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Hungarian State Injustice

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Donal Kerry discusses the continued persecution of Dr Agnes Geréb

Can Government inaction lead to State injustice? Can State injustice lead to the criminalisation of edical professionals simply trying to do their job and to their imprisonment and to the abuse of their human rights? Yes is the answer to all these questions, as shown by the case of Dr Agnes Geréb. The problems started in January 1998, when the Parliamentary Human Rights Ombudsman Dr Peter Polt affirmed that the Hungarian Constitution upheld the right of mothers to home birth. The government was then expected to introduce first-time legislation to provide roperly supported home birth services which parents would require. This didn't happen in 1998, or at any time until 2011.

Why it eventually took 13 years to enact legislation remains a matter of speculation but during that time parents wishing to birth at home were left with only two options: either to home birth alone without medical support or forgo their constitutional rights and have their babies in hospital. The Independent Midwives were also faced with two options: either act legally and abandon parents to the risks of bringing their babies into the world at home alone, or act illegally (unlicensed) but morally by supporting parents in their constitutional right to bring their babies safely into the world. Agnes Geréb took the latter decision and we now know that parents voted at the rate of more than 200 births a year to use Agnes's services. We also now know in 2011, after seeing the raft of court cases taken against Agnes and her midwife colleagues, just how brave the midwives were in giving their ser vices to home birth parents. Successive governments' inaction on home birth legislation from 1998 to 2011 meant that Agnes and her midwifery support team were discriminated against in several important ways:

1. Individual independent midwives were prevented from receiving a licence to attend home births, which, in turn, prevented them from offering their professional ser vices legally to parents who planned to birth at home.
2. Non-hospital midwives groups could not receive official recognition as Independent Midwifery Professionals within the Hungarian Medical System, nor enjoy the normal structures/protections that other officially recognised professions (like doctors) received.
3. Independent Midwives were uniquely exposed to extended and aggressive treatment by the State Police and Prosecution Ser vices. This was particularly acute around home birth incidences, as both these State Services applied laws and procedures that had not been altered to give proper legal effect to the 1998 Ombudsman decision.

Agnes with her midwifery team safely delivered over 3,500 babies at home yet she has faced criminal

charges in the three home birth related cases where fatality arose, though in two of these the actual deaths arose some 14 and seven months (a second twin) respectively after the births. The third death arose from shoulder dystocia complications, a potentially sudden and lethal condition even when it occurs in hospital. Annually, some 56 children die of shoulder dystocia in UK hospitals and somewhere between four and seven babies in Hungarian hospitals. Yet, no doctor in Hungary has ever had to face criminal charges in connection with a shoulder dystocia case, nor hardly ever in connection with any baby's death in hospital. By contrast the Hungarian Criminal Justice System has always pursued Agnes aggressively and to date
she:

• has been suspended from working as an obstetrician for three years
• has been imprisoned without trial for 77 days
• currently has been confined to over 220 days of indefinite house arrest
• and on 24 March 2011 was sentenced to two years imprisonment and suspended from working as a doctor or midwife for five years (this is currently being appealed).

Further, while imprisoned, Agnes was subjected to severe Human Rights abuses including strip searches and appearing in court in handcuffs and leg irons while being led on a chain. This treatment provoked national and international outrage and is now the subject of a court case filed against the Hungarian State with the European Court of Human Rights (ECHR). Why is Agnes treated so differently from hospital doctors? Why is she so connected with the criminal courts?

It is crucial to understand that Agnes's birth practice as a doctor or midwife has always been carried out ethically, professionally and with the sole and explicit intention of doing only what was in the best interest of the mother and baby. Agnes has never committed a criminal act and no criminal charges or convictions will ever alter this indisputable fact.

Agnes's involvement with the criminal code system comes about directly and solely because successive governments failed to introduce modern effective home birth legislation which, if in place, could have ensured that Dr Geréb or any midwife involved in birth incidents or fatalities would not normally have had to deal with these matters in the criminal courts.

