



National authorities have considerable room for manoeuvre when regulating the question of home births

In today's **Grand Chamber** judgment¹ 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 twelve votes to five votes, 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 a law in the Czech Republic which made it impossible in practice for mothers to be assisted by a midwife during home births. The applicants, two women who wished to avoid unnecessary medical intervention in delivering their babies, complained that because of this law they had had no choice but to give birth in a hospital if they wished to be assisted by a midwife.

The Court found in particular that the national authorities had considerable room for manoeuvre when regulating the question of home births, a matter for which there is no European consensus and which involves complex issues of health-care policy as well as allocation of State resources. It concluded that the State's current policy struck a fair balance between, on the one hand, mothers' right to respect for their private life and, on the other, the State's interest in protecting the health and safety of the child and mother during and after delivery. Moreover, since 2014 the Government have taken some initiatives with a view to improving the situation in local maternity hospitals, notably by setting up a new governmental expert committee on obstetrics, midwifery and related women's rights. The Court invited the Czech authorities to make further progress by continuing their constant review of the relevant legal provisions on home births, making sure that they reflect medical and scientific developments whilst fully respecting women's rights in the field of reproductive rights.

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 midwives are not allowed to assist with home births.

When pregnant with her second child in 2010, Ms Dubská decided to give birth at home given the stressful experience she had had during the birth of her first child in 2007 in a hospital. She had notably been urged to have various medical interventions against her wishes and had been ordered to stay in hospital longer than she wished. On making 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 midwife.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Ms Krejzová gave birth to her first two children at home, in 2008 and 2010, 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.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, both applicants complained that mothers had no choice but to give birth in a hospital if they wish to be assisted by a midwife.

The applications were lodged with the European Court of Human Rights on 4 May 2011 and 7 May 2012.

In its Chamber [judgment](#) of 11 December 2014, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 8 of the Convention.

On 1 June 2015 the case was referred to the Grand Chamber at the request of the applicants. A Grand Chamber hearing was held in Strasbourg on 2 December 2015.

The Governments of Croatia and the Slovak Republic as well as the following bodies and organisations intervened as third parties in the written proceedings (Article 36 § 2 of the Convention): the Royal College of Midwives; the International Study Group of the World Association of Perinatal Medicine; the Czech Union of Midwives (UNIPA); and, the Public Defender of Rights (Ombudsman) of the Czech Republic.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
András **Sajó** (Hungary),
İşil **Karakaş** (Turkey),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),
George **Nicolaou** (Cyprus),
Kristina **Pardalos** (San Marino),
Julia **Laffranque** (Estonia),
Helen **Keller** (Switzerland),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),
Valeriu **Grițco** (the Republic of Moldova),
Faris **Vehabović** (Bosnia and Herzegovina),
Dmitry **Dedov** (Russia),
Egidijus **Kūris** (Lithuania),
Jon Fridrik **Kjølbro** (Denmark),
Síofra **O’Leary** (Ireland),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Decision of the Court

The Court found that a mother’s choice of where she gives birth was fundamentally linked to her private life and therefore comes within the scope of Article 8 of the Convention.

The threat of sanctions against midwives who assisted with home births had a serious impact on this freedom of choice. Indeed, by the operation of the law midwives in the Czech Republic had been prevented in practice from assisting the applicants to give birth at home. Women – such as the applicants – wishing to give birth at home were thus given no choice but to do so without the assistance of a midwife, with the attendant risks that this posed to both themselves and their newborns. The Court considered that that amounted to an interference with their right to respect for their private life.

That interference, based on the different legislative provisions in force at the time Ms Dubská gave birth to her second child and Ms Krejzová gave birth to her third child, had been in accordance with the law. In particular, Ms Dubská and Ms Krejzová had been able – if need be with appropriate advice – to foresee that their homes were not equipped for giving birth as required under the relevant secondary legislation and therefore that the provisions in question did not allow midwives to assist with a planned home birth.

Furthermore, that interference – in effect, a State policy of encouraging hospital births – had been designed to protect the health and safety of mother and child during and after delivery.

Next the Court pointed out that it was not for it to decide the most appropriate policy for regulating matters related to the circumstances in which a mother gave birth, but for the competent national authorities. Indeed, it was of the view that national authorities had considerable room for manoeuvre (“margin of appreciation”) in the applicants’ case, which involved complex matters of health-care policy and allocation of resources. Moreover, there was no consensus among member States of the Council of Europe in favour of allowing home births: planned home births are provided for in domestic law and regulated in 20 member States depending on certain medical conditions being satisfied, and are unregulated or under-regulated in 23 other countries. In some of those 23 countries, home births do take place, but in a legal vacuum and without national health cover.

Instead, the Court went on to decide whether the State’s current policy – which made it impossible in practice for the applicants to be assisted by a midwife during their home births – struck a fair balance between the applicants’ right to respect for their private life and the State’s interest in protecting the health and safety of the child and mother during and after delivery.

On the one hand, the Court noted that the risks for mothers and newborns were higher in the case of home births than in the case of births in maternity hospitals which are fully staffed and adequately equipped. Unexpected difficulties could arise during delivery which might require, for example, a Caesarean section or special neonatal assistance.

On the other hand, according to the applicants’ own experiences, the conditions in which pregnant women were admitted and provided with medical treatment and medication in local maternity hospitals were apparently questionable, and in several local hospitals the wishes of mothers-to-be did not seem to be fully respected. Those remarks were confirmed in a report of 2010 by the Committee on the Elimination of Discrimination against women which expressed concern about the conditions for child birth and obstetric services in the Czech Republic.

However, since 2014 the Government have taken some initiatives with a view to improving that situation, notably by establishing a new governmental expert committee on the issue of obstetrics, midwifery, and related women’s rights. The Court invited the Czech authorities to make further progress by keeping the relevant legal provisions under constant review, making sure that they reflect medical and scientific developments whilst fully respecting women’s rights in the field of reproductive rights. Ensuring adequate conditions for both patients and medical staff in maternity hospitals across the Czech Republic was one way of achieving this progress.

The Court therefore concluded that the interference with the applicants’ right to private life had not been disproportionate and held that there had been no violation of Article 8 of the Convention.

Separate opinion

Judges Sajó, Karakaş, Nicolaou, Laffranque and Keller expressed a joint dissenting opinion which is annexed to the judgment.

The judgment is available in English and French.

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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.