, or risks of violence.

77. It appears from the local protocols for involuntary admission, such as the Protocol for Involuntary Emergency Admission to a Hospital or Residential Care Facility available at the Zaragoza City Council's website, that some areas have specific practices for compulsory admission in emergencies when a dependent or vulnerable person is unexpectedly found abandoned and requires urgent placement in a residential centre. In these circumstances a judge may order the person to be compulsorily admitted to hospital. The judge informs the Public Prosecutor's Office and arranges transport by ambulance accompanied by the national police.

78. In February 2010, a protocol on operational procedure between out-of-hospital emergency services and security forces for the management of hostile situations in healthcare was enacted in Almeria. As summarised in scholarly articles available in public domain, the primary role of the police as defined by the protocol is to secure the area before the medical teams enter, to neutralise threats and to protect the medical personnel during the intervention. Police actions may include searching the patient in case of aggressive behaviour, physically restraining the patient if needed, or remaining nearby to ensure everyone's safety, though they are not obliged to travel in the ambulance. Police intervention will be requested when the emergencies coordination centre detects possible aggression (where there is unexpected aggression on the arrival of a medical team, where the patient threatens violence, or cannot be safely approached). Police intervene in cases of fights or group violence, knife or firearm injuries, any non-accidental violent death or any scene that may be unsafe for medical personnel. The police may request medical assistance where a detainee or person in police custody needs medical evaluation, or a person involved in a police operation requires medical care. In violent incidents or when the patient is dangerous, the police may escort the ambulance to the hospital and may decide on the appropriate type of escort when the patient is a detainee. In certain areas such as Madrid or Cáceres in Extremadura, information available in public domain suggests that some areas have arrangements between the municipal police and the medical emergency services by which the police will provide the emergency medical services with an escort when patients in a serious condition are being taken to a medical centre. The escort is responsible for ensuring that traffic makes way for ambulances, so that medical vehicles can overcome any obstacles on the way to the hospital.

THE LAW

I. PRELIMINARY REMARKS

79. The applicant raised complaints under Articles 5 and 8 of the Convention in relation to her compulsory admission to the hospital. The parties agree, and the Court accepts, that further actions of the medical personnel at the hospital, which were subject-matter of a separate set of administrative proceedings brought by the applicant (see paragraph 63 above), fall outside the scope of this case. The Court will accordingly have regard to the events after the applicant's admission to the hospital only in so far as they are relevant to its consideration of the complaints brought before it in this case.

80. The Court considers it appropriate to start its examination of the case with Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

81. The applicant complained that her compulsory admission to hospital constituted a breach of her right to private life under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

82. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

83. The applicant submitted that the interference had no basis in the domestic law, as there was no legal provision allowing the court to order her to be compulsorily admitted to hospital. The applicant referred to *Ternovszky v. Hungary* (no. 67545/09, 14 December 2010) and asserted that when choices relating to the right to respect for private life fall within a legally

regulated area, the state must provide adequate legal protection for that right within its regulatory framework. Although home birth was permitted in Spain and considered a legitimate option by healthcare professionals, there was a lack of adequate regulation of home births and the legal and institutional environment did not facilitate a mother's choice. As a result, prospective mothers opted for home birth without fully understanding the implications, which increased the risk of decisions being made on an arbitrary basis. The Constitutional Court itself acknowledged that the provisions cited by the duty court were not directly applicable to the applicant and did not give the court power to restrict the applicant's fundamental rights so severely. Stretching the interpretation of inadequate domestic provisions did not meet the requirement of lawfulness (she cited *Altay v. Turkey (no. 2)*, no. 11236/09, § 59, 9 April 2019). The domestic law applied in the applicant's case was neither clear nor foreseeable.

84. She further argued that in the absence of a medical emergency there had been no legitimate reason for making the order against her and it had been disproportionate. Neither the domestic courts nor the Government were able to demonstrate that the life of the applicant's then unborn child had been at risk, and no such conclusion could have been drawn from the applicant's medical history. There had been no conflict between the child's life and the mother's wish to give birth at home, as the applicant's only aim was to give birth to a healthy child with the least medical intervention possible, and she had taken proper care of herself during the pregnancy. The pregnancy had been duly monitored by the hospital and the midwife. The applicant submitted that the birth had taken place 32 hours after her admission to hospital, and there had been no evidence of complications during that time.

85. As regards necessity in a democratic society, the applicant stressed that the interference with her rights had extended beyond her decision to give birth at home and had directly impacted her right to physical and personal integrity and her right to liberty, as she was transferred to the hospital and admitted against her will. The domestic legal framework did not provide adequate safeguards to prevent interferences which could be inconsistent with Article 8, and the domestic decision-making process was flawed. It had several specific deficiencies and was unfair, including because the applicant had not been involved in the legal proceedings. The margin of appreciation should accordingly have been a narrow one.

86. The applicant further argued that no reasons had been given in the order requiring her to be compulsorily admitted and that the domestic courts, including the duty court on 24 April 2019, had failed to adequately balance the interests at stake. The courts had taken the contents of the hospital report at face value. The doctor had however failed to refer in the report to any factors specific to the applicant's situation (she cited *Hanzelkovi v. the Czech Republic*, no. 43643/10, § 76, 11 December 2014). Nonetheless, his submissions were accepted as fact, without any acknowledgement that the

applicant had been assisted by a professional midwife. Given the seriousness of the interference, the applicant was especially concerned with the failure to involve her in the decision-making process and the authorities' failure to use the less restrictive measures which were available (she referred notably to the third-party intervener's submissions summarised in paragraph 90 below).

(b) The Government

87. The Government accepted that there had been an interference with the applicant's Article 8 rights. Referring to the findings of the Constitutional Court, they submitted that the interference was lawful. The aim was to protect the life of the unborn child. The interference was necessary in a democratic society. Faced with the conflict between the right to life of the unborn child and the right to autonomy of the pregnant mother, the duty court duly gave precedence to the right to life of both. The Government referred to the Constitutional Court's in-depth analysis of the proportionality of the order, including the balancing exercise carried out by the domestic judges, and argued that the interference was proportionate to the legitimate aim.

