

Voir Note explicative  
*See Explanatory Note*  
*Ld. a mellékelt útmutatót! (HUN)*

COUR EUROPÉENNE DES DROITS DE L'HOMME  
*EUROPEAN COURT OF HUMAN RIGHTS*  
*EURÓPAI EMBERI JOGI BÍROSÁG*

Conseil de l'Europe - *Council of Europe* - *Európai Tanács*  
Strasbourg, France/Franciaország

REQUÊTE  
*APPLICATION*

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,  
ainsi que des articles 45 et 47 du Règlement de la Cour

*under Article 34 of the European Convention on Human Rights*  
*and Rules 45 and 47 of the Rules of Court*

*az Európai Emberi Jogi Egyezmény 34. Cikke,*  
*valamint a Bíróság Szabályzatának 45. és 47. §-a alapján előterjesztett*

*KÉRELEM*

**IMPORTANT:** La présente requête est un document juridique et peut affecter vos droits et obligations.

*This application is a formal legal document and may affect your rights and obligations.*

**FIGYELEM!** E kérelem okirat, amely befolyásolhatja a kérelmező jogait és kötelezettségeit.

II - EXPOSÉ DES FAITS  
*STATEMENT OF THE  
FACTS*

*A TÉNYEK LEÍRÁSA*

(Voir chapitre II de la note explicative)

(See Part II of the Explanatory Note)

Si nécessaire, continuer sur une feuille séparée

Continue on a separate sheet if necessary

(Ld. az útmutató II. részét!)

Szükség esetén a szöveg különíven folytatható

14.

1. The applicant is a mother who wishes to give birth to her child in her home, and not in a hospital environment. According to the Act CLIV of 1997 on Health 15 § paragraph (1) the patient shall have a right to self-determination, which may only be restricted in the cases and in the ways defined by law. (2) Within the framework of exercising the right of self-determination, the patient is free to decide whether s/he wishes to use health care services, and which procedures to consent to or to refuse in the course of using such services, taking into account the restrictions set out in 20 §.. 20 § (1) In consideration of the provisions set out in paragraphs (2) – (3) and excepting the cases defined in paragraph (6), a patient with full legal capacity shall have the right to refuse healthcare, unless its lack would endanger the lives or physical safety of others. On the basis of the above the legislation does not prohibit that the mother, exercising her right to self-determination in health care, the legislation does not prohibit it, and so the Constitution of the Hungarian Republic also guarantees it (which can be derived from its 54 §).

2. Together with the above, according to the Government Decree 218/1999. (XII. 28) on Certain Petty Offences 101. § one who a) in the absence of a permit defined by another legislation, provides health care service, personal care child welfare service, child protection services or social services, b) brings the person receiving the services given in a) to a disadvantage because of his/her sex, nationality, belonging to a certain ethnical group, conscience, religious or political beliefs, origins, financial status or disability, may be fined up to fifty thousand forints. (2) The health care professional, who provides unauthorized health care or other then those defined in legislation (operating permit) may be fined up to one hundred thousand forints.

That is why the health care worker who gives assistance at a birth outside an institution is committing an offence and may be fined. There are examples of this in practice, so by analogy every part taking health care worker takes risk, to which s/he cannot be forced.

The Hungarian Republic does not create the legislative framework, so the mothers, and so the applicant may exercise her right to self-determination, and so brings the applicant to a disadvantage compared to those parents who choose institutional-hospital birth.

III - EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION ET/OU DES PROTOCOLES  
ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS Á L'APPUI  
*STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT  
ARGUMENTS*

*A KÉRELMEZŐ ÁLTAL ÁLLÍTOTT EGYEZMÉNY- (ILL. JEGYZŐKÖNYV-) SÉRTÉS(EK) ÉS AZ(OKA)T ALÁTÁMASZTÓ  
ÉRVEK*

(Voir chapitre III de la note explicative)  
(See Part III of the Explanatory Note)  
(Ld. az útmutató III. részét!)

15. In our opinion with the omission of the Hungarian Republic – i.e. it did not enact the corresponding legislation details so that the applicant may give birth to her child in her home and so – brings her to a disadvantage compared to mothers giving birth in hospital; further more treats health care workers assisting at home birth as offenders, has violated 8. and 14. article of the Convention.

1. It can be read in the documents of the World Health Organization's (WHO), that it regards birth outside an institute as equal to hospital birth, several documents and recommendations deal with the tasks and responsibility of medical staff (midwives) who accompany birth and provide health care if necessary. On the meeting of the European and American WHO regional offices in 1985 it became a part of the accepted recommendations, that the mother-to-be's informed decision regarding where she wishes to give birth must be respected. The 1996 WHO recommendation on normal birth also regards out of hospital birth as an equal to hospital birth, and states: after properly informed, the mother-to-be has the right to make a decision regarding the location of the birth, and this decision has to be respected. The international practice also shows that more and more countries enact legislations that serve the mother's right to self-determination and the safety of the fetus. Therefore, out of hospital birth is a viable option for mothers, and neither they nor those who assist them are at a disadvantage. Several international studies have dealt with the question, in the case of low risk births out of hospital birth does not hold more danger than hospital birth.

In our opinion the mother-to-be's right to self-determination should be evaluated in conclusion of the 8. article of the Convention. It is legally not possible for her to exercise this right in Hungary, the Hungarian government doesn't offer any support and this is not justifiable by the Article's provisions that provide restrictions.

