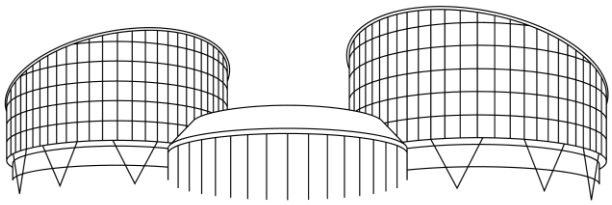

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECTION IV

CASE OF V.C. v. SLOVAKIA

(Application no. 18968/07)

JUDGMENT

STRASBOURG

8 November 2011

FINAL

08/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of V.C. v. Slovakia,

The European Court of Human Rights (Former Section IV), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 22 March, 6 June, 24 August and 17 October 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 18968/07) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Ms V.C. ("the applicant"), on 23 April 2007. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms B. Bukovská and Ms V. Durbáková, lawyers acting in cooperation with the Centre for Civil and Human Rights in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged a breach of Articles 3, 8, 12, 13 and 14 of the Convention on account of her sterilisation in a public hospital.

4. By a decision of 16 June 2009 the Court declared the application admissible.

5. The applicant and the Government each filed further written observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the International Federation of Gynaecology and Obstetrics (FIGO), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

6. A hearing was scheduled for 7 September 2010. It was adjourned on 24 August 2010 at the request of the Government, who indicated that they wished to explore the possibility of reaching a friendly settlement in the case. The parties did not reach a friendly-settlement agreement.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 22 March 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms M. PIROŠÍKOVÁ, *Agent*,
Ms K. ČAHOJOVÁ, *Co-Agent*,
Mr M. BUZGA,
Mr V. CUPANÍK,
Mr J. PALKOVIČ, *Advisers*;

(b) *for the applicant*
Ms B. BUKOVSKÁ, *Counsel*,
Ms V. DURBÁKOVÁ, *Counsel*.

The Court heard addresses by Ms Bukovská, Ms Durbáková, Ms Pirošíková, Mr Buzga and Mr Cupaník.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, who is of Roma ethnic origin, was born in 1980 and lives in Jarovnice. She finished compulsory education in the sixth grade and is unemployed. Her mother tongue is the Roma language, which she uses in daily communication, together with a local dialect.

A. The applicant's sterilisation in Prešov Hospital

9. On 23 August 2000 the applicant was sterilised while hospitalised at the Hospital and Health Care Centre in Prešov (now known as the University Teaching Hospital and J.A. Reiman Health Care Centre in Prešov –"Prešov Hospital"), which came under the management of the Ministry of Health.

10. The procedure was carried out during the delivery of the applicant's second child via Caesarean section. The applicant's first delivery had also been via Caesarean section. The sterilisation of the applicant entailed tubal ligation by the Pomeroy method, which consists of severing and sealing the Fallopian tubes in order to prevent fertilisation.

11. During her pregnancy the applicant did not have any regular check-ups. She visited her general practitioner only once.

12. The applicant was admitted to the gynaecology and obstetrics department of Prešov Hospital on 23 August 2000 shortly before 8 a.m. She

came to the hospital in pain resulting from the progress of labour. On arrival the applicant was informed that the delivery would be via Caesarean section.

13. The delivery was documented in a written record indicating details of the labour and birth at regular intervals. The first entry in the record was at 7.52 a.m. The applicant was subsequently monitored by CTG (cardiotocography); the last CTG entry was at 10.35 a.m.

14. According to the delivery record, after 10.30 a.m., when labour was well established, the applicant requested sterilisation. That request is entered directly in the delivery record with the typed words "Patient requests sterilisation". Below this is the shaky signature of the applicant. The signature was in an unsteady hand and the applicant's maiden name, which she used at the time, is split into two words.

15. The applicant submitted that, after she had been in labour for several hours and was in pain, the medical personnel of Prešov Hospital had asked her whether she wanted to have more children. The applicant responded in the affirmative but was told by the medical personnel that if she had one more child, either she or the baby would die. The applicant started to cry and as she was convinced that her next pregnancy would be fatal, she told the medical personnel "Do what you want to do". She was then asked to sign the delivery record under the note indicating that she had requested sterilisation. The applicant did not understand the term sterilisation and she signed the form out of fear that there would otherwise be fatal consequences. As she was in the last stage of labour, her recognition and cognitive abilities were influenced by labour and pain.

16. At 11.30 a.m. the applicant was put under anaesthesia, after which the delivery was completed via Caesarean section. In view of the state of the applicant's reproductive organs the two doctors involved asked the head physician for an opinion as to whether they should perform a hysterectomy or a sterilisation. They subsequently performed tubal ligation on the applicant. The procedure ended at 12.10 p.m. and the applicant came round from the anaesthetic ten minutes later.

17. The words "Patient is of Roma origin" appear in the record of the applicant's pregnancy and delivery (section "Medical history", sub-section "Social and working conditions, especially during the pregnancy" of the pre-printed form designed for that purpose).