88. They argued that there had been an imminent and serious risk to the life and health of the applicant's future child, and that sufficient evidence of that risk had been found by the domestic courts at three levels of jurisdiction. The courts' findings were based on accurate and complete information provided by medical professionals. Even though the applicant had not been heard before the order of 24 April 2019 was made because of the urgency of the matter, she had actively participated at all stages of the subsequent domestic proceedings, and the courts had assessed her arguments in detail. The applicant had been, in essence, disputing the assessment of the situation as a medical emergency, and claimed that the courts had made incorrect findings of fact.

89. The Government disagreed with the applicant's contention that she could not have foreseen that she might be compulsorily admitted to hospital. Her decision to give birth at home had not been the cause of the judicial intervention. Indeed, the hospital had been aware of her plan to give birth at home and had taken no action to prevent it. At all times, the medical personnel were willing and available to cooperate with the applicant, including on 23 April 2019, when she had been to the hospital for a check-up. Her account of her alleged attempt to return to the hospital later on that date had been inaccurate, as there had been several ways to contact the doctor or to reach other staff at the hospital (including through the areas which were open 24 hours a day) but she had failed either to use them or to explain her failure to do so. The Government further argued that the duty court had intervened only when the medical professionals had reported a serious risk to the foetus if she remained at home without monitoring. Lastly, they submitted that a wide margin of appreciation was afforded to domestic authorities in

determining the most appropriate policy for regulating matters related to childbirth, as hospital births were safer than home births.

(c) Submissions of the third-party intervener – Association of Women Judges of Spain

90. According to the intervener, unspecified domestic law provisions and practice allow a duty court to order the deployment of a mobile medical unit to the home of the individual involved to assess the situation on site, or to instruct a court-appointed doctor to visit the person's home and report on his or her health; or the judge can constitute him- or herself a judicial commission and go to the individual's home to assess the situation. A court hearing may be held through the judge's presence at home of the individual involved (as a judicial commission) or via the use of telecommunication technology.

2. The Court's assessment

(a) The existence and the nature of the interference

91. The Court reiterates that the conditions under which birth takes place are undeniably an integral part of a person's private life for the purposes of Article 8 (see *Ternovszky v. Hungary*, no. 67545/09, § 22, 14 December 2010; see also *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 162, 15 November 2016). While Article 8 cannot be interpreted as conferring a right to give birth at home as such, the fact that it is impossible in practice for women to be assisted when giving birth at home comes within the scope of their right to respect for their private life and accordingly of Article 8. Indeed, giving birth is a unique and delicate moment in a woman's life. It encompasses issues of physical and moral integrity, medical care, reproductive health and the protection of health-related information. These issues, including the choice of the place of birth, are therefore fundamentally linked to the woman's private life and fall within the scope of that concept for the purposes of Article 8 of the Convention (see *Dubská and Krejzová,* cited above, § 163).

92. It is not disputed, and the Court finds, that the order for the applicant to be compulsorily taken and admitted to hospital on 24 April 2019 pursuant to an order of the duty court of the same date constituted an interference with the applicant's private life.

93. Turning to the nature of the interference, the Court considers it important to note at the outset that giving birth at home is not prohibited by the Spanish legal system. As follows from the domestic courts' findings, the interference was not triggered by the applicant's decision to give birth at home, assisted by a midwife (contrast to *Dubská and Krejzová*, cited above, § 165). The applicant's right to give birth at home was not questioned in the domestic proceedings. The issue was not one of encouraging hospital births as a matter of health policy either (contrast to *Kosaitė-Čypienė and Others v. Lithuania*, § 50 et seq., 4 June 2019). Indeed, the hospital staff in this case had been aware of the applicant's preference for giving birth at home well in advance. However, they had not taken any steps whatsoever to dissuade her from doing so or to cast doubt on her choice until 23 April 2019, when she was 42 weeks and 2 days pregnant and came to the hospital for a check-up which revealed certain risks the medical personnel perceived as requiring urgent intervention. The crux of this case is therefore the response of the duty court to the hospital's application for a compulsory admission order and the subsequent assessment of that response in the domestic proceedings.

94. Any interference with Article 8 rights can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one or more of the legitimate aims to which that paragraph refers and is necessary in a democratic society in order to achieve any such aim.

(b) As regards lawfulness of the interference

(i) General principles

95. The wording "in accordance with the law" requires the disputed measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly referred to in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must therefore meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see, among others, *Dubská and Krejzová*, cited above, § 167; and *Ships Waste Oil Collector B.V. and Others v. the Netherlands* [GC], nos. 2799/16 and 3 others, § 152, 1 April 2025). A rule is "foreseeable" if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to foresee to a degree that is reasonable in the circumstances the consequences which a given action may entail (see, among others, *Altay*, cited above, §54; and *Dubská and Krejzová*, cited above, § 167). Those consequences need not be foreseeable with absolute certainty. A law which confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are set out with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see as a recent authority, *Sanchez v. France* [GC], § 125, 15 May 2023, with further

references; see further, under Article 8 in various contexts and in so far as relevant, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 94, ECHR 2008; *Ageyevy v. Russia*, no. 7075/10, § 122, 18 April 2013; or *Michaud v. France*, no. 12323/11, § 96, ECHR 2012).

96. In cases arising from individual applications the Court's task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see *Kosaitė-Čypienė and Others v. Lithuania*, no. 69489/12, § 102, 4 June 2019). It is not for the Court to express a view on the appropriateness of the methods chosen by the legislature of a respondent State to regulate a given field. Its task is confined to determining whether the methods adopted and the effects they entail are in conformity with the Convention (see, *mutatis mutandis*, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 184, 8 November 2016; and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 94, ECHR 2005-XI).

97. The Court's power to review compliance with domestic law is limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Pindo Mulla v. Spain* [GC], no. 15541/20, § 132, 17 September 2024; *Ships Waste Oil Collector B.V. and Others*, cited above, § 168; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 144 and 147, 27 June 2017). Except where this has been done in an arbitrary or manifestly unreasonable way, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see, among others, *Pindo Mulla,* cited above; and *Sanchez*, cited above, § 128, with further references).