Instead, like Hungarian hospital maternity doctors and all doctors and midwives in developed countries, the fatality would first have been reviewed by a professional committee of their peers. Only in the most extreme circumstances, would a birth fatality warrant referral to the criminal courts. But the absence in Hungary of proper regulations for home birth and for the midwives who attend them means there is no Committee of Enquiry, composed of midwives, who can investigate home birth incidents and make findings.

In fact, Hungary has no proper College of Midwifery as it has only ever recognised the lesser position of 'hospital nurse midwife' as it is the doctor who remains legally and solely responsible for the delivery of all hospital babies.

Independent Midwives have always had to work outside of the hospital system and have never received protection from the State systems. As a result, when birth incidents
arise, these midwives are left completely exposed and defenceless to actions taken against them by the State Police and Prosecution Ser vices, a markedly different approach from that experienced by hospital doctors. For example, no midwifery expert can be called upon by the police in any home birth incident investigation. It is a
hospital maternity doctor with absolutely no home birth experience who will review the midwife's practice and recommend whether this warrants further criminal investigation and likely prosecution. Bearing in mind that the Hungarian College of Obstetricians already has a publicly stated position that home birthing is dangerous
(in spite of abundant objective evidence to the contrary), it's reasonable to wonder how a member ofthat College can judge the midwife's actions in a just and impartial
manner.

As this article points out, the current Government's viewpoint that these cases of home birth incidents are properly a criminal courts issue is clearly flawed. Its claim that Dr Geréb would receive a fair trial is shown to be false given that she has already faced the following practical obstacles when before the Courts:
• No Hungarian midwife is deemed eligible to be on the Judicial Medical Expert List and so none can testify to the court on the matter of Dr Geréb's practice.
• All the medical experts testifying in this case are Hungarian maternity doctors, drawn from thehospital professional group, who have an officially and publicly stated position that home birth is dangerous.
• All the medical experts who testified had no direct professional experience of delivering under home birth conditions.
• All medical experts called were hospital doctors who referred exclusively to hospital practices and procedures when assessing the correctness of Dr Geréb's actions, despite the birth being in a home setting.
• The trial judge declined the defence's request for independent international experts to appear in court to present their opinion on Dr Geréb's practice.
• The trial judge ruled that only the written opinion of the international experts could be presented to the court but that it would not have an equal standing to the opinion of the listed Hungarian Hospital Medical Experts.
• The judge stated that he would not be influenced by the fact that these birth case incidents occurred in the home setting.

Successive governments had chosen to ignore their responsibilities to parents and midwives by not

introducing legislation and, by default, abandoning midwives to the attentions of the police and the judicial systems. Eventually, this option was challenged by the ECHR ruling of December 2010 in the Ternovsky case. The ECHR found the Hungarian Government to be in breach of its responsibilities to ensure that parents had the right to expect home birth to occur in a private and safe environment with medical ser vices available. The Hungarian Government responded by introducing a conservative and narrow set of regulations to govern home birth from 1 June 2011.

These regulations make it very difficult for many of the Independent Midwives to qualify for a licence and make it equally difficult for many mothers to meet the criteria for a home birth. Also, they omitted any structural changes to the midwifery profession or to the system of investigating birth incidents which could have lessened midwives' future exposure to the criminal code system. Nevertheless, they are welcome as they legalise the provision of home birth medical ser vices for the very first time.
Despite the December 2010 ECHR ruling, the Government failed to acknowledge the collective responsibility of successive governments towards Agnes.

Again, in early 2011, when Agnes and her colleagues petitioned the President of Hungary for a pardon because of their mistreatment by the State, the Government
chose not to support the petition. These actions suggest that the Government either doesn't accept or remains unaware of its obligations to address the injustices caused
by the State. It will be the job of the campaign team to engage with the Government to encourage it towards finding remedies to this situation and to persuade it of its central role in any solution. Eventually, we believe remedial actions must include support for a Presidential Pardon for Agnes and the other midwives, and also the
introduction of revised legislation to allow Independent Midwives equal treatment with Hungarian hospital doctors in the matter of birth incidents.

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