



Complaints concerning symphysiotomies in 1960s Ireland found inadmissible

In its decisions in the cases of [L.F. v. Ireland](#), [K.O'S. v. Ireland](#) and [W.M. v. Ireland](#) (application nos. 62007/17, 61836/17 and 61872/17) the European Court of Human Rights has unanimously declared the applications inadmissible. The decisions are final.

In the 1960s each of the applicants underwent surgical symphysiotomies in Irish maternity hospitals either during or in advance of labour. Their cases were among 10 applications introduced by women who had undergone symphysiotomies in different Irish maternity hospitals in the 1960s and 1970s.

The applicants complained that the use of the procedure in Ireland had not been the subject of a Convention-compliant domestic investigation and that, in addition, they had been unable to fully litigate their claims at the domestic level. One applicant also complained that in allowing symphysiotomies to take place the State had failed in its obligation to protect women from inhuman and degrading treatment.

In one case the Court found the complaint to be inadmissible as the applicant had failed to exhaust domestic remedies. In the other two cases it found the applicants' complaints to be manifestly ill-founded, indicating that a question regarding the exhaustion of domestic remedies also arose

Principal facts

The applicants in these three cases, L.F., K.O'S. and W.M., are Irish citizens who were born in 1939, 1934 and 1935 and live in Dublin, County Cork and Kells in Ireland, respectively.

The three applicants gave birth to children in three different hospitals in Ireland in the 1960s. In each case a symphysiotomy was performed either in advance of or during labour. All three applicants alleged that they had not been informed about the procedure and had not given their full and informed consent. They further alleged that they had suffered physical and psychological trauma as a result of the procedure.

A symphysiotomy involves partially cutting through the fibres of the joint uniting the pubic bones so as to facilitate natural childbirth where there is a mechanical problem. Although the procedure had fallen out of favour in Western Europe owing to safer Caesarean sections, in Ireland it was revived in the 1940s and continued to be used until the 1980s. In that time period approximately 1,500 symphysiotomies were performed. In or around 2001 concerns emerged about the use of symphysiotomies in Irish maternity hospitals. In 2011 a report was commissioned into the use of symphysiotomies in Ireland and in 2014 the Minister for Health announced the establishment of an *ex gratia* payment scheme offering compensation to women who had undergone a surgical symphysiotomy in any hospital in Ireland between 1940 and 1990. The awards ranged from 50,000 to 150,000 euros.

Some women who had undergone symphysiotomies brought actions for damages against the hospitals where they had been performed. The leading case was that of *Kearney v. McQuillan and North Eastern Health Board*, in which the symphysiotomy had been performed after the plaintiff had already given birth by Caesarean section. The High Court initially struck out the plaintiff's claim, which was largely based on the lack of consent, on the grounds that there was a risk of an unfair trial owing to the delay and without the testimony of the person who had carried out the procedure. The plaintiff in that case reformulated her claim, contending that there had been no justification whatsoever for performing the procedure. Her claim was allowed to proceed on this reformulated basis. The High Court and the Supreme Court found that in the circumstances of the

case there had been no justification for the use of the procedure. Ms Kearney was awarded 325,000 euros in damages.

L.F., K.O'S. and W.M. had also commenced proceedings in the domestic courts, which were stayed pending the conclusion of the Kearney case. Following the judgment in Kearney, L.F. also reformulated her claim so as to contend that there had been no justification in her case for the performance of a symphysiotomy. However, the High Court found that at the relevant time the procedure, which had been performed two weeks in advance of labour after it had been established that a vaginal delivery would have been impossible, had been a reasonable though limited option. In 2016 that decision was upheld by the Court of Appeal, noting however that that "did not necessarily mean that a court considering the circumstances in which another symphysiotomy procedure [had been] performed on a different patient might not come to a different conclusion." In 2017 the Supreme Court refused L.F. leave to appeal, reiterating that the issues in the case were fact-specific and case-related.

Following the judgments in the Kearney and L.F. cases, K.O'S. and W.M. abandoned their claims.

None of the three applicants applied to the ex gratia payment scheme, as they all believed that there was no possibility of any acknowledgement of a breach of their rights, among other reasons.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 10 (K.O'S.), 14 (W.M.) and 17 (L.F.) August 2017.

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention, the applicants in all three cases complained separately that they had been precluded from making a claim before the domestic courts concerning the symphysiotomy procedure that they claimed had been performed without their consent and that there had never been an independent and thorough investigation into the use of the procedure in Ireland.

K.O'S. alone also complained that the State had failed in its obligation to protect women from inhuman and degrading treatment in allowing symphysiotomies to take place in Ireland.

The decision was given by a Chamber of seven judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,
Síofra O'Leary (Ireland),
Stéphanie Mourou-Vikström (Monaco),
Latif Hüseyinov (Azerbaijan),
Jovan Ilievski (North Macedonia),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

L.F. and W.M.

Although the applicants complained under Articles 3, 8 and 13 of the Convention, the Court considered that it was more appropriate to consider these cases with reference to the State's obligations under Article 8 to provide victims of medical negligence access to proceedings in which they could, in appropriate cases, obtain compensation for damage.

Firstly, in view of the passage of time since the symphysiotomies had been performed, even if the applicants had been required to reformulate their complaints (as Ms Kearney and Ms. L.F. had done), in the Court's view the position adopted by the Irish courts had been one which had been reasonably open to them when faced with the difficult task of balancing the plaintiff's right of access to court in relation to a medical procedure performed several decades previously against the defendant hospital's right to a fair trial.

Secondly, the Court noted that in L.F.'s case the High Court had given careful consideration to the reformulated claim. While the applicant had been understandably disappointed by the outcome, this did not in and of itself mean that Ireland had failed in its obligation under Article 8 of the Convention. Had W.M. reformulated her claim, the Court had no doubt that the High Court would also have given careful consideration to whether, having regard to the prevailing medical and practice standards in 1960, the symphysiotomy performed on her could have been clinically justified at that time. By abandoning the proceedings, the medical evidence central to a judicial determination of the applicant's case had never been assessed or tested. In all three cases the Court noted that had the applicants considered that the reformulation of their claims itself had given rise to a violation of their Convention rights, it had been open to, and indeed incumbent on, them to challenge this. However, this question had not been raised before the domestic courts.

Lastly, while the Court expressed doubts about whether any duty to investigate had arisen on the facts of the present cases, it noted that Ireland had not remained inactive in the face of the considerable controversy surrounding the use of symphysiotomies in its maternity hospitals. In addition to the possibility of civil proceedings there had been an independent investigation, an ex gratia payment scheme which enabled all the women who had undergone a symphysiotomy to obtain an award of compensation, and the provision of access, free of charge, to healthcare and individual pathways of care. In the Court's view these factors had sufficed to meet any obligation the State might have been under to provide redress.

Owing to the above, the Court considered this complaint to be manifestly ill-founded since in its view there had been no failure to provide the applicants with access to effective proceedings allowing them to claim compensation.

K.O.'S.

K.O'S. alone complained that, in allowing symphysiotomies to take place in Ireland, the State had failed in its obligation to protect women from a medical procedure which in her view constituted inhuman and degrading treatment. However, the Court found that even if any such obligation could be said to have arisen in relation to the procedure in question, the applicant had not exhausted domestic remedies as she had not made that complaint before the domestic courts.

It also considered that she had failed to exhaust domestic remedies in respect of her complaint concerning access to proceedings in which she could claim compensation. Although she had brought civil proceedings against the hospital, she had not argued that the judgment in either Kearney or the L.F. case had violated her Convention rights because they had prevented her from making any effective complaint about the symphysiotomy.

The decision 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.