



Obstetric violence

- **Right to Informed Consent**

- **Article 8 ECHR**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a **public authority** (=hospitals, health care) with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

- **Jurisprudence**

R.R. v. Poland:

Facts: *The case R.R. v. Poland centers on a woman who was repeatedly refused diagnostic care while pregnant after a routine sonogram detected a cyst on the fetus's neck. Genetic tests were repeatedly stalled, preventing her from obtaining timely information on the health of the fetus and hindering her from seeking a legal abortion.*

Decision: According to the Court, “the effective exercise of this right (of access to information about her or his health) is often decisive for the possibility of exercising personal autonomy, also covered by Article 8 of the Convention, by deciding, on the basis of such information, on the future course of events relevant for the individual's quality of life (e.g. by refusing consent to medical treatment or by requesting a given form of treatment).” ***Thereby the Court has implicitly applied the notion of “informed consent”, which requires that a person should be provided with sufficient and understandable information to be able to voluntary consent to a certain medical treatment.*** By linking this to personal autonomy, the Court has recognized a broad right of access to health information, which is not only confined to reproductive health.

- **The right to be free from inhuman and degrading treatment**

- **Article 3 ECHR**

Prohibition of torture

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”



➤ **Jurisprudence**

R.R. v. Austria: The decision also states that *abuse and humiliation of women within the reproductive health sector can amount to inhuman and degrading treatment*, in violation of the ECHR. The case further highlights the need to adequately regulate the exercise of conscientious objection in the reproductive health field to avoid its abuse.

- **Physical integrity**

➤ **Article 8 ECHR and Jurisprudence**

The protection of private life under article 8 ECHR encompasses a person's physical and psychological integrity. A person's body is an intimate aspect of his or her private life (**Y.F v Turkey**) and a sound mental state is an important factor for the possibility to enjoy the right to private life (**Bensaid v UK para 47**). Measures which affect the physical integrity or mental health have to reach a certain degree of severity to qualify as an interference with the right to private life under Article 8 (**Bensaid v UK, para 46**). However, the Court has also held that even minor interferences with a person's physical integrity may fall within the scope of article 8 if they are against the person's will (**Storck v Germany, para 143**).

Administering medicine against the will of the patient or performing medical treatment interferes with the right to private life. Therefore it has to be based on a law and necessary in a democratic society to be justified.

Konovalova v. Russia:

Facts: The applicant was admitted to a public hospital in anticipation of the birth of her child. At the time of her admission, she was handed a booklet advising patients about their possible involvement in the hospital's clinical teaching program. The applicant was suffering from complications associated with her pregnancy and, on two separate occasions, was put into a drug-induced sleep because she was suffering from fatigue. She alleges that she was informed prior to being sedated that her delivery was scheduled for the next day and would be attended by medical students. The delivery took place as scheduled in the presence of doctors and medical students who had been briefed about her health and medical treatment. According to the applicant, she had objected in the delivery room to the presence of medical students.

The domestic courts dismissed the applicant's civil action, essentially on the grounds that the legislation did not require the written consent of a patient to the presence of medical students at the time of delivery. The applicant had been given a copy of the hospital's booklet, which contained an express warning about the possible presence of medical students, and there was no evidence to show that she had raised an objection.

Decision: *The Court noted that the concept of private life extends to physical integrity*, "since a person's body is the most intimate aspect of



private life, and medical intervention, even if it is of minor importance, constitutes an interference with this right.” Id. at paras. 39-41.

- **The right to private Life**
 - **Article 8 ECHR**
 - **Jurisprudence**

[Dubska and Krejova v. Czech Republic:](#)

Facts: The Court had joined two applications. The first one had been submitted by a mother of two, who in essence complained that Czech laws had made it impossible for her to give birth to a child at home. The applicant had given birth to her first child without any complications. Following the birth, medical personnel in the hospital had urged her to undergo medical treatment she considered unnecessary. Also, she had spent more time separated from her child than she wanted to and was not released from the hospital as early as she desired. Due to these difficulties, she decided to give birth at home when she was pregnant with her second child. However, she was unable to find any midwife willing to assist her; her health insurance informed her that assistance during a home birth would not be covered. The applicant gave birth to her child at home without any professional assistance.

The second applicant had already given birth to two children at home with the assistance of midwives. The midwives had worked without any authorization from the state. When the applicant was pregnant with her third child, she decided to deliver at home again. However, she was unable to find a midwife willing to assist her because of the heavy fines which could be imposed on persons providing medical assistance without authorization.

In the Czech Republic, only a very small number of women give birth at home. The Medical Chamber regards home births as risky and considers them not in line with professional standards. Recommendations issued by the Ministry of Health state that newborns should, as a rule, not be released from hospital sooner than 72 hours after birth. According to statistics, the Czech Republic is among the countries with the lowest mortality rate in Europe.

