As many of us have mentioned before - homebirth has been regulated since 2011 in Hungary after the decision in Ternovszky case. The European Court of Human Rights emphasized homebirth has to be a real choice for every woman as part of right to respect private life.

Now, in April 2015 we have the fourth anniversary of the decree on homebirth but the real choice has not been given yet.

The core statements of the Ternovszky decision were the following:

Firstly, in the Hungarian case the Court held that the right to respect for private life includes the right to choose the circumstances of birth.

Secondly, a regulation which imposes fines on midwives assisting at home births constitutes an interference in the exercise of the rights of women and of similarly situated pregnant mothers.

Thirdly, according to the Court’s opinion, the threat of sanctions – along with the absence of a specialised, comprehensive regulation in this area – are detrimental to the complainant’s ability to choose home birth. This in turn constitutes a violation of the legal security for the exercise of privacy rights, and in particular, violates the principle of legal certainty.

We found this judgment to be very important, and we were hoping that women can really choose the circumstances of birth. Unfortunately, this is not the case, and not only in regard of homebirth or giving birth in hospital, but also in hospitals there is a lack of informed consent, mothers usually do not get the necessary information and they cannot even decide in which position they wish to give birth.

Sections 15 and 20 of the Health Care Act 1997 recognise patients' right to self-determination in the context of medical treatment, including the right to reject certain interventions.

But under section 20(1), it is also written, that a competent patient may reject medical treatment unless this endangers the life of another person. This causes many problems in practice: doctors often refer to this law in order to supress women’s real choice. This is an emotional stress for women, mothers oviously do not want to endanger their babies’ lives.

Homebirth is still not financed by the national health insurance compared to giving birth in state hospitals. That causes that the real choice is not given because of financial circumstances. This situation has also been criticized by the CEDAW

The Committee expressed its concerns not only about the fact that homebirth regulations implemented in April 2011 have not provided Hungarian women with a real option for homebirth, but CEDAW also emphasized that the costs of out-of-hospital births are not covered by the National Health Insurance Scheme, which results in the fact that home birth is available only for wealthy families. The second problem is that midwifery as an independent medical profession has not been legally recognized so far. I will explain the second concern later, let’s concetrate now on the issue of financing. I would just like to give you a comprehensive picture about the Hungarian health insurance. Everybody has to pay some health insurance according to their income. It is mandatory even if you choose private service.There is only one big state insurance company, which is responsible for financing the whole state health care. And there is a Hungarian custom: patients pay so called gratitude money to the doctors directly after or even before the service. So the health care is far from being free, but if somebody wishes to give birth at home, she has to pay extra fee for the midwives.

In 2010 together with other organisations like Alternatal Foundation, Doctors for Free and Secure Birth, Birthouse Association- we formed an opinion how homebirth should be regulated. Already then we pointed out that the regulation should be reconsidered every two years. There was not a wide range of debate or discussion between the health care government and the professionals after creating the decree, but it would not only be useful but necessary to exchange the every-day life experience of midwives, and clarify according to their point of view.

There have not been real changes since then only a few, less important modifications.

There is a long list in the decree which contains the causes of exclusion. It has not been changed. We are aware that this is a medical question but in our point of view the regulation should be more flexible: it would be desirable to decide in every single situation individually and not to determ prior to the case.

We also emphasized that a professional protocol has to be created. It is crucial to involve midwives so that they could create an appropriate protocol according to their every-day life expereience. This protocol has been worked out, Felicia was one of the developers. It only misses the opinion and the approval of the health care government

Ambulant birthgiving

Although no law does prohibit it, what is more, the right to leave the institution is a named patients’right, it is not a practice. Health care professionals at hospitals also use the same rhetoric as pressing the cesaresan section and other interventions: the baby is in danger, so they can not leave the hospital. It is not just because of the medicalized approach, but hospitals get the money from the state insurance, if the mother spends at least 72 hours at the institution.

Just to put you a bit in the picture of Hungarian legislation and practice I would like to highlight that generally we have quite good laws in terms of patients’ rights which include informed consent, the right to human dignity, the right to refuse treatment etc., but in practice it does not always prevail. What is more, it does not pervail in most cases. There is still a patriarchal approach not only during giving birh but in the whole system.

Other core issue is the right to contact during hospital care. It is declared in law that delivering women have the right to have a person to stay with them. The law does not say that it should only be one, but doctors interprete it this way. So that is why women have to choose whether they want their husband or their midwife to stay with them during giving birth. We took actions in this field too, due to this there is a reconciliation between midwives and doctors, with the support of National Patients’ Rights and Documentary Center.

We are also carrying out a campaign which helps the enforcement of the right to contact. It refers not only to the mothers’ togetherness with their newborn babies and fathers’ presence, but children, who have to spend time in hospital.

**Petition**

A petition was sent by three NGO-s to the Committee on Petitions of the European Parliament (I will henceforth call it just Committee) concerning the fact that Hungary has not implemented the provisions of Directive 2005/36/EC into the national legislation and therefore the recognition of professional qualifications with regard to the competence of midwives has failed.

The Committee has placed the issue on its agenda and held a hearing on 25th November 2013. We were assured of the support of the Committee and they decided to keep the question open and get in contact with the Hungarian government in order to transpose the directive properly.

Our main concerns:

Firstly, the Directive refers to the professional competence of midwives and in a broader sense to their professional autonomy and independence. Secondly, it has relevance to those women who, based on exhaustive and objective information, would like to decide autonomously on where, how and with whom they want to give birth. This is absolutely important so that self-autonomy and the right to respect private life can prevail.

Recently we have received the answer from the PETI. the Committee has declared that Hungarian legislation does not violate the Directive.

In their interpretation the directive does not say that widwives have the right to practice independently from dotcors. The PETI says that it is a Member States’ competency how to share the tasks and responsibilities between midwives and doctors and health care professionals. We think, this is a misinterpretation of the Directive and we are thinking about taking further steps.

**Public opinion**

It has not really changed yet. Women and midwives have to face stigma. There is some fatal homebirths published every month in the media but nobody speaks about the unfortunate stories at hospitals. This practice is very harmful because it suggests that homebirth is more dangerous compared to giving birth in frame of institutional environment.

I would like to stress the ECHR’s statement here, that such regulation which imposes fines on midwives assisting at home births constitutes an interference in the exercise of the rights of women and of similarly situated pregnant mothers.

We have to be aware of the fact, that if this practice sustains, we are continuosly breaking the law if it is only the midwives assisting fatal homebirths have to face criminal proceedings.