18. During her hospitalisation on the gynaecology and obstetrics ward of Prešov Hospital the applicant was accommodated in a room in which there were exclusively women of Roma ethnic origin. She was prevented from using the same bathrooms and toilets as women who were not of Roma origin.

19. The applicant has suffered serious medical and psychological after-effects from the sterilisation procedure. Hence, at the end of 2007 and the beginning of 2008 she displayed the symptoms of a false pregnancy. She

believed that she was pregnant and exhibited all the signs of pregnancy. However, the ultrasound examination revealed that she was not pregnant. Subsequently, in July 2008, she was treated by a psychiatrist in Sabinov. According to the latter's statement, the applicant continues to suffer as the result of her infertility.

20. The applicant has also been ostracised by the Roma community. Her husband, the father of her children, left her several times owing to her infertility. In 2009 the applicant and her husband divorced. The applicant maintained that her infertility was one of the reasons for their separation.

B. Position of Prešov Hospital

21. A written statement by the Director of Prešov Hospital dated 3 July 2008 indicates that the applicant's first delivery in 1998 ended with a Caesarean section as the size of the applicant's pelvis excluded a normal delivery. Prior to the delivery the applicant had attended a pre-natal care centre only twice, at the beginning of her pregnancy. After the delivery she was placed in a post-delivery room with sanitary equipment where she received medical care. On the third day she left the hospital without doctors' consent and returned 24 hours later with sepsis caused by inflammation of the uterus. After nine days' hospitalisation during which she received intensive treatment with antibiotics the applicant and her child were discharged from the hospital. The applicant was advised to visit a gynaecologist regularly but failed to do so.

22. During her second pregnancy, the applicant visited the pre-natal care centre only once, in the initial stages. At the time of the second delivery, owing to pain which the applicant experienced in the lower part of her uterus (where she had been operated on during her first delivery) and in view of the size of her pelvis, doctors indicated that a Caesarean section would be needed. They were of the view that there was a risk of rupture of the uterus. After they had explained to her the situation and the risks inherent in a possible third pregnancy, the applicant, who was fully aware of what was happening, signed the sterilisation request.

23. In a different statement dated 27 July 2009 the Director of Prešov Hospital denied deliberate and organised segregation of Roma women and the existence of so called "Gypsy rooms". In practice, Roma women were frequently accommodated together at their own request.

C. Criminal proceedings

24. On 23 January 2003, in response to the publication by the Centre for Reproductive Rights and the Centre for Civil and Human Rights of "Body and Soul: Forced and Coercive Sterilisation and Other Assaults on Roma Reproductive Freedom in Slovakia" ("the Body and Soul Report"), the

Section for Human Rights and Minorities of the Government Office initiated a criminal investigation into the allegedly unlawful sterilisation of several different Roma women.

25. The criminal investigation was conducted within the Regional Directorate of the Police Corps in Žilina by the Office of the Judicial and Criminal Police. Several decisions were issued by the investigator, public prosecutors at several levels and the Constitutional Court. The proceedings were ultimately discontinued on the ground that no offence had been committed in the context of the sterilisation of women of Roma ethnic origin (further details are set out in *I.G., M.K. and R.H. v. Slovakia* (dec.), no. 15966/04, 22 September 2009).

26. The applicant did not initiate any individual criminal proceedings.

D. Civil proceedings

27. In January 2003, after the release of the Body and Soul Report, the applicant learned that a tubal ligation was not life-saving surgery as alleged by the medical personnel of Prešov Hospital and that the patient's full and informed consent to such a procedure was required. For this reason, she unsuccessfully tried to review her medical records. She was allowed access to her medical file with her lawyer in May 2004 following a judicial order to that effect.

28. On 9 September 2004 the applicant lodged a claim with the Prešov District Court under Articles 11 et seq. of the Civil Code, seeking protection of her personal rights. She submitted that the sterilisation performed on her had been carried out in violation of Slovakian legislation and international human rights standards including Articles 3, 8, 12 and 14 of the Convention. The applicant argued that she had not been duly informed about the procedure as such, its consequences and alternative solutions. She requested an apology for the procedure and claimed compensation for non-pecuniary damage.

29. In the course of the proceedings the District Court considered documentary evidence and obtained a number of statements from the applicant as well as from the medical personnel of Prešov Hospital.

30. In particular, the applicant described the circumstances in which she had given birth in Prešov Hospital and how she had been asked to sign the relevant entry in the record. She also stated that the father of her children had left her for two years owing to her infertility and that they had experienced problems in their relationship for that reason. She outlined the health problems which she was experiencing.

