



Sterilisation of 20-year old Roma woman in a public hospital without her informed consent violated her human rights

In today's Chamber judgment in the case **V.C. v. Slovakia** (application no. 18968/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights; and,

A violation of Article 8 (right to respect for private and family life) of the Convention.

The case concerned the allegation of a Slovak woman of Roma ethnic origin that she had been the victim of forced sterilisation. This is the Court's first judgment dealing with sterilisation.

Principal facts

The applicant, V.C., is a Slovakian national of Roma ethnic origin. She was born in 1980 and lives in Jarovnice (Slovakia).

On 23 August 2000 she was sterilised at the Hospital and Health Care Centre in Prešov (eastern Slovakia) – under the management of the Ministry of Health – during the delivery of her second child via Caesarean section. The sterilisation entailed tubal ligation, which consists of severing and sealing the Fallopian tubes in order to prevent fertilisation.

The applicant alleged that, in the last stages of labour, she was asked whether she wanted to have more children and told that, if she did have any more, either she or the baby would die. She submits that, in pain and scared, she signed the sterilisation consent form but that, at the time, she did not understand what sterilisation meant, the nature and consequences of the procedure, and in particular its irreversibility. She was not informed of any alternative methods. Her signature next to the typed words "Patient requests sterilisation" is shaky and her maiden name split into two words. She also claims that her Roma ethnicity – clearly stated in her medical record – played a decisive role in her sterilisation.

Prešov hospital's management state that the applicant's sterilisation was carried out on medical grounds – the risk of rupture of the uterus – and that she had given her authorisation after having being warned by doctors of the risks of a third pregnancy.

In January 2003 the Centre for Reproductive Rights and the Centre for Civil and Human Rights published a report "Body and Soul: Forced and Coercive Sterilisation and Other

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Assaults on Roma Reproductive Freedom in Slovakia" ("the Body and Soul Report"). A number of proceedings ensued: a general criminal investigation into the alleged unlawful sterilisation of various Roma women, which was ultimately discontinued on the ground that no offence had been committed; and, civil and constitutional proceedings brought by the applicant in which she alleged that the staff at Prešov hospital had misled her into being sterilised and in which she requested an apology and compensation. The civil complaint was ultimately dismissed on appeal by the Prešov Regional Court in May 2006, the courts finding that the sterilisation, a medical necessity, had been carried out in accordance with domestic legislation (the 1972 Sterilisation Regulation) in force and with the applicant's consent. The Constitutional complaint was also subsequently dismissed.

The applicant referred to a number of publications pointing to a history of forced sterilisation of Roma women which originated under the communist regime in Czechoslovakia in the early 1970s and which were allegedly designed to control the Roma population. In particular, she submitted that, according to one study, 60% of sterilisations carried out from 1986 to 1987 in the Prešov district had been on Roma women.

The Government submitted that health care in Slovakia was provided to all women equally and that, according to the conclusions of a group of government-appointed experts in a report issued in May 2003, all cases of sterilisations had been based on medical grounds. Indeed, the sterilisation rate of women in Slovakia (0.1% of women of reproductive age) was low in comparison to other European countries (where the rate was between 20 to 40%). Some shortcomings had, however, been found in domestic law and practice, with the experts noting that, in certain cases, patients were not on an equal footing with medical staff and their rights and responsibilities in matters of health care were limited. Special measures were recommended such as training medical staff on cultural differences as well as the setting up of a network of trained health care assistants who would operate in Roma settlements.

The applicant's sterilisation has had serious medical and psychological after-effects. Notably in 2007/2008 she showed all the signs of being pregnant but was not (known as an "hysterical pregnancy"). Treated since 2008 by a psychiatrist, she continues to suffer from being sterilised. She has been ostracised by the Roma community. Now divorced from her husband, she cites her infertility as one of the reasons for their separation.

Complaints, procedure and composition of the Court

The applicant complained that she had been sterilised without her full and informed consent and that the authorities' ensuing investigation into her sterilisation had not been thorough, fair or effective. She further alleged that her ethnic origin had played a decisive role in her sterilisation and should be seen in the context of the widespread practice – which originated under the communist regime – of sterilising Roma women as well as enduringly hostile attitudes towards people of Roma ethnic origin. She relied on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 12 (right to found a family), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 23 April 2007.

Third-party comments were received from the International Federation of Gynaecology and Obstetrics (FIGO).

Judgment was given by a Chamber of seven, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Lech **Garlicki** (Poland),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David Thór **Björgvinsson** (Iceland),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland),
Mihai **Poalelungi** (Moldova), *Judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

Ill-treatment

The Court noted that sterilisation amounted to a major interference with a person's reproductive health status and, involving manifold aspects of personal integrity (physical and mental well-being as well as emotional, spiritual and family life), required informed consent when the patient was an adult of sound mind. Moreover, informed consent as a prerequisite to sterilisation is laid down in a number of international documents, notably the Council of Europe's Convention on Human Rights and Biomedicine, as ratified by Slovakia in December 1999 and in force in the country at the time of the applicant's sterilisation.

