



Lithuanian law prohibiting professional medical assistance for home births did not breach mothers' rights

In today's **Chamber judgment**¹ in the case of **Kosaitė - Čypienė and Others v. Lithuania** (application no. 69489/12) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned Lithuania's law on medical assistance for home births. The applicants, four women, had unsuccessfully requested that the Ministry of Health amend the legislation that prohibited medical professionals from assisting in home births.

The Court found that Lithuania had struck a fair balance between the interests involved: namely, the mothers' right to respect for their private life against the State's interest in health and safety. In particular, the four women could have opted for any one of the maternity wards created in Lithuania since the 1990s to ensure home-like conditions for women giving birth, in particular in Vilnius where they lived. Additionally, postnatal care was available if an emergency had arisen during or after a delivery at home.

Moreover, although Lithuania had recently changed the law on home births, it had not actually been required to do so under the European Convention given the great disparity between the legal systems of the Contracting States on the matter.

Principal facts

The applicants, Ms I. Rinkevičienė, Ms E. Zakarevičienė, Ms O. Valainienė, and Ms E. Kosaitė-Čypienė, are Lithuanian nationals who live in Vilnius.

The four applicants are mothers who gave birth at home with the aid of a doula (a childbirth coach), J.I.Š. They attest that their home births took place without complications.

After criminal charges were brought against J.I.Š. for assisting in home births, in 2012 three of the applicants asked local hospitals to provide them with medical assistance for a home birth. However, the hospitals refused because providing such aid was prohibited under the relevant domestic legislation, namely Medical Regulation MN 40:2006.

Three of the applicants then asked that the Ministry of Health amend the legislation to permit medical personnel to assist with home births. The Ministry replied that there were no plans to amend the legislation or enact new legislation to regulate midwifery services at home, stating that giving birth in a maternity ward was the safest option and that the applicants could visit the wards to find the one most suited to their needs.

Ms O. Valainienė challenged the Ministry's reply before the administrative courts, without success. Ultimately, in 2012 the Supreme Administrative Court rejected her argument that the absence of legal regulation on medical assistance during home birth breached her right to privacy. On the

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.

contrary, domestic law guaranteed her the right to choose the most suitable medical institution and to state her wishes regarding privacy and, in any case, the right to privacy could not be given higher value than the health of mother and child.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life) of the European Convention, the applicants complained that Lithuanian law had dissuaded healthcare professionals from assisting in home births.

The application was lodged with the European Court of Human Rights on 19 October 2012.

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

Robert **Spano** (Iceland), *President*,
 Julia **Laffranque** (Estonia),
 Valeriu **Grițco** (the Republic of Moldova),
 Egidijus **Kūris** (Lithuania),
 Ivana **Jelić** (Montenegro),
 Arnfinn **Bårdsen** (Norway),
 Darian **Pavli** (Albania),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

The Court found that the applicants had been put in a situation that had had a serious impact on their freedom of choice: they had been required either to give birth in a hospital or, if they wished to give birth at home, to do so without the assistance of a healthcare professional. The Court considered that that had amounted to an interference with the applicants' right to respect for their private life.

That interference had, however, been in accordance with the law. The domestic law had not only been accessible but it had also been explicitly and clearly regulated, enabling the applicants to foresee that professionally assisted home births were not permitted. The ban had also been confirmed through the letters from the hospitals that the applicants had received while some of them were still pregnant.

Furthermore, it found that Lithuania had struck a fair balance between the applicants' rights and the State's legitimate interest in protecting the health and safety of the mother and child during and after delivery.

In particular, steps had been taken in Lithuania since the 1990s to ensure home-like conditions for women giving birth in maternity wards. In Vilnius alone, where all four applicants lived, there were three such hospitals. Ms Valainienė had in fact been invited to visit one of those hospitals but, as pointed out by the Supreme Administrative Court, she had failed to make contact.

Additionally, postnatal care had been available if complications had arisen during or after delivery.

Lastly, while medical professionals would have faced legal repercussions for assisting in home births, mothers could not be punished for giving birth at home.

The Court reiterated, moreover, that Lithuania was not required under the Convention to allow planned home births. There was still a great disparity between the legal systems of the Contracting States on home births and the Court was sensitive to the fact that the law developed gradually in this area.

Although the law had indeed recently changed on home births, that could have no bearing on the applicants' situation which had taken place before the change.

In those circumstances, the interference with the applicants' right to respect for their private life had not been disproportionate and the Court concluded that there had been no violation of Article 8 of the Convention.

Separate opinion

Judge Laffranque expressed a concurring opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

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

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

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.