



No breach of woman's rights in home birth case, but Court calls on Croatia to regulate legislation more clearly

In today's **Chamber** judgment¹ in the case of [Pojatina v. Croatia](#) (application no. 18568/12) 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 Croatian legislation on home births. The applicant in the case is a mother who gave birth to her fourth child at home with the help of a midwife from abroad. She alleged in particular that, although Croatian law allowed home births, women such as her could not make this choice in practice because they were not able to get professional help.

The Court accepted that at first there might have been some doubt as to whether a system for assisted home births had been set up in Croatia. It therefore called on the authorities to consolidate the relevant legislation so that the matter is expressly and clearly regulated.

However, it found that the applicant had clearly been made aware, through the letters from the Croatian Chamber of Midwives and the Ministry of Health which she had received while she had still been pregnant with her fourth child, that the domestic law did not allow assisted home births. It further found that the authorities had struck the right balance between the applicant's right to respect for her private life and the State's interest in protecting the health and safety of mothers and children. It pointed out in particular that Croatia was not currently 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.

Principal facts

The applicant, Ivana Pojatina, is a Croatian national who was born in 1976 and lives in Zagreb.

She gave birth to her first three children in hospital. In 2011 she became pregnant with her fourth child and had a due date in February 2012. During her pregnancy she wrote to the Croatian Chamber of Midwives to enquire whether she could have professional help with a home birth.

The Chamber told her that under Croatian law, health professionals, including midwives, were unable to assist with home births. In particular, the setting up of private practices by midwives was not clearly regulated and thus no midwife officially assisted with home births. The Chamber also cited a statement by the Ministry of Health showing that there was no system for assisting home births in Croatia.

On 15 February 2012 the applicant gave birth to her fourth child at home, assisted by a midwife from abroad.

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.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy), Ms Pojatina complained that Croatian law had dissuaded health professionals from assisting her when giving birth at home. She alleged in particular that, although the law allowed home births, women such as her could not make this choice in practice because they were not able to get professional help. She also alleged that, because she had chosen to give birth at home, she and her child had been denied postnatal care and that it had been difficult to register her child and obtain a birth certificate.

The application was lodged with the European Court of Human Rights on 9 February 2012.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Krzysztof **Wojtyczek** (Poland),
Ksenija **Turković** (Croatia),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court found that the Croatian legislation had had a serious impact on Ms Pojatina's freedom of choice when giving birth. She had either had to give birth in a hospital, or if she wished to give birth at home, it had to be without the assistance of a midwife, and therefore with risks to herself and her baby. In the end, she had given birth at home with the assistance of a midwife from abroad.

The Court held that that interference with the applicant's right to respect for her private life had been "in accordance with the law". Indeed, although at first there might have been some doubt as to whether a system for assisted home births was set up in Croatia, she had received letters from the Croatian Chamber of Midwives and the Ministry of Health while she had still been pregnant with her fourth child, explaining that the law did not allow assisted home births. However, the Court called on the Croatian authorities to consolidate the relevant legislation so that the matter was expressly and clearly regulated.

Moreover, the interference with Ms Pojatina's right to respect for her private life had not been disproportionate to the State's legitimate aim of encouraging hospital births to protect the health and safety of mothers and children. In particular, while it would be possible for Croatia to allow planned home births, it was not currently required to so under the Convention. The Court was sensitive to the fact that the law developed gradually in this area, there still being a great disparity between the legal systems of the Contracting States. The Court could not disregard remarks that wishes of women during childbirth did not seem to be fully respected in Croatian maternity wards. However, it noted that in recent years initiatives had been taken in order to improve the situation. The Court invited the Croatian authorities to make further progress by keeping the legal provisions on the issue under constant review in order to reflect medical and scientific developments while fully respecting women's rights, in particular by ensuring adequate conditions for both patients and medical staff in maternity hospitals across the country.

The Court also noted that there were no provisions under Croatian law criminalising home births and no woman or health professional had ever been prosecuted or punished in the country for a home birth.

As concerned Ms Pojatina's complaint that she and her child had been denied postnatal care, the Court noted that she had never actually reported this to any relevant authority, and, in any case, it was not in dispute that she and her child had eventually received post-delivery medical care. Nor could the Court accept her complaint that women giving birth at home experienced difficulties in registering their children as the law obliged them to submit medical documents to prove their motherhood. Such a requirement was directed at avoiding abuse in situations where there was no official information on a child or its biological parents.

Bearing in mind those circumstances, the Court held that there had been no violation of Article 8.

Separate opinions

Judge Koskelo expressed a concurring opinion, while Judge Wojtyczek expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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