

## Pregnant woman discriminated against by insurance authorities

In today's **Chamber judgment**<sup>1</sup> in the case of [Jurčić v. Croatia](#) (application no. 54711/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights read in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention.**

The case concerned the denial to the applicant of employment health-insurance coverage during pregnancy. The authorities had claimed that her recently signed employment contract had been fictitious, and that she should not have started work in any case while undergoing *in vitro* fertilisation.

The Court found in particular that the Croatian authorities had failed to demonstrate any fraud, and had implied that pregnant women should not seek work, thus discriminating against the applicant.

### Principal facts

The applicant, Kristina Jurčić, is a Croatian national who was born in 1975 and lives in Rijeka (Croatia).

The applicant was employed almost continuously from 1993 until 1 November 2009. On 17 November 2009 she underwent *in vitro* fertilisation (IVF). On 27 November the applicant took up a position with a company in Split and was then registered with the Croatian health-insurance scheme. She learned about her pregnancy in December and sick leave was prescribed owing to pregnancy-related complications.

The applicant applied for payment of her salary during her sick leave. The authorities then took it upon themselves to review the applicant's health-insurance status. They denied her employment insurance altogether, considering that her employment was fictitious and aimed solely at securing payment during pregnancy. They also held that she had been medically unfit to take up work in a distant town owing to the IVF process.

The applicant appealed to the courts, arguing that she had been discriminated against as a woman who had undergone IVF. The High Administrative Court dismissed the action, which was later upheld by the Constitutional Court.

The applicant also turned to the Gender Equality Ombudsperson, who found that the authorities' interpretation of the applicant's situation had been based on the premise that every woman who was undergoing IVF or pregnant would in reality not be employed by any employer.

### Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant complained of 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](http://www.coe.int/t/dghl/monitoring/execution).

revocation of her health-insurance status, stating that it had been a result of discrimination against her as a woman undergoing *in vitro* fertilisation.

The application was lodged with the European Court of Human Rights on 28 October 2015.

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

Krzysztof **Wojtyczek** (Poland), *President*,  
Ksenija **Turković** (Croatia),  
Alena **Poláčková** (Slovakia),  
Péter **Paczolay** (Hungary),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Raffaale **Sabato** (Italy),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

The Government argued that the applicant had been treated in the same way as any woman who sought to profit from fictitious employment contracts. The decision had been taken to protect the public purse.

The Court firstly noted that a decision refusing insurance status on grounds of employment which had been declared fictitious due to the applicant's pregnancy could only be made in respect of a woman. In the applicant's case such a decision had thus constituted a difference in treatment on grounds of sex. It furthermore stressed that actual pregnancy itself could not be fraudulent, and that the financial obligations imposed on the State during a woman's pregnancy by themselves could not constitute sufficiently weighty reasons to justify difference in treatment on the basis of sex.

In the applicant's case, the Court noted that the applicant had taken up employment a short time after undergoing IVF and that the authorities had been entitled to verify the validity of the facts on which she had been insured. At the same time, it considered the Administrative Court's case-law submitted by the Government to be generally problematic, as it indicated that such reviews in practice frequently targeted pregnant women.

The Court noted that, in deciding the applicant's case, the domestic authorities had limited themselves to concluding that, owing to the IVF procedure, she had been medically unfit to take up the position in question, implying that she had to refrain from doing so until her pregnancy had been confirmed. That approach had been in direct contravention of both domestic and international law and had been tantamount to discouraging the applicant from seeking employment owing to her pregnancy. This alone was in the Court's view sufficient to conclude that the applicant had been discriminated on the basis of her sex.

In addition, the Court noted that the Croatian authorities had failed to show how the applicant's taking up employment could have been fraudulent since she could not have known when entering into employment whether the IVF procedure had been successful and had not been under any legal obligation to inform her employer about it. Nor had the authorities examined whether she had in fact commenced work or whether the IVF she had undergone had necessitated her absence from work due to health reasons.

Lastly, the Court cautioned that gender stereotyping by the authorities as observed in the applicant's case presented a serious obstacle to the achievement of real substantive gender equality, one of the major goals of the member States of the Council of Europe.

Stressing that a refusal to employ or recognise an employment-related benefit to a pregnant woman based on her pregnancy, amounts to direct discrimination on grounds of sex, the Court concluded that the difference in treatment of the applicant had not been objectively justified, leading to a violation of her Convention rights.

### Separate opinions

Judge Wojtyczek expressed a concurring opinion, which is joined to the judgment.

### Just satisfaction (Article 41)

The Court held that Croatia was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,150 in respect of costs and expenses.

*The judgment is available only in English.*

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**Neil Connolly**  
Tracey Turner-Tretz  
Denis Lambert  
Inci Ertekin

**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.