31. Doctor Č. of Prešov Hospital, who had performed the procedure on the applicant, stated that he did not specifically remember the applicant or the circumstances of her hospitalisation. His statement was based on the information in the applicant's medical file. He alleged that the applicant had

been fully informed about her medical condition and the progress of the labour approximately ninety minutes prior to the delivery. The information about the need for sterilisation had been conveyed to her by the head doctor of the gynaecology and obstetrics ward, as well as the second doctor who had participated in the surgery, and also by the anaesthetist. The sterilisation had been carried out at the applicant's request as a medical necessity. A possible third pregnancy could have been risky for the applicant unless she was monitored regularly during the pregnancy. Doctor Č. stated that the sterilisation of the applicant had not been life-saving surgery.

32. Doctor K., head doctor of the gynaecology and obstetrics ward of Prešov Hospital, stated that he fully agreed with the testimony of Doctor Č. Doctor K. did not specifically recall the case of the applicant either. He assumed that her case was the same as other similar cases. He had not been present during the delivery and the sterilisation of the applicant but had been told about her case by other doctors. He described the sterilisation procedure as governed by the relevant law. In the case of the applicant, there had been no time to convene any committee as she had come to the hospital a very short time before delivery.

33. Doctor K. further stated that, after he had designated his colleagues Š. and Č. to perform the surgery, he had also asked them to find out whether the patient would agree to sterilisation, and to have her consent confirmed by a signature. Even if a patient refused to give written consent to sterilisation, it could be carried out under section 2 of the 1972 Sterilisation Regulation, which permitted such a move in the case of danger to a person's life.

34. In the civil proceedings, the applicant also submitted a psychologist's assessment of her mental capacity dated 17 February 2006. It indicated that her intellectual capacity was very low, on the verge of mental retardation, but that her thinking was well developed in relation to practical issues. The psychologist concluded that communication with the applicant needed to be adapted to her mental and language skills. No mental illness was detected that would prevent the applicant from making decisions concerning her life and assuming responsibility for matters related to her life.

35. On 28 February 2006 the Prešov District Court dismissed the action. It held that the procedure had been performed only after the medical personnel had obtained the applicant's signature. It admitted that the applicant's signature on the delivery record had been obtained shortly before the Caesarean section was performed, when the applicant had been in "a supine position". The procedure had been performed on medical grounds. It had been necessary owing to the applicant's poor medical condition. The medical personnel had proceeded in accordance with the law.

36. The fact that the procedure had not been approved earlier by a sterilisation committee amounted only to a failure to meet the formal

requirements; it could not have interfered with the applicant's personal integrity as protected by Articles 11 et seq. of the Civil Code. No violation of the applicant's rights under the Convention had been established.

37. Finally, the District Court held that the applicant's situation was not irreversible as there was a possibility of *in vitro* fertilisation.

38. On 12 May 2006 the applicant appealed. She maintained that she had been sterilised without her full and informed consent in a situation where she had not been able to understand fully the nature and consequences of the procedure. There were gaps and inconsistencies in the statements of the medical personnel and the medical file contained no record of her having been duly informed about the procedure, its irreversible character and the alternative methods. In violation of the legislation in force the sterilisation had not been approved by a sterilisation committee. A tubal ligation could not be considered as life-saving surgery. The applicant relied on documents issued by international medical organisations.

39. On 25 October 2006 the Prešov Regional Court upheld the first-instance judgment. It concluded that the applicant's sterilisation had been performed in accordance with the legislation in force and that it had been required by her medical condition.

40. The appellate court referred to the statements by the physicians involved and held that there had been a risk of rupture of the applicant's uterus. The applicant had requested sterilisation after she had been duly informed of her state of health. The procedure had complied with the relevant provisions of the 1972 Sterilisation Regulation. The decision as to whether or not sterilisation was required lay in such circumstances with the head physician. Prior approval by a sterilisation committee was required only where sterilisation was to be carried out on healthy reproductive organs. However, this had not been the case with the applicant.

E. Constitutional proceedings

41. On 17 January 2007 the applicant lodged a complaint with the Constitutional Court. With reference to her sterilisation and the ordinary courts' conclusions in the above-mentioned civil proceedings, she submitted that she had been subjected to sterilisation in Prešov Hospital without her informed consent and that she had been unable to obtain redress as a result of the conduct and decision of the Prešov Regional Court. She alleged that the latter had thereby breached her constitutional rights and freedoms prohibiting discrimination and cruel, inhuman or degrading treatment or punishment, her right to protection from unjustified interference with her private and family life and her right to protection of her family, as well as her rights under Articles 3, 8, 12, 13 and 14 of the European Convention on Human Rights and Article 5 of the Convention on Human Rights and

Biomedicine. The applicant requested that the Constitutional Court quash the Regional Court's judgment.

42. On 14 February 2008 the Constitutional Court dismissed the complaint as being manifestly ill-founded (for further details see the decision on the admissibility of the present application of 16 June 2009).

F. Accounts of sterilisation practices in Slovakia

1. Information submitted by the applicant

43. The applicant referred to a number of publications pointing to a history of forced sterilisation of Roma women which had originated under the communist regime in Czechoslovakia in the early 1970s and which she believed had influenced her own sterilisation.