2. The Convention's 14. Article declares that the rights included in the Convention are to be exercised without discrimination. Nevertheless the applicant is at a disadvantage when exercising her right declared by the 8. Article compared to all the other women who chooses hospital birth, since for those women all the necessary material conditions are given, the hospital staff does not face any sanctions and the financing is also taken care of.

**IV - EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35 § 1 DE LA CONVENTION**

**STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION**

**AZ EGYEZMÉNY 35. CIKK (1) BEKEZDÉSÉVEL KAPCSOLATOS TÉNYÁLLÁS**

(Voir chapitre IV de la note explicative. Donner pour chaque grief, et au besoin sur une feuille séparée, les renseignements demandés sous les points 16 A 18 ci-après)

(See Part IV of the Explanatory Note. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)

**There is no litigation or administrative proceedings, which would effectively eliminate the violation discussed above. However, the legal representative has turned to the Constitutional Court of the Republic of Hungary on the 28<sup>th</sup> of October 2009, which procedure however, can take up to ten years.**

16. Decision interne définitive (date et nature de la décision, organe - judiciaire ou autre - l'ayant rendue)

*Final decision (date, court or authority and nature of decision)*

*Végső határozat (a határozat kelte, az azt hozó bíróság ill. hatóság, a határozat jellege)*

**There is no final decision, the matter can not be decided because the Republic of Hungary fails to enter into force legislation.**

17. Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe

- judiciaire ou autre — l'ayant rendue)

*Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)*

*Egyéb határozatok (időrendi sorrendben felsorolva: az egyes határozatok kelte, a határozato(ka)t hozó bíróság hatóság, a határozat(ok) jellege)*

18. Dispos(i)ez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?

*Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.*

*Rendelkezésére áll(t)-e olyan jogorvoslat, amelyet nem vett igénybe? Ha igen, fejtse ki, hogy miért nem élt vele!*

*Si nécessaire, continuer sur une feuille séparée*

*Continue on a separate sheet if necessary*

*Szükség esetén a szöveg különösen folytatható*

**There are (were) such appeals or remedies.**

V - EXPOSÉ DE L'OBJET DE LA REQUETE  
*STATEMENT OF THE OBJECT OF THE  
APPLICATION*

*A KÉRELEM CÉLJA*

(Voir chapitre V de la note explicative)

(See Part V of the Explanatory Note)

(Ld az útmutató V. részét)

19.

**We ask the European Court of Human Rights to censure the defendant, the Republic of Hungary due to the violation caused and to order that the incurred costs of legal representation be paid using a separate working mirror, in the national currency of the respondent State, applying the exchange rate applied when the payment is made.**

VI - AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ  
L' AFFAIRE

*STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS*

*EGYÉB NEMZETKÖZI ELJÁRÁSOKRA VONATKOZÓ NYILATKOZAT*

(Voir chapitre VI de la note explicative)

(See Part VI of the Explanatory Note)

(Ld. az útmutató VI. részét!)

20. Avez-vous soumis a une autre instance internationale d'enquete ou de reglement les griefs enonces dans la presente requete?

Si oui, fournir des indications detainees a ce sujet.

*Have you submitted the above complaints to any other procedure of international investigation or settlement?*

*If so, give full details.*

*Fenti panaszaival kapcsolatban igénybe vett-e más nemzetközi kivizsgálási ill. rendezési eljárást? Ha igen, részletezze!*

**The applicant did not use any other international investigation or settlement proceedings in connection with her complaint.**

**VII - PIECES ANNEXEES (PAS D'ORIGINAUX,  
LIST OF DOCUMENTS UNIQUEMENT DES COPIES)  
IRATOK LISTÁJA (NO ORIGINAL DOCUMENTS, ONLY  
PHOTOCOPIES)**

**(NE KÜLDJÖN EREDETI IRATOKAT, CSAK  
FÉNYMÁSOLATOKAT!)**

(Voir chapitre VII de la note explicative. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaires, et, en cas d'impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournés.)

(See Part VII of the Explanatory Note. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them.

If you cannot obtain them, explain why not. No documents will be returned to you.)

(Ld. az útmutató VII. részét! Mellékelje a fenti IV. és VI. fejezetben hivatkozott valamennyi határozat egy-egy másolati példányát! A határozatok másolatait

Önnek kell beszereznie; ha ez nem lehetséges, fejtse ki, hogy miért nem! Az iratokat nem küldjük vissza Önnek.)

21.

I. Budai Központi Kerületi Bíróság végzése 2007. december 12-i keltezéssel, száma: 13. Sz..2817/2007/4.

VIII - DECLARATION ET SIGNATURE

DECLARATION AND SIGNATURE

NYILATKOZAT ÉS ALÁÍRÁS

(Voir chapitre VIII de la note explicative)

(See Part VIII of the Explanatory Note)

(Ld. az útmutató VIII. részét!)

22. Je declare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.

*I hereby declare that, to the best of my knowledge and belief the information I have given in the present application form is correct.*

*Tiszta lelkiismerettel kijelentem, hogy a jelen kérelemben leírtak - legjobb tudomásom szerint - megfelelnek a valóságnak.*

**Budapest, 2009. december 15.**

Date/Date ..... (dátum)

**Dr. Fazekas Tamás**  
**ügyvéd**

(Signature du/de la requérant(e) ou du/de la représentant(e))

(Signature of the applicant or of the representative)

(A kérelmező ill. a képviselő aláírása)