(ii) Application to the present case

98. Turning to the present case, the Court notes that the legal basis for the interference was extensively examined and found sufficient and reasonable by the Constitutional Court (see paragraphs 53-57 above). It reiterates that the courts' role is precisely to dissipate remaining doubts as to interpretation (see *Leyla Şahin*, cited above, § 91; *Sanchez*, cited above, § 126; and *Versaci v. Italy*, no. 3795/22, § 112, 15 May 2025). The Constitutional Court found that, in exercising its constitutional duty to decide an application concerning the protection of the unborn child's fundamental right to life when it conflicted with the mother's fundamental rights, the duty court legitimately used the interpretative approach and relied on a reasonable legal basis for the interference with the mother's fundamental rights given the circumstances of the case (see paragraphs 54-56 above).

99. The Court does not find that the Constitutional Court reached that conclusion in an arbitrary or manifestly unforeseeable way, and it finds that generally the domestic courts interpreted and applied the domestic law in an acceptable manner. It notes that the provisions of the Spanish Constitution setting out fundamental rights and public freedoms, including the right to life

as expressly referred to by the duty court, were directly applicable (see paragraph 54 above). The duty court and the courts in the review proceedings, including the *Audiencia Provincial*, relied on Article 158(6) in conjunction with Article 29 of the Civil Code and Article 9 of the Patient Autonomy Act (see paragraphs 19, 39, 43 and 54 above). Article 29 of the Civil Code extends to an unborn child the protection afforded to a child who has already been born for all favourable purposes (see paragraph 67 above). As explained by the Constitutional Court, the duty court (and the courts in subsequent proceedings) relied on that provision with a clear intention of attributing the status of "minor" to the unborn child (see paragraph 55 above). That, in turn, allowed the judge to examine the situation from the standpoint of Articles 158(6) of the Civil Code, which empowers a judge to make any order he or she deems appropriate to remove a minor from danger. Lastly, the Court notes the Constitutional Court's reference to Article 17(9) of Basic Law 1/1996 of 15 January 1996 on the Legal Protection of Minors (see paragraphs 55 and 71 above), which empowers competent authorities to take appropriate measures in case of a possible prenatal risk. That provision appears to have the same rationale as the legal rules referred to by the duty court, that is, to give the authorities power to intervene where there is an imminent and serious danger to the life of the (unborn) child.

100. The Court notes from the documents in the case file that once the hospital doctors had observed the worrying indications during the check-up on 23 April 2019, they advised the applicant both of the risks in her case, including the intrauterine death of the foetus, and of the need for close monitoring and eventually the induction of labour (see paragraphs 9-10,16 and 17 above). The applicant left the hospital and, as established, did not have any further contact with it until she was compulsorily taken back there for admission (see paragraph 14 above). The Court finds that the applicant was able – if need be with appropriate advice – to foresee to a degree that was reasonable in the circumstances that domestic law (in respect of which no accessibility issue arose) would allow the authorities to urgently intervene if there were a conflict between a mother's choice not to receive medical assistance in a hospital (and instead to give birth at home) and an imminent danger to the life of the unborn child (see further the established domestic case-law as to the application of guarantees of Article 15 of the Constitution to "unborn life", summarised in paragraph 75 above).

101. As regards the precise scope of the interference, the Court notes that Article 158(6) of the Civil Code gives a judge power to make "generally, other orders deemed suitable to remove the minor from danger", without further details (see paragraph 68 above). The Court reiterates that, whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are

vague, and whose interpretation and application are questions of practice (see, *mutatis mutandis*, *Sanchez*, cited above, § 125).

102. The duty court in the present case performed systematic interpretation of the domestic law so as to resolve the conflict between the applicant's right to privacy and the right to life of the unborn child (and, accordingly, a corresponding obligation of the State to protect that life, enshrined in Article 15 of the Spanish Constitution), and clearly identified the legitimate aim of the order made (see paragraphs 55 and 59 above). The court made an order under Article 158(6) of the Civil Code and had regard to: (a) the hospital's assessment that the foetus was in imminent and serious danger, (b) the impossibility of ensuring a safe birth at home given the danger, and (c) the mother's wish to give birth at home and her manifest failure to contact the hospital further or to agree to go back to the hospital as suggested by the hospital personnel (see paragraph 19 above). The Court does not find, in these circumstances, that the court chose to make the order in an arbitrary or manifestly unreasonable way. While the proportionality of the order of 24 April 2019 will be assessed below, the Court is prepared to accept that where the medical professionals had established that the foetus was in imminent danger, one of the possible and reasonably foreseeable interpretations of the domestic law (see, *mutatis mutandis*, *Sanchez*, cited above, § 141; and *Danileţ v. Romania* [GC], no. 16915/21, § 122, 15 December 2025) was that the court would order the applicant to be taken to the hospital and compulsorily admitted.

103. The Court therefore concludes that the disputed interference was in accordance with the law.

(c) As regards the legitimate aim

104. The Court considers that the interference in question pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention, namely the protection of the health of the applicant and her unborn child (see, in so far as relevant, *Dubská and Krejzová*, cited above, § 173).

(d) As regards necessity in a democratic society

105. The Court reiterates at the outset that healthcare policy matters come within the margin of appreciation of the national authorities, as they are best placed to assess priorities, the use of resources and social needs. The Court has had occasion to state that the margin of appreciation afforded to the States in the field of healthcare must be a wide one (see *Communauté genevoise d'action syndicale (CGAS)* [GC], cited above, § 160; *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 274, 8 April 2021). Further, the respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (see, for example, *Evans*

v. the United Kingdom [GC], no. 6339/05, § 77 *in fine*, ECHR 2007-I, with further references).

106. Applying principles from its well-established case-law, the Court takes the view that in the present case, where the authorities had to strike a fair balance between the applicant's right to respect to her private life, namely her choice to give birth at home, on the one hand, and the medically highlighted risks to the health of her (then) unborn child and possibly of the applicant's own life on the other, the margin of appreciation should be a wide one, while not unlimited (see, *mutatis mutandis*, *Dubská and Krejzová*, cited above, § 184). The Court must supervise whether, having regard to that margin of appreciation, the interference constitutes a proportionate balancing of the competing interests involved (ibid.; see further, in so far as relevant, *A, B and C v. Ireland* [GC], no. 25579/05, § 238, ECHR 2010).