44. In particular, the applicant submitted that the Ministry of Health's 1972 Sterilisation Regulation had been used to encourage the sterilisation of Roma women. According to a 1979 document by Charter 77, a Czechoslovakian dissident group, a programme had been launched in Czechoslovakia offering financial incentives for Roma women to be sterilised because of earlier unsuccessful government efforts "to control the highly unhealthy Roma population through family planning and contraception."

45. The applicant further maintained that in Prešov District 60% of the sterilisation operations performed from 1986 to 1987 had been on Roma women, who represented only 7% of the population of the district. Another study found that in 1983 approximately 26% of sterilised women in eastern Slovakia (the region where the applicant resides) were Roma; by 1987, this figure had risen to 36.6%.

46. In 1992 a report by Human Rights Watch noted that many Roma women were not fully aware of the irreversible nature of the procedure and were forced into it because of their poor economic situation or pressure from the authorities.

47. According to other reports, in 1999 nurses working in Finnish refugee reception centres informed researchers from Amnesty International that they had noticed unusually high rates of gynaecological procedures such as sterilisation and removal of ovaries among female Roma asylum-seekers from eastern Slovakia. All the reports cited identified Prešov Hospital as one of the hospitals where such sterilisation practices were applied.[1]

1. The applicant relied on the following documents:
Commission of the European Communities, Regular Report on Slovakia's Progress Towards Accession (2002), p. 31.

2. Information submitted by the respondent Government

48. The Government submitted that health care in Slovakia was provided to all women equally. Statistical data based on the ethnic origin of patients were generally not gathered as this was considered to be contrary to persons' human rights.

49. Following the publication of the Body and Soul Report the Ministry of Health established a group of experts with a view to investigating allegedly unlawful sterilisations and segregation of Roma women.

50. The Ministry's report of 28 May 2003, submitted to the parliamentary committee on human rights, nationalities and the status of women, indicated that the medical records of 3,500 women who had been sterilised and those of 18,000 women who had given birth by means of Caesarean section during the preceding ten years had been reviewed.

51. The rate of sterilisation of women in Slovakia amounted to only 0.1% of women of reproductive age. In other European countries that rate was between 20 and 40%. The low rate of sterilisation in Slovakia was mainly due to the fact that the procedure was not widely used as a method of contraception.

52. In the absence of official statistical data concerning the ethnic origin of inhabitants, the expert group could assess only indirectly the position regarding women of Roma ethnic origin. In those regions where it was possible to indirectly assess the proportion of women of Roma ethnic origin, the frequency of sterilisation and Caesarean section in the Roma population was significantly lower than among the rest of the population. The

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European Roma Rights Centre, "Stigmata: Segregated Schooling of Roma in Central and Eastern Europe, a survey of patterns of segregated education of Roma in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia", 2004, available at www.errc.org.

Amnesty International Report 2003, chapter on Slovakia.

European Roma Rights Centre, "Discrimination in the Slovak Judicial System", Roma Rights 1/2002, pp. 106–108.

Bureau of Democracy, Human Rights and Labour, US State Department, "Human Rights Practices: Slovak Republic 2001", 2002, § 5.

Open Society Institute, "Monitoring the EU Accession Process: Minority Protection in Slovakia", 2001.

R. Tritt, J. Laber, Lois Whitman, "Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies", Human Rights Watch, New York, August 1992, pp. 19, 22 and 139-144.

David M. Crow, "History of the Gypsies of Eastern Europe and Russia", St. Martin´s Griffin, New York, 1995, p. 60.

Ruben Pellar and Zbyněk Andrš, "Statistical Evaluation of the Cases of Sexual Sterilisation of Romani Women in East Slovakia", Appendix to the Report on the Examination in the Problematic Sexual Sterilisation of Romanies in Czechoslovakia, 1990.

Dr med. Posluch and Dr med. Posluchová, "The Problems of Planned Parenthood among Gypsy Fellow-citizens in the Eastern Slovakia Region", published in *Zdravotnícka pracovníčka* No. 39/1989, p. 220-223.

frequency of sterilisations was statistically insignificantly higher in the Prešov and Košice regions than in other regions of Slovakia.

53. The group concluded that in the hospitals investigated by its members no genocide or segregation of the Roma population had occurred. All cases of sterilisation had been based on medical indications. Certain shortcomings in health care and non-compliance with the regulations on sterilisation (such as failure to observe the administrative procedure) had been identified in several cases. However, they affected the whole population equally regardless of patients' ethnic origin. Hospitals in which administrative errors had been discovered had adopted measures with a view to eliminating them.

54. In none of the hospitals visited by the expert group did there exist separate rooms for Roma women; all patients received treatment within the same hospital facilities. Owing to the situation existing during the preceding decades, medical personnel and individuals were not on an equal footing with regard to responsibility for maintaining and improving individuals' state of health. This was reflected, in particular, in limited individual rights and responsibilities in matters of health care. Measures had been recommended to ensure that individuals received the necessary information to enable them to give informed consent to their treatment or refuse it. Individual requests for medical intervention were to be made in a legally valid manner permitting the persons concerned to express their own free will after receiving the appropriate information.

