



## Prohibition on midwives assisting home births in Czech Republic does not violate mothers' rights

In today's **Chamber** judgment<sup>1</sup> in the case of [Dubská and Krejzová v. the Czech Republic](#) (application nos. 28859/11 and 28473/12) the European Court of Human Rights held, by a majority, that there had been:

**no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned the prohibition under Czech law on midwives assisting home births.

The Court took into consideration, in particular, that there was no European consensus on whether or not to allow home births, and that this question involved the allocation of financial resources, for example for an adequate emergency system for home births. It concluded that States had a lot of room for manoeuvre ("margin of appreciation") in regulating this issue. Moreover, the applicants did not have to bear a disproportionate burden on account of the fact that they could only be assisted by a medical professional if giving birth in a hospital.

### Principal facts

The applicants, Šárka Dubská and Alexandra Krejzová, are Czech nationals who were born in 1985 and 1980 and live in Jilemnice and Prague (the Czech Republic) respectively. Both applicants wished to give birth at home. However, under Czech law health professionals are prohibited from assisting with home births.

When pregnant with her second child in 2010, Ms Dubská decided to give birth at home, given her experience during the birth of her first child in 2007 in a hospital when she had been urged to have various medical interventions against her wishes and had been ordered to stay in hospital longer than she wished. On her enquiries, she was informed that Czech legislation did not provide for the possibility of a public health insurance to cover the costs of a birth at home and that midwives were allowed to assist at births only in premises with the technical equipment required by law. Ms Dubská eventually gave birth to her second child at home alone in May 2011. In February 2012, the Czech Constitutional Court dismissed her complaint about being denied the possibility of giving birth at home with the assistance of a health professional.

Ms Krejzová gave birth to her first two children at home, in 2008 and 2010 respectively, with midwives who assisted her without any authorisation from the State. At the time of lodging her application with the European Court of Human Rights, she was pregnant with her third child but unable to find a midwife, because under new legislation, in force from 1 April 2012, midwives risked heavy fines for providing medical services without authorisation. She ended up giving birth in May 2012, 140 km from Prague in a hospital with a reputation for respecting the wishes of mothers during delivery.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), both applicants complained that mothers have no choice but to give birth in a hospital if they wish to be assisted by a health professional.

The application was lodged with the European Court of Human Rights on 4 May 2011.

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

Mark **Villiger** (Liechtenstein), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Ganna **Yudkivska** (Ukraine),  
André **Potocki** (France),  
Paul **Lemmens** (Belgium),  
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court considered that the impossibility for the applicants to be assisted by midwives when giving birth at home had amounted to an interference with their right to respect for their private lives. It had regard, in particular, to the broad concept of private life within the meaning of Article 8, which included the right to personal autonomy and to physical and psychological integrity. The Court acknowledged that the interference had a legal basis, given that the applicants had been able to foresee that the assistance of a health professional at a home birth was not permitted by law.

Furthermore, the interference had served a legitimate aim, namely the protection of health and of the rights of others within the meaning of Article 8. There were no grounds for doubting that the Czech law in question was designed to protect the health and safety of the newborn during and after delivery and, at least indirectly, that of the mother.

As regards the question of whether the interference had been necessary, the Court observed in particular that there was no European consensus on whether or not to allow home births and under what circumstances. The matter required an assessment by the national authorities of expert and scientific data concerning the relative risks of hospital and home births. It also involved general social and economic policy considerations of the State, including the allocation of financial resources to set up an adequate emergency system for home births, which might mean shifting funds away from a general system of maternity hospitals. Having regard to these considerations, the Court found that States had a wide margin of appreciation in regulating this question.

It was true that the Czech Government, when balancing the interests at stake, had focused primarily on the aim of protecting the best interests of the child. Mothers such as the applicants could choose a hospital to give birth where their wishes were likely to be respected, but the applicants' experience showed that respect for mothers' wishes was not guaranteed.

A majority of research studies on the safety of home births indicated that, if certain conditions were fulfilled, there was no increased risk compared to hospital births. Those conditions included in particular that home births would only take place in low-risk pregnancies and they had to be attended by a qualified midwife. The situation in the Czech Republic, where medical professionals were not allowed to assist mothers giving birth at home and where there was no special emergency aid available, actually increased the risk to the life and health of mother and newborn. However, the

Court also had regard to the Czech Government's argument that even if a pregnancy seemed to be without any particular complications, there could be unexpected difficulties requiring specialised medical interventions only available in a hospital. In this light, the Court concluded that the mothers concerned, including the applicants, did not have to bear a disproportionate and excessive burden.

At the same time, the Court underlined that the Czech authorities should keep the relevant provisions under a constant review, taking into account medical, scientific and legal developments.

In conclusion, the Court found, by a majority, that there had been no violation of the applicants' rights under Article 8.

### Separate opinions

Judges Villiger and Yudkivska each expressed a concurring opinion. Judge Lemmens expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

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