107. In so far as under Spanish law an unborn child is deemed already born for all purposes favourable to him (see paragraph 67 above), and the unborn life is protected (see paragraph 75 above), the Court notes that Articles 2 and 8 of the Convention in particular put the Contracting States under a positive obligation to take appropriate measures to protect the life and health of those within their jurisdiction (see *Vavřička and Others, cited above,* § 282). In very exceptional circumstances State responsibility may be engaged because of the actions and omissions of health care providers, notably where a patient's life is knowingly endangered by the denial of access to life-saving treatment and where the authorities knew or ought to have known of that risk but did not take the necessary measures to prevent it from being realised (see, *mutatis mutandis*, *Mehmet Ulusoy and Others v. Turkey*, no. 54969/09, §§ 83-84, 25 June 2019). In so far as the risk for the mother's life and health could also be at stake (see, for the Constitutional Court's assessment, paragraphs 58-59 above), the Court further notes that emergency medical interventions on life-saving grounds performed without the patients' consent are not necessarily incompatible with the Convention (see, in particular, *Bogumil v. Portugal*, no. 35228/03, §§ 90-91, 7 October 2008, and *Mayboroda v. Ukraine*, no. 14709/07, §56, 13 April 2023).

108. The Court notes that the interpretation of the national courts leads to a conclusion that interests of an unborn child are protected under Spanish law (see paragraphs 67 and 75 above), and that the domestic courts carefully weighted the interests at stake in this case. The Court accepts the conclusions reached by the national authorities after weighting all the interests involved. On 23 April 2019, as the domestic courts established, medical professionals of the hospital found that that there was a risk of foetal hypoxia and intrauterine foetal death after 42 weeks of pregnancy (see paragraphs 9-10, 40, 45, 55 and 59 above). It is not in dispute that the applicant was advised of the specific risks related to her prolonged pregnancy, and that the head of the obstetrics section advised the applicant that either birth should be brought on or, alternatively, monitoring should be extended and foetal wellbeing closely

supervised (see paragraph 10 above). The applicant then advised the medical personnel that she needed to think about that and left the hospital.

109. The Court does not need to address specifically the applicant's assertion that she had gone back to the hospital on the same date and the relevant unit was closed (see paragraph 12 above). It was not disputed - and it is sufficient for the Court to note - that there were clearly other means of contacting either the doctor whose details the applicant's partner had used to make the initial appointment (see paragraph 8 above) or the hospital itself, which had various areas that were open 24 hours a day (see paragraph 13 above), to provide updates on any decisions the applicant had made.

110. The Court accepts that the doctors at the hospital were obviously concerned about the applicant's reluctance to follow their advice or to contact the hospital after having left it on that date (see paragraphs 17, 40, 45 above). By contrast to *Glass v. the United Kingdom*, no. 61827/00, § 81, ECHR 2004-II, where the doctors and officials used the limited time available to them in order to try to impose their views on one of the applicants, the hospital in the present case chose to make an urgent application to the duty court. They expressly highlighted the urgency of the situation and the seriousness of the risk for the foetus.

111. The Court does not find any evidence that the decisions of the domestic courts were arbitrary. The initial order was based on the information from medical professionals who flagged serious risks for the foetus. By contrast to *Hanzelkovi* (cited above, §76), the doctors referred to precise factors specific to the applicant's situation, such as the tests the day before the events of this case which had shown a risk of foetal hypoxia and intrauterine foetal death. They assessed that risk as serious and imminent. The doctors advised the duty court that the applicant (a) had planned to give birth at home; (b) had been informed that the monitoring results were not normal and required follow-up monitoring, and that the doctors' attempts to persuade her to be admitted to hospital for immediate induction of labour had been unsuccessful; and (c) that she had not returned to the hospital (see paragraph 17 above). There is nothing to suggest that the duty court was not given all the facts on which it should base its decision (contrast to *Pindo FMulla*, cited above, § 175). Furthermore, by contrast to *Pindo Mulla* (cited above, § 165), the authorisation was not granted in unqualified terms, but was confined to "compulsory admission" for induction of labour, if necessary (see paragraph § 19 above, and knowing that, as a matter of fact, the induction was never performed).

112. Further, the Court shares the Constitutional Court's view that the reasons given by the national authorities to justify the interference were relevant and sufficient (see paragraph 59 above). The duty court set out the purpose of the order, explained that its aim was to preserve the life and health of the unborn child, and stated that an order compelling the applicant to go to hospital was appropriate to the intended purpose of ensuring a safe birth, and

referred to the risks outlined by the doctors. The Court reiterates at this juncture that, while there is generally no conflict of interest between a mother and her child, certain choices made by the mother as to the place, circumstances or method of delivery may give rise to an increased risk to the health and safety of newborns (see *Dubská and Krejzová*, cited above, § 185).

113. The Court further reiterates that in the case of *Dubská and Krejzová* it noted, among other things, that the risk for mothers and newborns was higher in the case of home births than in the case of births in maternity hospitals which were fully staffed and adequately equipped from a technical and material perspective, and that even if a pregnancy proceeded without any complications and could have therefore been considered a "low-risk" pregnancy, unexpected difficulties could arise during the delivery which would require immediate specialist medical intervention, such as a Caesarean section or special neonatal assistance. Moreover, the Court noted that a maternity hospital could provide all the necessary urgent medical care, whereas this would not be possible in the case of a home birth, even with a midwife attending (see *Dubská and Krejzová*, cited above, § 186; *Kosaitė - Čypienė and Others*, cited above, § 104; and *Pojatina v. Croatia*, no. 18568/12, § 80, 4 October 2018). The Court finds that the duty court and the other domestic courts based their orders on precisely these points (see paragraphs 46 and 54-55 above).

114. In the Court's view, the above-cited findings reached in *Dubská and Krejzová* are particularly relevant in this case because, as noted by the appellate court and the Constitutional Court from the medical documents (see paragraphs 45-46 and 58 above), the mother's life and health could also be at risk. The Constitutional Court referred to the fact that the process ended with caesarean section, with appropriate medical assistance and material resources (see paragraph 59 above). The Court further notes that, by contrast to *Pindo Mulla* (cited above, § 126), the applicant's refusal to resort to medical assistance by specialists in an adequately equipped hospital involved a direct risk to the health of the child. Given the risks related to possible complications during childbirth, the duty court had attached more importance to life and health of the unborn child than to the mother's right to personal freedom and the right to freely choose the place and manner of birth. In the Court's view, that choice was reasonable in the circumstances and, contrary to the applicant's submissions, was not triggered by her decision to give birth at home as such, but by her refusal to cooperate with hospital personnel in a situation involving specific serious and imminent risk to the unborn child.