55. The measures recommended in the report consisted in the amendment of the legal rules on sterilisation with a view to ensuring compliance with, i*nter alia*, the Convention on Human Rights and Biomedicine, which Slovakia had ratified. The report also contained a set of recommendations regarding the education of medical staff, focusing on "cultural differences in regions with an increased concentration of Roma communities". In order to educate the Roma population in the area of health care, the Slovak Health University in Bratislava was to establish, in cooperation with the Ministry of Health, a network of health care assistants who would receive special training and operate in Roma settlements.

56. At the hearing the Government indicated that it was open to women allegedly affected by malpractice in the context of sterilisation to claim compensation before the civil courts. According to the information available to the Government, there were five sets of proceedings of that kind pending before the Slovakian courts. Six other sets of proceedings had ended in a final decision. In three of them the claimants had been successful.

II. RELEVANT DOMESTIC LAW

A. The Civil Code

57. Under Article 11, natural persons have the right to protection of their personal rights (personal integrity), in particular their life and health, civil and human dignity, privacy, name and personal characteristics.

58. Under Article 13 § 1, natural persons have the right to request that unjustified infringements of their personal rights be ended and that the consequences of such infringements be erased. They also have the right to appropriate just satisfaction.

59. Article 13 § 2 provides that, in cases where the satisfaction obtained under Article 13 § 1 is insufficient, in particular because the injured party's dignity or social standing has been significantly diminished, he or she is also entitled to financial compensation for non-pecuniary damage.

B. The 1972 Sterilisation Regulation

60. Regulation No. Z-4 582/1972-B/1 of the Ministry of Health of the Slovak Socialist Republic, published in Official Journal of the Ministry of Health No. 8-9/1972 ("the 1972 Sterilisation Regulation") and applicable at the relevant time, contained guidelines governing sterilisation in medical practice.

61. Section 2 permitted sterilisation in a medical institution either at the request of the person concerned or with that person's consent where, *inter alia*, the procedure was necessary according to the rules of medical science for the treatment of a person's reproductive organs which were affected by disease (section 2(a)), or where the pregnancy or birth would seriously threaten the life or health of a woman whose reproductive organs were healthy (section 2(b)).

62. Section 5(1)(a) authorised the head physician of the hospital department in which the person concerned was treated to decide whether or not that person's sterilisation was required within the meaning of section 2(a) of the 1972 Sterilisation Regulation. Sterilisation on any other ground required prior approval by a medical committee ("sterilisation committee").

63. Point XIV of the Annex to the 1972 Sterilisation Regulation indicated the following as obstetric or gynaecological reasons justifying a woman's sterilisation:

(a) during and after a second or subsequent Caesarean section, where this method of delivery was necessary for reasons which were likely to persist during a further pregnancy and where the woman concerned did not wish to deliver again via Caesarean section;

(b) in the event of repeated complications during pregnancy, in the course of delivery and in the subsequent six-week period, where a further pregnancy would seriously threaten the woman's life or health;

(c) where a woman had several children (four children for women under the age of 35 and three children for women over that age).

64. The Regulation was repealed by the Health Care Act 2004 with effect from 1 January 2005 (see below).

C. The Health Care Act 1994

65. At the relevant time the following provisions of Law no. 277/1994 on Health Care (*Zákon o zdravotnej starostlivosti* – "the Health Care Act 1994") were in force.

66. Section 13(1) made medical treatment subject to the patient's consent. A patient's consent to medical procedures of a particularly serious character or which substantially affected a person's future life had to be given in writing or in another provable manner (section 13(2)).

67. Under section 15(1) the doctor was obliged to advise the patient, in an appropriate and provable way, about the nature of his or her illness and the necessary medical procedures, so that the doctor and the patient could actively cooperate in the patient's treatment. The amount of information which it was appropriate to provide to the patient was to be determined by the doctor in the light of the particular circumstances of the case. Such information had to be given in a manner which respected the patient ethically, and was not allowed to affect the patient's treatment.

D. The Health Care Act 2004

68. Law no. 576/2004 on health care and health care services and on the amendment and completion of certain Acts (*Zákon o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov* – "the Health Care Act 2004") came into force on 1 November 2004 and became operative on 1 January 2005.

69. Section 6 governs the provision of information to and giving of informed consent by patients. Pursuant to sub-section 1, medical practitioners are obliged, unless the law provides otherwise, to inform the persons listed below about the aim, nature, consequences and risks of treatment, the possibility of choice as to the proposed procedures and the risks connected with refusal to accept treatment. This obligation to inform extends, *inter alia*, to the person to be treated or another person chosen by the former; to the statutory representative or guardian where health care is to be provided to a minor, a person deprived of legal capacity or a person with

limited legal capacity; and, in an appropriate manner, also to persons incapable of giving informed consent.