Decision: The European Court of Human Rights pointed out that the issue fell within the scope of article 8 ECHR. ***It clarified that the question at hand was not whether the right to private life embraced a right to give birth at home, but rather whether it encompassed a woman’s right to decide herself on the circumstances and way in which she wanted to give birth.*** The Court reiterated its jurisprudence that private life is a broad concept which covers personal autonomy. It stated that giving birth had implications for the mother’s physical and psychological integrity and constituted a very intimate aspect of her private life.



The European Court of Human Rights then turned to the question whether the interference (article 8 par. 2 ECHR) was necessary in a democratic society. It pointed out that there was no consensus among Council of Europe member states on questions of home birth and health care during and after delivery. Also, regulation in this field required a lot of scientific data and expert advice. Since member states were best placed to obtain these, they enjoyed a wide margin of appreciation in this area. ***It stated that legislation on health care related to births had to respect the rights of the mother while being mindful of the interests of the newborn children as well.***

[Ternovszky v. Hungary:](#)

Facts: The applicant, Ms Ternovszky, intended to give birth at her home, rather than in a hospital or a birth home, but alleged she had not been able to do so because health professionals were effectively dissuaded by law from assisting her as they risked being convicted.

Decision: ***The European Court of Human Rights (ECHR) got it right, in the 2010 case of Ternovszky v. Hungary. Birthing women have a fundamental human right to choose the circumstances in which they give birth.*** While the ECHR is the first high tribunal to articulate this right in these terms, the foundation for this right-- the right to privacy, the right to autonomy, the right to control over one's own body-- applies to all women everywhere.

[P. C. and S. v. the UK](#)

Facts: The first applicant, P, was a United States national, married to C, a British national. S was their daughter, born in 1998. Before S was born P had had a child by a previous partner who had been taken into protective custody by the US authorities. She had also been convicted of a misdemeanor under Californian law. She later met and married C, a social worker who had written a thesis about women wrongly accused of a certain psychiatric disorder (Munchhausen's Syndrome by Proxy). When the child of that union, S, was born, the local authority took her into care under an emergency protection order. On appeal the domestic courts found that P had a personality disorder and that C would not accept that P was responsible for harming her previous child. S was therefore freed for adoption.

The applicants complained under Article 6(1) that they had not had access to court in respect of the freeing for adoption proceedings. They also complained that they had been insufficiently involved in the pre-birth decision making process. They also contended that freeing for adoption orders was a procedure that was draconian and irreversible, as they made no provision for resuming any form of direct contact in future. Which constituted an interference with the child's right to respect for family life with her parents, and theirs with her, under Article 8. They also complained



under Article 12 that the proceedings had put an immense strain on their marriage and had prevented them from founding a family.

Decision: Whilst the Court acknowledged that it had been proper for the local authority in its child protection function to take steps to obtain an emergency protection order, *nevertheless the removal of a baby from its mother at birth required exceptional justification. Such justification was not forthcoming and therefore the Court concluded that this step could not be regarded as "necessary in a democratic society" for the purposes of safeguarding the child. Therefore there had been a breach of Article 8.*

"the removal of a baby from its mother at birth requires exceptional justification. It is a step which is *traumatic for the mother and places her own physical and mental health under a strain*, and it deprives the newborn baby of close contact with its natural mother and, as pointed out by the applicants, of the advantages of breast-feeding"

[CEDAW General Recommendation No. 24: Article 12 of the Convention](#)

[\(Women and Health\)](#)

Article 12

"1. States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.

"2. Notwithstanding the provisions of paragraph 1 of this article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

20. **Women have the right to be fully informed**, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.

22. States parties should also report on measures taken to ensure access to quality health-care services, for example, by making them acceptable to women. **Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.** States parties should not permit forms of coercion, such as non-consensual sterilization, mandatory testing for sexually transmitted



diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.

31. States parties should also, in particular:

(e) Require all health services to be consistent with the *human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice*;

[WHO's recommendations in Appropriate Technology for Birth \(WHO, 1985a\)](#)

Right to Information and Choice

The training of health professionals should include communication techniques in order to promote sensitive exchange of information between members of the health team and the pregnant woman and her family.

Emotional support

The well-being of the new mother must be ensured through free access to a chosen member of her family during birth and throughout the postnatal period. In addition, the healthcare team must provide emotional support.

Mother-child attachment

The healthy newborn must remain with the mother whenever possible. Observation of the healthy newborn does not justify separation from the mother. Immediate breastfeeding should be encouraged even before the mother leaves the delivery room.

Medicalization

The perineum should be protected wherever possible. Systematic use of episiotomy is not justified.

[Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health \(Twenty-second session, 2000\), U.N. Doc. E/C.12/2000/4 \(2000\), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 85 \(2003\)](#)



Article 12.2 (a). The right to maternal, child and reproductive health

14. "The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a)) (10) may be understood as ***requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, (11) emergency obstetric services and access to information, as well as to resources necessary to act on that information.***

Women and the right to health

21. To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. ***The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.*** It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

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