115. Furthermore, the Court sees no sufficient reason to deviate from the assessment of the domestic courts that no less restrictive measure was available in this case. The wait-and-see management strategy referred to by the applicant and the third-party intervener was effectively applied once the applicant had been taken to hospital, and the monitoring had been commenced. Communication between the hospital and the applicant had

taken place on 23 April 2019, when the applicant had been advised of the imminent risk. Nonetheless, she chose not to respond to a proposal for hospitalisation, and returned home instead. Appointing a forensic expert to assess the situation or holding an on-site hearing could have unduly delayed the medical intervention. Similarly, as explained by the domestic courts, the urgency of the situation, together with the fact that the applicant had already been given information about all the risks to the foetus of a birth outside a properly equipped hospital setting and without closer monitoring, could justify not hearing the applicant (whether in person or via telecommunication technology) and, in any event, does not render the order disproportionate under Article 8 of the Convention. In that latter respect, the Court notes that the applicant was afforded ample opportunities to be heard in the subsequent review proceedings.

116. Lastly, the Court cannot overlook the subsequent developments in the applicant's case, particularly the circumstances surrounding her daughter's birth. It is true that, as established by the domestic courts, the doctors initially adopted a "wait-and-see" approach when the applicant was compulsorily admitted as there were no worrying indications, and that labour began spontaneously. However, on 25 April 2019, it was suspected that the foetus would be unable to pass through the upper opening of the pelvis, the foetal heart rate was deteriorating and there was an arrest of the first stage of labour. This resulted in an urgent caesarean section, which the applicant and her partner explicitly consented to (see paragraph 34 above). These circumstances indicate that the assessment that there was a high risk to the mother and the child, as highlighted by the hospital when it applied for an urgent order, was far from unfounded.

117. Accordingly, the Court accepts that the interference was "necessary" in a democratic society.

(e) Conclusion

118. There has accordingly been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

119. The applicant complained in her application form that her compulsory admission to hospital amounted to an unlawful deprivation of liberty in breach of Article 5 of the Convention, which reads as follows, insofar as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..."

A. The parties' submissions

1. The Government

120. The Government argued that the complaint was inadmissible *ratione materiae*. The duty court had never ordered the applicant's detention. She had not been deprived of her liberty, as defined in Article 5. Her transfer to hospital was not coercive, she was neither taken there by force nor held by the police. The police officers who went to the applicant's home did so only to notify her of the court order for compulsory admission and persuade her to comply. The fact that they spent almost two hours trying to persuade her demonstrated their willingness to engage in dialogue rather than coercion. Had she not been persuaded by the officers to go to hospital, and had she resisted the court order, the officers would not have had the power to seize her by force or enter her home. In that scenario, to enforce compliance, a court might have ordered her arrest or deprivation of liberty for disobedience. Ordering the officers to accompany the applicant to hospital after persuading her to go, as the investigating court did, was obviously less intrusive than ordering her arrest and forcible transfer. The applicant herself acknowledged that she had eventually accepted ("resigned herself to") going to hospital. Furthermore, she was not in custody once she was admitted to hospital. The police left immediately after she entered the emergency room, as evidenced by the police report. She was not subjected to forced labour induction or any other medical procedure against her will while in hospital.

121. They further argued that, in any event, the complaint was manifestly ill-founded. Referring to the Constitutional Court's detailed findings, they asserted that the contested measure had a sufficient and reasonable legal basis and that any alleged deprivation of liberty did not exceed what was necessary. The applicant's complaint under Article 5 of the Convention that she had been compulsorily admitted to hospital essentially concerned the alleged breach of her Article 8 rights. Contrary to her submissions, the domestic court could not be said to have failed to consider any "less intrusive measures", as it had duly assessed the urgency of the situation and the relevant risks. No "less intrusive" alternatives existed in her case.

2. The applicant

122. The applicant argued in her observations that she had been deprived of liberty within the meaning of Article 5, and in breach of that provision. during the following two periods:

(1) from 3.40 p.m. on 24 April 2019, when the police and ambulance had arrived at her home, until her arrival at the hospital at 5.30 p.m. on the same date, including the time spent travelling in the ambulance with the police escort; and

(2) from 5.30 p.m. on 24 April 2019 (when she arrived at the hospital) until 1.40 a.m. on 26 April 2019, when she gave birth.

123. In her view, she had been deprived of her liberty during both those periods. The court had ordered her to be compulsorily admitted for the possible induction of labour, against her will. That order contained instructions for the police to accompany the ambulance and ensure that she complied with the court ruling.

124. Stressing her extreme vulnerability at the time of the events, she further argued in respect of the first period that the police officers had put pressure on her to comply with the order. She had not given a valid consent to be admitted to hospital. The element of coercion persisted during the journey in the ambulance, as it was escorted by a police car; and the applicant's partner was not allowed to accompany her in the ambulance, which had meant she was isolated. As regards the second period, she argued that she had remained in the hospital pursuant to a court order for compulsory admission, which explicitly authorised that labour could be induced if necessary. The hospital staff had formally notified her of the order and relevant procedures. Subsequent communications from the medical team to the court on 25 and 26 April 2019 confirmed that the order had remained in force until after the child was delivered (the applicant referred to the clinical notes summarised in paragraph 29 above). She could not have freely left the hospital without adverse consequences. Until 12.20 a.m. on 25 April 2019 she was not allowed to leave her hospital ward. Moreover, it was only at that point that the nursing supervisor had noted that the applicant was "no longer in custody", which implied that she had been in custody up to that point. Even after that time, she had remained under exceptionally high supervision. The supervisor had believed she required continuous surveillance, with a level of control far beyond normal clinical practice. She submitted that there had been no basis in domestic law for her detention during either period. The domestic courts had used legal provisions in an unforeseeable manner. Her detention did not fall within the scope of any of the sub-paragraphs of Article 5 § 1 and had been arbitrary.