70. Section 6(2) obliges medical practitioners to provide information comprehensibly, considerately and without pressure, allowing the patient the possibility and sufficient time to freely give or withhold his or her informed consent, and in a manner appropriate to the maturity of intellect and will and the state of health of the person concerned.

71. Section 6(3) provides that any person entitled to such information also has the right to refuse it. Such refusal has to be recorded in writing.

72. Pursuant to section 6(4), informed consent is provable consent to treatment preceded by information as stipulated by the Health Care Act 2004. A written form of informed consent is required, *inter alia*, in the case of sterilisation. Everyone with the right to give informed consent also has the right to freely withdraw that consent at any time.

73. Section 40 reads as follows:

Sterilisation

"(1) Sterilisation for the purposes of this law shall mean the prevention of fertility without the removal or impairment of a person's reproductive organs.

(2) Sterilisation may be performed only on the basis of a written request and written informed consent following the provision of information to a person with full legal capacity or to the statutory representative of a person not capable of giving informed consent, or on the basis of a court decision issued on an application by the statutory representative.

(3) The information preceding a person's informed consent must be provided as specified by section 6(2) and must encompass:

(a) alternative methods of contraception and planned parenthood;

(b) the possibility of a change in the life circumstances which led to the request for sterilisation;

(c) the medical consequences of sterilisation as a method aimed at the irreversible prevention of fertility;

(d) the possibility that the sterilisation might fail.

(4) The request for sterilisation is to be submitted to a [health care] provider who carries out sterilisations. Requests for female sterilisation shall be examined and the sterilisation carried out by a physician specialising in the field of gynaecology and obstetrics; requests for male sterilisation shall be examined and the sterilisation carried out by a physician specialising in the field of urology.

(5) Sterilisation may not be carried out earlier than thirty days after informed consent has been given. "

74. Section 50 repeals the 1972 Sterilisation Regulation.

75. Article IV of the Health Care Act 2004 introduces the offence of "unlawful sterilisation", which is included in the Criminal Code as Article 246b. Sub-paragraph 1 of Article 246b provides that anybody who sterilises a person contrary to the law is to be punished by a prison term of

between three and eight years, by a prohibition on carrying out his or her activity or by a pecuniary penalty. The prison term may be between five and twelve years when the offence was committed in aggravating circumstances (sub-paragraph 2).

III. INTERNATIONAL MATERIALS

A. Council of Europe documents

1. The Convention on Human Rights and Biomedicine

76. The Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine (Council of Europe Treaty Series No. 164) was ratified by Slovakia on 15 January 1998 and entered into force in respect of Slovakia on 1 December 1999. The corresponding notification, together with the text of the Convention, were published in the Collection of Laws under number 40/2000 on 10 February 2000. The relevant provisions read as follows:

Article 1 – Purpose and object

"Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.

Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.

..."

Article 4 – Professional standards

"Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards."

Chapter II – Consent

Article 5 – General rule

"An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

The person concerned may freely withdraw consent at any time.

..."

Article 8 – Emergency situation

"When because of an emergency situation the appropriate consent cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned."

77. The relevant parts of the Explanatory Report to the Convention on Human Rights and Biomedicine provide:

"Article 4 – Professional standards

...

33. Further, a particular course of action must be judged in the light of the specific health problem raised by a given patient. In particular, an intervention must meet criteria of relevance and proportionality between the aim pursued and the means employed. Another important factor in the success of medical treatment is the patient's confidence in his or her doctor. This confidence also determines the duties of the doctor towards the patient. An important element of these duties is the respect of the rights of the patient. The latter creates and increases mutual trust. The therapeutic alliance will be strengthened if the rights of the patient are fully respected.

...

Article 5 – General rule

34. This article deals with consent and affirms at the international level an already well-established rule, that is that no one may in principle be forced to undergo an intervention without his or her consent. Human beings must therefore be able freely to give or refuse their consent to any intervention involving their person. This rule makes clear patients' autonomy in their relationship with health care professionals and restrains the paternalist approaches which might ignore the wish of the patient. ...

35. The patient's consent is considered to be free and informed if it is given on the basis of objective information from the responsible health care professional as to the nature and the potential consequences of the planned intervention or of its alternatives, in the absence of any pressure from anyone. Article 5, paragraph 2, mentions the most important aspects of the information which should precede the intervention but it is not an exhaustive list: informed consent may imply, according to the circumstances, additional elements. In order for their consent to be valid the persons in question must have been informed about the relevant facts regarding the intervention being contemplated. This information must include the purpose, nature and consequences of the intervention and the risks involved. Information on the risks involved in the intervention or in alternative courses of action must cover not only the risks inherent in the type of intervention contemplated, but also any risks related to the individual characteristics of each patient, such as age or the existence of other pathologies. Requests for additional information made by patients must be adequately answered.

