

Clemency for Hungarian homebirth midwife Ágnes Geréb

The case of Ágnes Geréb attracted international attention after she was prosecuted for helping women to give birth at home. Andrew Symon brings the story up to date.

Previous articles in this series (Symon 2010; 2012) have noted how women in some other countries, even within the European Union, do not enjoy the same legal rights and protections as women in the UK when it comes to maternity services. The case of the Hungarian midwife Ágnes Geréb has highlighted how state power can be used to restrict the availability of services, effectively denying women certain rights. A landmark ruling has recently been passed in this complex case.

Who is Ágnes Geréb?

Briefly, Ágnes Geréb was an experienced obstetrician who in 1989 decided to practise as a midwife, a decision she explained in a BBC interview (Thorpe, 2012). In addition to setting up a birth centre, she travelled extensively, gathering evidence on the safety of homebirth. Medical orthodoxy in Hungary held that childbirth should happen in hospital under the direct supervision of a doctor. A woman could not choose to give birth at home under medical supervision, and no licences were available for anyone else (such as an independent midwife) to assist.

Despite homebirth with medical supervision not being technically available, and despite being unlicensed as a midwife, Geréb attended some 3500 homebirths from around 1990 to 2010, also helping to develop a small cadre of homebirth midwives. These independent midwives

were only able to apply for a licence to attend a homebirth thanks to a change in the domestic law that followed a ruling by the European Court of Human Rights. In *Ternovszky v Hungary* [2010], the court held that homebirth could be considered a human rights issue.

While Geréb's supporters saw her as a defender of women's rights, including the right to avoid medicalised birth, her stance challenged medical orthodoxy. In October 2010, she was arrested following a non-fatal adverse incident at a homebirth. Additional charges were then brought relating to two other homebirths from 2003 (concerning a baby who died following a shoulder dystocia) and 2007 (relating to a twin who died 7 months after the birth). In 2011, after nearly 3 months of pre-trial detention, she appeared in court, her wrists and ankles shackled. She was found guilty and sentenced to 18 months in jail, together with an 8-year ban on practising as an obstetrician or a midwife. Her legal team petitioned the Hungarian president for a pardon, meaning that she could be kept under house arrest rather than going to jail. In 2012, while still under house arrest, her sentence was increased to 2 years, with the ban on practising increased to 10 years.

Regulation in the UK

This is strong stuff in terms of legal penalties. In the UK, there is a range of sanctions that can be applied in cases when clinical practice is deemed to fall below certain standards. Professional sanctions can be invoked, with any interested party referring a midwife to the Nursing and Midwifery Council. Civil law can also be invoked by an allegation of negligence, and this column has covered a number

of cases in both categories. The relevant incidents are adjudged with reference to expert witnesses from the profession. Recourse to criminal law is exceptional, and happens only when the alleged practice is so far below acceptable standards that professional sanctions or civil laws are not deemed sufficient; in practice this usually means cases of manslaughter (Mason and Laurie, 2013). The point is that this is a proportionate process, usually involving intra-professional and/or civil legal investigations, with criminal investigations only deemed necessary in exceptional cases. In Hungary, despite the effective legalisation of homebirth in 2011, the investigation of adverse planned homebirths involving licensed midwives remains the responsibility of the criminal system.

Few would argue that professional and legal sanctions should not be available when practitioners' conduct renders them unfit or unsafe to practise. These are an option; the question is whether they apply and are proportionate. Bad outcomes happen, and sometimes because of sub-standard midwifery practice, as was clearly noted in the Morecambe Bay investigation (Kirkup, 2015). Equally, sometimes investigations into non-conformist practitioners exceed proportionality—as the case of the English obstetrician Wendy Savage proved. She noted that a selective trawl through any practitioner's history will reveal mistakes and poor outcomes (Savage, 1986): focusing only on the bad outcomes can present a distorted picture.

The international response

Ágnes Geréb conceded that she could have been more careful in the cases in question, but denied that she had been negligent. Her

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case has attracted international attention, with the UN special rapporteur expressing concern that her arrest and detention may have been linked to her work in defence of human rights (Frontline Defenders, 2018). Geréb's legal team appealed and, after more than 3 years, her house arrest was reduced to 'regional arrest', meaning she could move within Budapest and the surrounding area. However, her prison sentence and 10-year ban on practising remained in force pending consideration of her petition to the Hungarian president.

In 2016, the original legal case was re-opened following a supportive medical opinion from a court-approved expert, and in April 2017 a court converted her 2-year jail sentence to a suspended sentence, also reducing the practising ban to 8 years. However, the state appealed this ruling, and in January 2018, the earlier verdict of a 2-year jail sentence was reinstated. A fresh appeal for clemency was made to the president, coinciding with efforts by the International Confederation of Midwives (ICM) and the International Federation of Gynaecology and Obstetrics (FIGO) to lobby on her behalf. Their joint letter (ICM and FIGO, 2018:1) to the Hungarian president stated:

'It is our shared belief that women around the world have the right to excellent midwifery and/or obstetric care and we encourage and celebrate midwives and obstetricians who respect a woman's right to make informed choices and decisions about her care during childbirth.'

The ICM/FIGO letter went on to note that:

'Midwives and obstetricians always have the right to first be investigated by their peers; that is, a professional hearing by experts from their own profession of midwives or obstetricians, respectively. Such a professional hearing should always precede the potential necessity of handling by police and investigation by a criminal court.'

This is an important point: in the absence of evident criminality, any investigation into professional practice should be within the boundaries of professional review—that is one of the specific benefits of belonging to a professional body. The ICM and FIGO also offered the Hungarian president their technical expertise in the form of opinion and feedback on proposed guidelines for homebirth and on healthcare professional disciplinary processes.

Now for the good news.

On 28 June 2018 the Hungarian President, Dr János Áder, granted clemency, thereby cancelling Geréb's prison sentence. While this is a victory for Geréb and her supporters, it is a partial one. Clemency is not a pardon, so Geréb's criminal record remains, as does her ban on practising.

Has it been worth it?

It's hard to imagine the stress and strain of being arrested, held in detention, shackled, placed under house arrest with the prospect of further time in jail, and being banned from practising until 2022, by which time Geréb will be 70. Her reaction to the president's act of clemency is cited on her support webpage (Free Geréb Ágnes, 2018). As well as thanking all those who had backed her, she noted that the decision was,

'an acknowledgement of liberty in giving birth. It is a recognition by the State that the rights of women to make decisions about the circumstances of their children's birth must be acknowledged.'

One of the groups campaigning for Geréb's release noted that her struggle had brought significant change: fathers, once banned from attending childbirth, are now welcome; homebirth, for many years only possible without official medical supervision, is now much more feasible; and hospital practices are said to have been improved because of the recognition that undisturbed birth is desirable. Other influences will have been at work to bring about these changes, but it seems clear that Geréb's stance in support of women's choice and undisturbed birth played a significant role.



Few practitioners would claim to have never made a clinical mistake, and all will know of poor outcomes that occurred despite no one making a mistake. Over years of practice, all midwives will have a case record that includes bad outcomes. When these occur due to poor practice, professional and legal sanctions exist; invoking either or both must be on proportionate grounds. To invoke the full weight of the criminal law without firm proof of criminality, and despite a growing evidence base on clinical effectiveness (in this case regarding homebirth), is the reaction of a hierarchy that feels threatened by change. **BJM**

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