However, from the documents submitted, the applicant – a mentally competent adult patient – had apparently not been fully informed about the status of her health, the proposed sterilisation and/or its alternatives. Instead, she had been asked to sign a typed record after she had been in labour and lying down for several hours. Furthermore, she had been prompted to sign the document after being told by medical staff that if she had one more child, either she or the baby would die. The intervention had not therefore been an imminent medical necessity as any threat to her health was considered likely in the event of a future pregnancy. Indeed, sterilisation is not generally considered as life-saving surgery. The Court considered that the way in which the hospital staff had acted had been paternalistic, as she had not in practice had any other choice but to agree to the procedure, without having had time to reflect on its implications or to discuss it with her husband.

The applicant's sterilisation, as well as the way in which she had been requested to agree to it, must therefore have made her feel fear, anguish and inferiority. The suffering that entailed had had long-lasting and serious repercussions on her physical and psychological state of health as well as on her relationship with both her husband and the Roma community. Although there was no proof that the medical staff had intended to ill-treat the applicant, they had nevertheless acted with gross disregard to her right to autonomy and choice as a patient. The applicant's sterilisation had therefore been in violation of Article 3.

Investigation into the ill-treatment

The Court noted that the applicant had had an opportunity to have the actions of the hospital staff examined by the domestic authorities via civil and constitutional proceedings. The courts dealt with her civil case within two years and one month and with her constitutional case within 13 months, a period of time which was not open to particular criticism. She had not sought redress by requesting a criminal investigation into her case although that possibility was open to her. There had therefore been no

violation of Article 3 as concerned the applicant's allegation that the investigation into her sterilisation had been inadequate.

Article 8 (right to respect for private and family life)

Given its earlier finding of a violation of Article 3, the Court did not consider it necessary to examine separately under Article 8 whether the applicant's sterilisation had breached her right to respect for her private and family life.

It nevertheless found that Slovakia had failed to fulfil its obligation under Article 8 to respect private and family life in that it did not ensure that particular attention was paid to the reproductive health of the applicant as a Roma.

Both the Council of Europe's Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI) had identified serious shortcomings in the legislation and practice relating to sterilisations in general in Slovakia and had stated that the Roma community, severely disadvantaged in most areas of life, were more likely to be affected by those shortcomings. Equally, the Slovak government-appointed experts – in their report of May 2003 – had identified shortcomings in health care and in compliance with regulations on sterilisation and had made specific recommendations about training of medical staff regarding Roma.

As concerned the applicant in particular, the Court found that simply referring to her ethnic origin in her medical record without more information indicated a certain mindset on the part of the medical staff as to the manner in which the health of the applicant, as a Roma, should be managed.

New legislation – the Health Care Act 2004 – has been introduced to eliminate such shortcomings with prerequisites for sterilisation being spelled out (ie a written request and consent, as well as prior information about alternative methods of contraception, planned parenthood and the medical consequences) and the procedure only being allowed 30 days after informed consent. Those developments, although to be welcomed, did not affect the applicant as they had occurred after her sterilisation.

There had therefore been a violation of Article 8 concerning the lack of legal safeguards at the time of the applicant's sterilisation giving special consideration to her reproductive health as a Roma.

Article 13 (right to an effective remedy)

The applicant had been able to have her case reviewed by the civil courts at two levels of jurisdiction and subsequently by the Constitutional Court. In addition, she could have but did not bring criminal proceedings. Lastly, Article 13 could not be interpreted as requiring a general remedy against a domestic law, to the extent that – as alleged by the applicant – the lack of appropriate safeguards in domestic law had been at the origin of her sterilisation and the subsequent dismissal of her claim. There had therefore been no violation of Article 13.

Article 12 (right to found a family)

Given the Court's finding that the applicant's sterilisation had had serious repercussions on her private and family life, the Court found that there was no need to examine whether the facts of the case also gave rise to a breach of her right to marry and to found a family. It therefore held, unanimously, that there was no need to examine separately the applicant's complaint under Article 12.

Article 14 (prohibition of discrimination)

The Court held, by six votes to one, that there was no need to examine separately the applicant's complaint under Article 14. The information available was not sufficient to prove that the doctors had acted in bad faith when sterilising the applicant, that their behaviour had been intentionally racially motivated or, indeed, that her sterilisation was part of a more general organised policy. The Court further noted that international bodies and domestic experts had pointed to serious shortcomings in the legislation and practice relating to sterilisations which were particularly liable to affect members of the Roma community and that, in that connection, it had found that Slovakia had not complied with its positive obligation under Article 8 to sufficiently protect the applicant.

Article 41 (just satisfaction)

The Court held that Slovakia was to pay the applicant 31,000 euros (EUR) in respect of non-pecuniary damage and EUR 12,000 for costs and expenses.

Separate opinion

Judge Mijović expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.