36. Moreover, this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The patient must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause.

...

Article 8 – Emergency situations

56. In emergencies, doctors may be faced with a conflict of duties between their obligations to provide care and seek the patient's consent. This article allows the practitioner to act immediately in such situations without waiting until the consent of the patient or the authorisation of the legal representative where appropriate can be given. As it departs from the general rule laid down in Articles 5 and 6, it is accompanied by conditions.

57. First, this possibility is restricted to emergencies which prevent the practitioner from obtaining the appropriate consent... An example that might be put forward is that of a patient in a coma who is thus unable to give his consent (see also paragraph 43 above), or that of a doctor who is unable to contact an incapacitated person's legal representative who would normally have to authorise an urgent intervention. Even in emergency situations, however, health care professionals must make every reasonable effort to determine what the patient would want.

58. Next, the possibility is limited solely to medically necessary interventions which can not be delayed. Interventions for which a delay is acceptable are excluded. However, this possibility is not reserved for life-saving interventions.

59. Lastly, the article specifies that the intervention must be carried out for the immediate benefit of the individual concerned."

2. Council of Europe Commissioner for Human Rights

78. In his recommendation following fact-finding missions to Slovakia the Commissioner for Human Rights of the Council of Europe indicated, *inter alia*:

"35. The issue of sterilizations does not appear to concern exclusively one ethnic group of the Slovak population, nor does the question of their improper performance. It is likely that vulnerable individuals from various ethnic origins have, at some stage, been exposed to the risk of sterilization without proper consent. However, for a number of factors, which are developed throughout this report, the Commissioner is convinced that the Roma population of eastern Slovakia has been at particular risk.

36. The initiative of the authorities to investigate into the sterilization practices in the country is welcomed. The Slovak Government engaged in an open and constructive dialogue with the Commissioner concerning this difficult issue. It is also encouraging to note that the Government is considering ways of improving the country's health care system in general, including reproductive health care, and access to it for vulnerable persons, including Roma women in particular.

37. The Commissioner is concerned about what appears to be a widespread negative attitude towards the relatively high birth rate among the Roma as compared with other parts of the population. These concerns are often explained with worries of an increased proportion of the population living on social benefits. Such statements, particularly when pronounced by persons of authority, have the potential of further encouraging negative perceptions of the Roma among the non-Roma population. It cannot be excluded that these types of statements may have encouraged improper sterilization practices of Roma women.

...

50. In view of the difficulties encountered during the investigations, and limitations surrounding them, initiated by the Government, it is unlikely that they will shed full light on the sterilizations practices.

51. However, on the basis of the information contained in the reports referred to above, and that obtained during the visit, it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent.

52. The information available to the Commissioner does not suggest that an active or organized Government policy of improper sterilizations has existed (at least since the end of the communist regime). However, the Slovak Government has, in the view of the Commissioner, an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision of sterilization practices although allegations of improper sterilizations have been made throughout the 1990's and early 2000. " [1]

79. The relevant part of the Commissioner's follow-up report on the Slovak Republic of 29 March 2006 (CommDH(2006)5) reads as follows:

"**4. The involuntary sterilisation of Roma women**

...

Development of the situation and measures taken

33. The allegations of forced and coerced sterilizations of Roma women in Slovakia were considered as a possible grave violation of human rights and therefore taken very seriously by the Slovak Government. A considerable effort was devoted to their thorough examination. In addition to a criminal investigation, a professional medical inspection of healthcare establishments was organised and an expert opinion of the Faculty of Medicine of the Comenius University in Bratislava requested. It was not confirmed that the Slovak Government would have supported an organized discriminatory sterilizations' policy. Legislative and practical measures were taken by the Government in order to eliminate the administrative shortcomings identified in the course of inquires and to prevent similar situations from occurring in the future.

34. The Public Health Act, which came into effect on 1 January 2005, sought to deal with these issues by including sections on sterilisation, informed consent and access to medical records. The law was elaborated in accordance with the Council of Europe Convention on Human Rights and Biomedicine, and among other things, eliminates the deficiencies in legislation found in the course of the investigations. The law, *inter alia*, guarantees informed consent and requires health care professionals to provide information to patients before, for example, undergoing sterilisation. It also requires a thirty day waiting period after informed consent is given. In addition, the new law addresses the problem many individuals face in accessing their medical records. The law explicitly allows authorisation by the patient to another person, through a power of attorney, to view and photocopy their files.

35. Women allegedly harmed by sterilisation have the right to turn to the Slovak courts with a request for compensation and it is the view of the Slovakian authorities that the existing legal framework offers them sufficient possibilities to seek compensation. Some of the cases have been concluded by rejecting the complaint or by halting proceedings. In other cases, court proceedings are still underway.

Conclusions

1. Recommendation of the Commissioner for Human Rights concerning certain aspects of law and practice relating to sterilization of women in the Slovak Republic, CommDH(2003)12, Strasbourg, 17 October 2003.