3. *Submissions of the third-party intervener – Association of Women Judges of Spain*

125. The intervener summarised the legal and jurisprudential requirements for lawful detention in Spain, reiterating that any interference with the right to liberty must (i) be provided for by law, (ii) be authorised by a court order giving reasons, and (iii) be proportionate. Regarding the first criterion, the intervener provided a list of situations in which deprivation of liberty was expressly permitted by domestic law. These included, for instance, detention on suspicion of having committed a crime, preventive detention in a criminal case, administrative detention for identification purposes, compulsory detention on mental health grounds or immigration

detention. Regarding the second criterion, the court order must set out the legal basis for ordering detention and give an analysis of the circumstances of the case, and the essential procedural safeguards must be respected. Among those safeguards, hearing the person concerned is essential. Only an appropriate order could be considered necessary and therefore proportionate (the appropriateness test). The court must have considered whether less restrictive measures were available (the necessity or indispensability test) and whether the order was in the public interest or serving other rights and values (the strict proportionality test). Failure to comply with those requirements would constitute a violation of the right to effective judicial protection.

B. The Court's assessment

1. The Court's case-law

126. To determine whether someone has been "deprived of his liberty" within the meaning of Article 5 of the Convention, the starting point must be his or her specific situation and account must be taken of a range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see *Aftanache v. Romania*, no. 999/19, §§ 78, 26 May 2020, with further references; and *Nada v. Switzerland* [GC], no. 10593/08, § 225, ECHR 2012). The Court attaches importance to factors such as whether it is possible to leave the restricted area, the degree of supervision and control over the movements of the person concerned, the extent of that person's isolation and whether they can have contact with the outside world (see *Guzzardi v. Italy*, 6 November 1980, § 95, Series A no. 39, cited above, and *H.M. v. Switzerland*, no. 39187/98, § 45, ECHR 2002-II). Article 5 § 1 may also apply to deprivations of liberty of a very short duration (see, among many authorities, *Creangă v. Romania* [GC], no. 29226/03, § 93, 23 February 2012; *M.A. v. Cyprus*, no. 41872/10, § 190, ECHR 2013 (extracts)); *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts); and *Siedlecka v. Poland*, no. 13375/18, §58, 31 July 2025). Where mentally disordered persons are placed in an institution, the Court has held that the notion of deprivation of liberty covers more than merely a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 117, ECHR 2012, with a further reference). The absence of handcuffing or other measures of physical restraint is not decisive in establishing whether there has been a deprivation of liberty (see *M.A.*, cited above, § 193 *in fine*), and nor does the characterisation or lack of characterisation given by a State to the facts (see *Creangă*, cited above, § 92) or the purpose of the measures

taken by the authorities which deprived the applicants of their liberty (ibid., § 93). In *Ulisei Grosu v. Romania* (no. 60113/12, §§ 27-32, 22 March 2016) the Court found that taking of a person by the police to a psychiatric hospital against his or her will could amount to “deprivation of liberty”. In *Aftanache* (cited above, §§ 81-83) it reached a similar conclusion in respect of an applicant who had been held against his will by ambulance personnel and the police for about six hours.

2. Application to the present case

127. The Court notes at the outset that in this case the hospital made a formal application supported by reasons for an order for the applicant to be compulsorily admitted to hospital (see by contrast *Aftanache,* cited above, § 97). The necessity of the measure was considered by a competent court which had issued a reasoned decision of 24 April 2019 granting it (see, for the Court’s assessment of its lawfulness and proportionality under Article 8 of the Convention, paragraphs 98-117 above). Although the applicant disagreed that there had been any medical emergency, it followed from the medical professionals’ conclusion that her admission to hospital was required, given the risk to the foetus (see, for the hospital’s submissions and the courts’ findings, paragraphs 16, 17, 19, 40 , 45and 59 above; see further, *mutatis mutandis*, *O.G. v. Latvia* (dec.), no. 6752/13, § 29, 30 June 2015).

128. The Court observes that the duty court in the present case did not order that the applicant be detained, arrested or otherwise deprived of liberty, within any pending criminal or administrative proceedings or otherwise (see paragraph 19 above and contrast, for instance, *Zelčs v. Latvia*, no. 65367/16, § 37, 20 February 2020; and *M.A. v. Cyprus,* cited above,§ 194). The role of the police was narrowly defined by the same order as “accompanying” the applicant to the hospital and making sure that she went there in a medically equipped vehicle (see paragraph 20 above), which cannot be equated to detention.

129. As regards the first of the periods referred to by the applicant, the Court notes from the police report and the parties’ submissions that the disputed period lasted from 3.30 p.m., when the police arrived, to 5.30 p.m., when the applicant was admitted to the hospital (see paragraphs 22 and 28 above), that is, for a short period of time. At no point was the applicant arrested or detained during that period (see, by contrast, *Stelian Roşca v. Romania*, no. 5543/06, § 60, 4 June 2013). Neither the police officers nor the ambulance personnel entered the applicant’s home. Importantly, there is nothing to suggest that, should the applicant have refused to comply with the order, the order would have enabled the officers to enter her home, let alone to arrest her. As submitted by the Government and not disputed by the applicant, they could only have done that if they had obtained a separate order for arrest for disobedience of the first court order.

130. In any event, it is not for the Court to speculate how the events would have unfolded if the applicant had disobeyed the order of 24 April 2019. The facts of the case are that the police spent more than an hour persuading the couple to go to the hospital without entering her home (see paragraphs 22 and 25 above). The officers engaged in an extensive conversation with the midwife and the applicant's partner who told the applicant what was being said (and the midwife contacted her lawyer). Then, at 4.50 p.m. the applicant accepted that she had to go to the hospital. While the parties are in dispute about whether she went to the hospital of her own free will or as a result of pressure by the officers, the Court does not detect elements of coercion which affected the applicant's liberty within the meaning of Article 5 of the Convention (see, by way of contrast, *Venskutė v. Lithuania*, no. 10645/08, § 73, 11 December 2012; and compare to *Guenat v. Switzerland* (dec.), no. 24722/94, Commission decision of 10 April 1995). It is noteworthy that the applicant's submission that the police officers had put pressure on her was made for the first time in her observations to the Court and not in the domestic proceedings (compare paragraphs 26 and 27 above).

