



Dubska and Krejzova v. The Czech Republic

Application Nos. 28859/11 and 28473/12

Country: Czech Republic

Region: Europe

Year: 2014

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Sexual and reproductive health

Human Rights: Right to health, Right to privacy

Facts

Ms. Sarka Dubska and Ms. Alexandra Krejzova sued the Government of the Czech Republic, alleging that a Czech law forbidding health professionals from attending home births was in violation of the right to private life as provided for in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (â€œConventionâ€•).

Dubska decided to give birth at home and failed to find a midwife to assist at the birth. Czech law only allowed registered health professionals, including midwives, to attend a home birth if the home had the technical equipment necessary. Most private homes were not eligible. Not having found any health professional to assist her, the applicant gave birth to her son at home, alone.

Krejzova was the mother of two children. Both of the children were home-birthed with the assistance of a midwife. The midwives had attended the births without any authorization from the State.

Decision and Reasoning

The Court held that there was no violation of Article 8 of Convention. The Court reasoned that, in adopting and applying the policy relating to home births, the government had neither exceeded the wide margin of appreciation afforded to it nor upset the fair balance that had to be struck between competing interests. Though the Court noted that the ban on midwives at home births was an interference with the applicantsâ€™ right to respect for their private lives, the applicants were able to foresee with a degree that was reasonable in the circumstances that the assistance of a health professional at a home birth was not permitted by law. Accordingly, the Court found that the interference was in accordance with the law for the purpose of Article 8 section 2 of the Convention.

The Court also reasoned that the policy was designed to protect the health and safety of the newborn during and after delivery and, at least indirectly, that of the mother. It may accordingly be said that it served a legitimate aim. The Court further held that in balancing the interest of applicantsâ€™ freedom of choice and interest of the life and health of the mother and newborn, the mothers concerned, including the applicants, did not have to bear a disproportionate and excessive burden.Â

Decision Excerpts

â€œThe Court observes that the present case involves a complex matter of health-care policy requiring an assessment by the national authorities of expert and scientific data concerning the relative risks of hospital and home births. It notes in this respect that besides their physical vulnerability, newborns are fully dependent on decisions made by others, which justifies a strong involvement on the part of the State. Moreover, the issue of home births touches on areas where there is no clear common ground amongst the member States (see paragraphs 59-61 above) and involves general social and economic policy considerations of the State including the allocation of financial means as setting up an adequate emergency system may involve shifting budgetary means from the general system of maternity hospitals to a new security network for home births. In the light of these considerations, the Court is of the opinion that the margin of appreciation to be afforded to the respondent State must be a wide one.â€• Para. 93.