



PORADŇA PRE OBČIANSKE A ĽUDSKÉ PRÁVA

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THE EUROPEAN COURT OF HUMAN RIGHTS: SLOVAKIA UNLAWFULLY DENIED ROMANI WOMEN THE ACCESS TO THEIR MEDICAL RECORDS

The Center for Civil and Human Rights is pleased to announce today's decision of the European Court of Human Rights in case of *K.H. and Others vs. Slovakia* concerning the access to medical records on forced sterilization

Kosice, Slovakia: Today, the European Court of Human Rights found Slovakia in violation of Article 8 and Article 6 para 1 of the European Convention for denying the full access to medical records of eight Romani women who suspected they were forcibly sterilized in Presov and Spisska Nova Ves Hospitals.

In 2002, eight Romani women, who underwent caesarean sections in the respective hospitals and were not able to conceive afterwards, attempted to access and copy their medical records held by the hospitals via the lawyers from the Center for Civil and Human Rights ("the Center"). The hospitals denied their requests, claiming the patients did not have such right. The Romani women subsequently filed law suits with the Slovak courts, including the Constitutional Court. However, the courts denied their requests, arguing that the records were owned by hospitals and the records could not have been copied as a prevention of "abuse". They only allowed the women to take hand written notes from the records. In August 2004, the Romani women, represented by the lawyers of the Center, filed a case with the European Court. Relying on Article 8 (the right to respect of the private and family life) and Article 6 para 1 (the right to access to court) of the European Convention, the Romani women complained that they needed the copies of their medical files to establish the reason for their infertility; they also complain of being thus denied access to court as they were unable to assess in a qualified manner the position in their cases for later civil litigation, the prospects of success of any such litigation and to produce these photocopies of medical records as evidence. They also claimed that the copies of the files were necessary in order to prevent them from getting lost or destroyed by the hospitals. The Romani women were able to access the records only after the Law on Health Care was changed in 2004. However, the file of one of the women was indeed lost in the meantime, and the Slovak Government did not recognize the violation of their rights. The Slovak Government argued that the denial of the access was justified with a view of preventing the abuse of the files. Today, the European Court dismissed the arguments of the Slovak Government and ruled in favor of the Romani women.

The European Court found the access to medical records falls within the ambit of the right to private and family life, and persons who wished to obtain photocopies of documents containing their personal data, should not have been obliged to make specific justification as to why they needed the copies. It should have been rather for the authority in possession of the data to show that there had been compelling reasons for not providing that facility. The European Court also dismissed the argument that the files could

have been abused by the Romani women, noting that it did not see how the women could abuse information concerning their own medical conditions by making photocopies of the medical files.

The European Court also accepted the argument that the Romani women had been in a state of uncertainty as regards their state of health and reproductive ability following their treatment in the hospitals. It also agreed that obtaining the photocopies had been essential for their assessment of the perspectives of seeking redress before the courts in respect of any shortcoming in their medical treatment. By denying them the right to copy the files, the Romani women were prevented from filing cases for damages for their forced sterilization with the Slovak courts.

“This case indicates the complicity of the Slovak Government in the practice of forced sterilization of Romani women”, said Barbora Bukovska, one of the representatives of the applicants in this case. *“Originally, in spring of 2002, we were able to access and copy medical records of our clients. But as soon as the hospitals realized we were seeking access to medical records on forced sterilizations, they halted the access. The Slovak Government, instead of rectifying the situation, supported the hospitals in their position and over the years, denied their responsibility for the violations. All of this in order to prevent forcibly sterilized Romani women from finding truth about their sterilization surgeries and seeking compensations for them.”*

Vanda Durbakova, another attorney representing the victims, adds: *“We applaud the decision of the European Court because it recognizes that the state and medical professionals have to respect the rights of patients to access fully information on their medical conditions. The medical records are essential personal records and patients – the subject of that information – should have full access to them.”*

The European Court also granted each applicant a financial compensation of 3,500 EUR (28,000 EUR total) as well as the recovery of legal costs.

To read the full ruling of the European Court of Human Rights visit:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Slovakia&sessionid=22903212&skin=hudoc-en>

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Notes for the editors:

- 1) For more information, contact: **Vanda Durbáková** at tel./fax: +421-55-68 06 180, cell: +421-908-695 531, e-mail: poradna@poradna-prava.sk or **Barbora Bukovská** at cell: +44-789 684 5539, E-mail: bbukovska@post.harvard.edu.
- 2) The **Center for Civil and Human Rights** (Poradňa pre občianske a ľudské práva) is a human rights organization, based in Košice, Slovakia. It conducts advocacy, strategic litigation and educational activities to combat discrimination against Roma in the country. In 2002, the Center documented the practice of forced sterilization of Romani women. Since then, it has been litigating individual cases of forced sterilization in the domestic proceedings and at the European Court of Human Rights and advocating for the redress to the victims of this practice.
- 3) The Center for Civil and Human Rights would like to express its appreciation for a generous support of MamaCash Foundation, Oak Philanthropy, the Open Society Institute, Fillia Frauenstiftung, DOEN Stichting, Slovak – Czech Women’s Fund and many individuals to the strategic litigation program of the Center as well as the assistance of the INTERIGHTS and the International Human Rights Clinic of Harvard Law School that contributed to bringing this and other cases to the European Court. The Center also acknowledges the dedication and persistence of all its staff and members in the work to eradicate the practice of forced sterilization in Slovakia.