131. Once she agreed to go to hospital, the applicant was given time to prepare for the journey, and then she was taken to the hospital by ambulance (see paragraphs 23 and 27 above). The police officers were not present in the ambulance. The applicant's partner asked the officers to give him a lift as he was unable to drive (see paragraph 23 above). The Court finds that the way in which the applicant was taken to hospital does not in itself raise an issue under Article 5 § 1 of the Convention, nor did it go further than normal practical arrangements for taking someone for hospital treatment.

132. Having regard to the specific circumstances discussed above and the short duration of the disputed period (see, *mutatis mutandis*, *Vadym Melnyk v. Ukraine*, nos. 62209/17 and 50933/18, § 84, 16 September 2022), and bearing in mind the domestic legal framework, the reasons given by the court for its order and the way the order was carried out, the Court finds that the applicant's situation between 3.30 p.m. and 5.30 p.m. on 24 April 2019 did not amount to a deprivation of liberty.

133. As regards the second period referred to by the applicant in her observations (from her admission to the emergency department to the time the child was delivered), the police officers had left immediately on the applicant's admission to the emergency department (see paragraph 24 above, and contrast *Udaltsov v. Russia*, no. 76695/11, §§ 130 and 136, 6 October 2020). As labour was not induced, the medical personnel provided assistance to the applicant as she continued in labour (see paragraphs 31 and 34 above). As regards the applicant's allegations that she had been under enhanced supervision by the supervising nurse, she referred to nurse's notes made in the clinical history which stated that the applicant should "no longer" be considered "in custody". However, the Court, applying its established case-law, does not find sufficient indications of coercion or any intention on the

authorities' side to detain the applicant within the meaning of Article 5. Contrary to the applicant's submissions, the supervisory nurse's notes of her exchange with a duty doctor on 24 April 2019 and in the early hours of 25 April 2019 (see paragraph 29 above) clearly suggest that the applicant did not need supervision, and was perceived by the medical personnel in the same way as "any other patient" and treated as such.

134. Lastly, in respect of both periods, the applicant was not isolated or unable to contact the outside world. It is uncontested that she was accompanied by her partner at all times, apart from the very short period of the journey to the hospital, and she was free to communicate with the midwife during the disputed period.

135. Based on the above considerations the Court concludes that the applicant was not deprived of liberty within the meaning of Article 5 § 1 of the Convention between 4.30 p.m. of 24 April 2019 and 1.40 a.m. of 26 April 2019.

136. It follows that this part of the application is incompatible *ratione materiae* with the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 11 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Kateřina Šimáčková
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Šimáčková is annexed to this judgment.

DISSENTING OPINION OF JUDGE ŠIMÁČKOVÁ

1. I respectfully disagree with the majority's conclusion that there has been no violation of Article 8 of the Convention in the applicant's case.

2. In this case, the applicant is a woman who was in a vulnerable situation at the relevant time, as she was expecting a child. Unfortunately, what was meant to have been a beautiful and significant moment in her personal and family life was overshadowed by the intimidation to which she was subjected by medical staff, a judge and the police, the latter having gone so far as to break into her home. It would appear that such immediate intervention on the part of the State wasn't even necessary, since labour didn't begin until two days later.

3. The national authorities have argued extensively on this case, contrasting the rights of the birthing mother with the protection of the child. This debate ultimately serves neither the mother's needs nor the child's best interests. Every expecting woman wishes to give birth to a healthy and happy child, and a newborn cannot develop properly if his or her mother is traumatised and feels humiliated. According to the World Health Organization (WHO) Labour Care Guide, "all women have a right to a positive childbirth experience" (see paragraph 13 below).

4. The legal basis for my disagreement with the finding that Article 8 of the Convention was not breached in this case is that the interference with the applicant's private and family life was not in accordance with the law or foreseeable for the applicant; nor was it necessary or proportionate. Although the interpretation of domestic law is primarily a matter for the domestic courts, I do not find their interpretations convincing enough in the present case. This conclusion is also supported by the submissions of the third-party intervener, together with the separate opinions accompanying the judgment of the Spanish Constitutional Court.

5. This case also highlights the broader scope of a problem in obstetrics: the inclination to discipline disobedient women and to regard them as mere child incubators. These tendencies, when coupled with the argument that women's rights and well-being need to be weighed against the interest in protecting the unborn child, give rise to an artificial conflict that does not actually exist but can have far-reaching consequences.

I. LACK OF A LEGAL BASIS AND MORE APPROPRIATE MEASURES TO ACHIEVE THE AIM PURSUED

6. I cannot agree with the argument that all legal rules protecting a child's best interests can automatically be applied to protect a foetus or an unborn child. Although the reasoning of the national courts and the Spanish Constitutional Court is based on this argument, I consider it to be overly broad and inconsistent with the content of the legal provision on which the measure

in the present case was based. Even though the national authorities agreed on this interpretation, it could not have been foreseeable for those subject to the law. There is no clear legal provision in Spanish law that, in my opinion, would have justified the decision to which the applicant was subjected.

7. Even if we were to accept the national authorities' interpretation and disregard the issue of foreseeability for the applicant, the measure taken would still be unacceptable because it was neither necessary nor proportionate. The aim that the national authorities sought to achieve – namely, that the applicant be placed under medical supervision in view of possible health complications – could have been achieved in a far more proportionate manner.

8. I would like to refer to the submissions of the third-party intervener, Association of Women Judges of Spain (*Asociación de Mujeres Juezas de España*), which show that there were other, less severe measures available – measures which would have interfered with the applicant's privacy and autonomy in a less intrusive manner – through which the State and medical authorities could have achieved the goal of protecting the unborn child while respecting the needs of its mother. According to the third-party intervener, the alternative measures available to judges in such cases, which are less restrictive of fundamental rights than the measure taken in the present case and are in accordance with both Spanish legislation and judicial practice, are as follows: first, the possibility of implementing protective measures at the affected person's home; second, measures decided in accordance with the obligation to weigh up the legitimate interests at stake in the specific case; and third, the possibility of granting a prior hearing to the person subject to the measure.

