

Eggermont, Marlies (Ghent University)

The Impact of the Right to Private Life on the Choice of Child Delivery

In a judgment of 14 December 2010, in the case of Madame Ternovszky versus Hungary, the European Court of Human Rights has considered that a State should provide an adequate regulatory scheme concerning the right to choose in matters of child delivery (at home or in a hospital) The State has to ensure that the legal protection is foreseeable and accessible. The right to choose includes the legal certainty that the choice is lawful and not subject to direct or indirect sanctions of the healthcare worker.

Article 8 of the Convention provides that everyone has the right to respect for his private life and that the public authority will not interfere with the exercise of this right (although exceptions are possible). “*Private life*” is a broad term and it incorporates the right to decide to become a parent, which includes the right of choosing the circumstances of becoming a parent. The applicant of the procedure was a pregnant women who intended to give birth at home. She alleged the violation of article 8 because she meant that the Hungarian national law prohibited a healthcare worker (for example a midwife) to assist a home delivery, as Government Decree no. 218/1999 (XII.28) stipulates that a healthcare worker assisting a home birth runs the risk of conviction for a regulatory offence.

The Court decided that the Hungarian national law violates article 8, considering that there is (1) a contradiction between the Health Care Act 1997, which recognizes the patients right to self-determination, and the Government Decree, which penalizes the healthcare worker who carries out activities within his qualifications in a incompatible manner with the law or his license and considering that (2) one year before the judgment the Hungarian Government was given the task “*to determine the professional rules and conditions governing birth outside an institution and the causes excluding the possibility of such birth*”.

We want to research if the regulatory scheme in the States of Belgium, Germany, the Netherlands and France (members of the Legal Research Network) concerning the choice of child delivery is in accordance with article 8 of the European Convention on Human Rights.