



## National court's decision authorising applicant's compulsory hospital admission to give birth had been reasonable in the circumstances

The case of [C.P. v. Spain](#) (application no. 50181/22) concerned a woman's compulsory admission to hospital to give birth pursuant to a judicial order, despite her wish to give birth at home, owing to a risk of foetal hypoxia and intrauterine foetal death.

In today's **Chamber judgment**<sup>1</sup> in the case, the European Court of Human Rights held, six votes to one, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

C.P. had become pregnant in 2018 and had decided to give birth at home. In April 2019, when she was 42 weeks and two days pregnant, she attended a hospital check-up, during which a risk to both her and to her unborn child was identified. Following an urgent application by the hospital, a duty court ordered C.P.'s compulsory admission for labour to be induced if necessary.

The Court noted that the legal basis for the order had been extensively examined by the national courts. The Constitutional Court had found that, despite there being no specific legal provision for ordering compulsory admission to hospital for a birth classified as posing a risk to the life of the foetus, the legal framework relied on by the duty court had been reasonable and sufficient. The Constitutional Court had not reached that conclusion in an arbitrary or manifestly unforeseeable way, and that generally the national courts had interpreted and applied the law in an acceptable manner.

The Court also declared, unanimously, that the complaint under **Article 5 (right to liberty and security)** was inadmissible.

### Principal facts

The applicant, C.P., is a French national who was born in 1990 and lives in Posada Llanera (Spain).

C.P. became pregnant in 2018 and decided to give birth at home with the assistance of V., a registered midwife. On 23 April 2019, when C.P. was 42 weeks and two days pregnant, she went to the hospital for a medical check-up. She was examined by a doctor, who considered that there was a risk to both her and to the foetus and that labour should be induced. C.P. left the hospital to consult with V. and had no further contact with the hospital that day.

The next day, following an urgent application by the hospital based on risks of foetal hypoxia and intrauterine foetal death after a gestation of 42 weeks, a duty court ordered C.P.'s compulsory admission for labour to be induced if necessary. Police officers and an ambulance crew arrived at C.P.'s home. After some time, C.P. accepted that she had no choice but to go to hospital. On admission, C.P. underwent tests which gave no cause for immediate concern and a wait-and-see approach was taken. C.P. went into labour spontaneously on 25 April. At some point, the gynaecologist informed C.P. and her partner that a caesarean section was necessary as cervical examinations were indicating no progress was being made, the baby's head was not in an optimal position and C.P.' pain was not being alleviated by medication. C.P. and her partner agreed and signed the informed consent documents.

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).

C.P.'s daughter was born, with normal neonatal indicators, in the early hours of 26 April 2019 by emergency caesarean section.

On 15 May 2019 the first-instance court dismissed an action for annulment of the court order lodged by C.P., holding that the order had been issued lawfully. An appeal brought by C.P. was unsuccessful. On 2 June 2022 the Constitutional Court dismissed C.P.'s *amparo* appeal. It concluded that, despite the absence of a specific legal basis for ordering compulsory admission to hospital for a birth classified as posing an imminent risk to the life of the foetus, the legal framework relied on by the duty court had offered reasonable legal coverage. The duty court had restricted C.P.'s right to personal freedom and privacy only to the extent required to protect the life and health of both her and her unborn child.

## Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 5 (right to liberty and security), the C.P. complained about her compulsory admission to hospital. In particular, she argued that there had been no legal provision allowing the court to order her compulsory admission to hospital and that in the absence of a medical emergency there had been no legitimate reason for making the order, which had been disproportionate.

The application was lodged with the European Court of Human Rights on 13 October 2022.

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

Kateřina Šimáčková (the Czech Republic), *President*,  
María Elósegui (Spain),  
Gilberto Felici (San Marino),  
Mykola Gnatovskyy (Ukraine),  
Vahe Grigoryan (Armenia),  
Sébastien Biancheri (Monaco),  
Nicholas Emiliou (Cyprus),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

The conditions under which birth took place was an integral part of a person's private life for the purposes of Article 8. Hospital staff had been aware of C.P.'s preference for a home birth, which is permitted in Spain and, until she went for a hospital check-up on 23 April 2019, no steps had been taken by medical professionals to dissuade her from one.

As regards the lawfulness of the interference, the Spanish Constitution set out fundamental rights, including the right to life, and those provisions were directly applicable. The duty court had found that Article 29 of the Civil Code extended to an unborn child the protection afforded to a child after birth. That finding had allowed it to examine the situation from the standpoint of Article 158(6) of the Civil Code, which empowered a judge to make any order she or he deemed appropriate to remove a minor from danger. The duty court had issued such an order, following the hospital's assessment that the foetus was in imminent and serious danger. The legal basis for the interference had been extensively examined by the national courts. The Constitutional Court found that the legal basis relied on had been sufficient and reasonable and the duty court had legitimately used an interpretative approach.

The interference in question pursued the legitimate aim of the protection of the health of C.P. and her unborn child. Healthcare policy matters came within the discretion ("margin of appreciation") of the national authorities. In C.P.'s case, where the authorities had had to strike a fair balance between her right to respect for her private life, namely her choice to give birth at home, on the one hand and the medically highlighted risks of her unborn child and possibly of her own life, the discretion was wide. It

was for the Court to supervise, having regard to that wide discretion, whether the interference constituted a proportionate balancing of the competing interests involved.

The initial order had been based on the information from medical professionals who had flagged serious specific risks for the foetus, including foetal hypoxia and intrauterine foetal death, as well as the urgency of the situation. There was nothing to suggest that the duty court had not been given all the facts on which to base its decision. The authorisation had been confined to “compulsory admission” for induction of labour if necessary. The Court shared the Constitutional Court’s view that the reasons given by the national authorities to justify the interference had been relevant and sufficient. The duty court had set out the purpose of the order, explained that its aim was to preserve the life and health of the unborn child, and had stated that an order compelling C.P. to go to hospital to ensure a safe birth had been appropriate. No less restrictive measure had been available. The fact that the baby had ultimately been born by caesarean section indicated that the assessment that there was a high risk to the mother and the child, had not been unfounded. The interference had been necessary in a democratic society.

There had therefore been no violation of Article 8.

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As regards Article 5, the Court found that the measure had been considered by a competent court which had issued a reasoned decision. The duty court had not ordered that C.P. be detained, arrested or otherwise deprived of liberty. There were insufficient indications of coercion or any intention on the authorities’ side to detain her. She had not been isolated or unable to contact the outside world and had been accompanied by her partner at all times. The Court concluded that C.P. had not been deprived of her liberty within the meaning of the Convention.

The complaint under Article 5 was therefore inadmissible.

## Separate opinion

Judge Šimáčková expressed a dissenting opinion. This opinion is annexed to the judgment.

*The judgment is available only in English.*

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