9. This is an excerpt from the text submitted by the third-party intervener (original English):

> "22. Firstly, once the judge is made aware of the situation thought communication from the healthcare centre, they have the authority to order the presence of a medical unit at the affected person's home. This unit could be commissioned by the judge, not only to assess the situation on site to determine the specific risks present but also to evaluate whether, despite the supposed risks, it is possible, according to the wishes of the affected person, for the birth to take place at home with the assistance of medical professionals. Alternatively, the judge could grant the mother a period of time to prepare and transfer to the hospital, even accompanied by the medical unit, or could ensure that she is transferred to a healthcare facility where the most analogous birthing modality to the one freely chosen by her is available.
>
> 23. Secondly, the judge could adopt measures that ensure their knowledge of the specific case, so as to ensure the proper reasoning behind the judicial decision. In this respect, it is important to note that the forensic doctor's report should not be based solely and exclusively on reproducing the reasons and arguments put forward by the hospital. Two natural measures emerge to remedy such an infringement:
>
> a) First, the forensic doctor could be instructed to visit the affected person's home and issue a report on the condition of the mother and the newborn, as well as the mother's

> cognitive ability to understand the risk of the situation and her volitional capacity to give the requisite consent.
>
> b) Second, the judge themselves could form a judicial commission and go to the pregnant woman's home to assess the situation.
>
> c) In both cases, both the forensic doctor and the judicial commission could be accompanied by the aforementioned mobile medical unit in order to ensure the protection of the affected individuals.
>
> 24. Thirdly, the measure can – and must – be adopted following a hearing with the pregnant woman, either through the judge's personal attendance at the home with the relevant judicial commission, or through the use of two-way telecommunication means, and not only before making the decision but also at any moment immediately thereafter."

Considering the actions suggested above, it can be concluded that the measures taken against the applicant lacked a legal basis, were unforeseeable to her and that the State had admittedly less severe means at its disposal to achieve the aim pursued. The interference with the applicant's rights was therefore neither necessary nor proportionate.

10. I also fully agree with the conclusion expressed by Judge Inmaculada Montalban Huertas of the Constitutional Court in her separate opinion in this case:

> "The validation of such a degree of preventive interference by the judiciary significantly weakens women's fundamental rights due to the distinctive factor inherent in maternity and pregnancy. Moreover, it presents a considerable and evident risk that future interferences with and intrusions into the lives and rights of pregnant women could be legitimised and justified without due respect for or protection of the essential guarantees safeguarding the dignity of the individual, even preventively."

II. ARTIFICIAL CONFLICT BETWEEN THE MOTHER'S RIGHTS AND THE INTERESTS OF THE UNBORN CHILD

11. I would now like to reflect upon the fact that, in both medical and legal discourse, the interests of the unborn child and the rights of his or her mother tend to be pitted against each other in an artificial conflict, even when no such conflict actually exists. This conflict can then be exploited to manipulate the mother, harming both her and, by extension, the interests of the unborn child. Amplifying this conflict, in which judges and doctors assume the role of arbiters, runs the risk of subjecting expecting mothers to excessive interferences with their rights during childbirth, which could in turn amount to obstetric violence. This myth of a polarity of interests supports the entrenchment of the patriarchy and arbitrarily extends legal rules to discipline women. It may be part of a structural problem (and perhaps one of the reasons why fewer children are being born in Europe), which is sometimes described by proponents of feminism as that of old men making decisions about young women's bodies while positioning themselves as experts, without having any

personal experience or understanding of just how difficult childbirth can sometimes be for a mother.

12. I therefore strongly disagree with the idea that the law should endorse this conflict-based view of the mother-child relationship during childbirth, thereby turning judges and doctors into arbiters in an artificial dispute. In this case, this artificial conflict led the national authorities to coerce the applicant into a situation that unnecessarily tainted a crucial moment in her family life and infringed upon her mental well-being and physical integrity.

13. Medical staff and lawyers dealing with situations involving women giving birth must always respect the woman involved and safeguard her well - being and that of her child. The WHO expressed this very well in its guidelines on childbirth (see WHO recommendations: intrapartum care for a positive childbirth experience, 7 February 2018, https://www.who.int/publications/i/item/9789241550215, last accessed on 27 May 2026):

> "Women want a positive childbirth experience that fulfils or exceeds their prior personal and sociocultural beliefs and expectations. This includes giving birth to a healthy baby in a clinically and psychologically safe environment with continuity of practical and emotional support from birth companion(s) and kind, technically competent clinical staff. Most women want a physiological labour and birth, and to have a sense of personal achievement and control through involvement in decision-making, even when medical interventions are needed or wanted."

14. Another aspect of the case (slightly on the sidelines) is the lack of respect shown by the doctors and judges towards the role of the midwife during the applicant's delivery, one which also reflects a stereotypical lack of respect for women's strength and wisdom and a clear effort to eliminate this form of support for the birthing mother. Without the assistance of independent midwives, women in labour are more compliant and frightened, making them easier to manipulate.

III. COERCION AND LACK OF RESPECT FOR A WOMAN'S CONSENT

15. This case is yet another example of how contemporary society and the law do not sufficiently respect a woman's free will or consider her consent to be important but are rather keen to place her in a vulnerable position in order to make her more compliant. The Court has examined a number of cases ranging from sexual assault and violations of bodily integrity to high-profile media cases where it appeared that both society and the law failed to show sufficient respect for a woman's freedom and autonomy. A woman's refusal to comply is often overridden by violence or by social, political and legal pressure. This case, too, sends a message that society does not care about a woman's free choice; her body is merely a child incubator in the eyes of society. Such disrespect can lead women to fear motherhood, because their

bodies suddenly become a public commodity over which a doctor, a duty judge, or a patriarchal society as a whole have the power to decide. I do not want young women to be subjected to such pressure and stress when making a free decision about whether to become mothers.

16. Furthermore, I am convinced that in this specific case a little more understanding, responsiveness, explanation and kindness on the part of the medical staff could have gone a long way and would have resolved the entire issue, without turning it into a traumatic experience for the applicant, a case before the European Court of Human Rights and an infringement of the applicant's fundamental right to respect for her private and family life.