36. The Commissioner welcomes the coming into force of the Public Health Act, and its provisions on informed consent and access to medical records. These were crucial issues which the Commissioner had addressed in his Recommendation to the Slovak authorities, and he is pleased to see that the new law has explicitly addressed these problem areas.

37. The Commissioner notes with regret that the Slovak authorities have not yet established an independent commission to provide compensation or an apology to the victims. While victims may seek redress through the court system, in these types of cases, litigation has its practical shortcomings. These include the difficult and costly nature of obtaining legal counsel, particularly, for Roma women living in marginalised communities, and the extremely high evidential standards.

38. The Commissioner again encourages the authorities to consider creating an independent commission that might, on the examination of each case, provide effective and rapid non-judicial redress. Such redress would be given to individual applicants, who could show that appropriate procedures were not followed, without there necessarily having been intent or criminal negligence on the part of individual medical staff, but because of systemic shortcomings in the procedures permitted, and that in their particular case, sterilisation was without informed consent. Such a Commission might allow for alleged cases to be examined thoroughly, but with fewer formalities and less cost for applicants, than judicial proceedings."

3. ECRI reports on Slovakia

80. The European Commission against Racism and Intolerance (ECRI) published its third report on Slovakia on 27 January 2004. The relevant parts read as follows:

"...The Roma minority remains severely disadvantaged in most areas of life, particularly in the fields of housing, employment and education. Various strategies and measures to address these problems have not led to real, widespread and sustainable improvements, and the stated political, priority given to this issue has not been translated into adequate resources or a concerted interest and commitment on the part of all the administrative sectors involved. Public opinion towards the Roma minority remains generally negative.

...

Allegations of sterilisations of Roma women without their full and informed consent

...

93. ECRI is very concerned by reports which came to national and international attention at the beginning of 2003 claiming that Roma women have, in recent years and on an on-going basis, been subject to sterilisations in some hospitals in Eastern Slovakia without their full and informed consent. ...

...

Recommendations:

96. ECRI is of the opinion that the possibility of sterilisations of Roma women without their full and informed consent necessitates immediate, extensive and thorough investigation. It seems clear to ECRI that in such investigations, attention should be focused not on whether a signed form can be produced, but on whether the

women involved were fully informed of what they were signing and the actual implications of sterilisation. ...

...

98. ECRI also recommends that, prior to and notwithstanding the outcome of the investigation, more adequate safeguards should be put in place to forestall any further problems or lack of certainty in this area. In fact, the authorities have acknowledged there remains at present, at the legal level, some anomalies between the law in force and specific regulations issued previously. Clear, detailed and coherent regulations and instructions should thus be issued immediately to ensure that all sterilisations are being carried out in accordance with best medical knowledge, practice and procedures, including the provision of full and comprehensible information to patients about the interventions proposed to them."

81. In its next periodic report (fourth monitoring cycle) on Slovakia, published on 26 May 2009, ECRI concluded as follows:

"111. ECRI notes with concern that the problems as regards investigations into allegations of sterilisations of Roma women without their full and informed consent noted in its third report remained. The authorities continued to investigate these allegations under the crime of genocide rather than, for example, under the crimes of assault or of inflicting grievous bodily harm. The angle under which these allegations were investigated thus rendered proof of a crime having been committed virtually impossible and the possibility for redress through the courts almost null. The investigations also reportedly continued to focus on the issue of consent forms being signed rather than on whether full prior information was provided. Due to these flaws, in most cases, the courts decided that the allegations were unproven. ECRI wishes to stress that at the very least, the authorities should secure legal aid to victims so that they can seek compensation through civil law.

112. Some legislative measures have been taken to provide better legal safeguards against the practice. The Criminal Code has been amended to include the crime of "illegal sterilisation" and it provides for a thirty-day waiting period from the time the patient has given her consent before the sterilisation is carried out. Section 40 of Law No. 576/2004 Coll. on Healthcare which entered into force on 1 January 2005 provides that sterilisation can only be performed following a written request and informed written consent from a person who has been previously informed and is fully legally responsible for him/herself, or from a person who legally represents them and can provide their informed consent, or on the basis of a court decision based on a request by a legal representative. The patient information session preceding consent must be carried out according to the law and must include information on alternative methods of contraception and family planning, possible changes in life circumstances which led to the request for sterilisation, the medical consequences of sterilisation and the possibility that the sterilisation may fail.

113. While welcoming these legislative developments, ECRI regrets that due to the above-mentioned problems in the investigations of allegations of sterilisations of Roma women without their full and informed consent, no redress has been possible for the majority of women involved.

114. ECRI recommends that the Slovak authorities monitor all facilities which perform sterilisations to ensure that the legislative safeguards concerning this procedure are respected. It also urges the authorities to take steps to ensure that complaints filed by Roma women alleging sterilisations without their full and informed consent are duly investigated and that the victims receive proper redress."

B. Documents adopted within the United Nations system

1. UN Convention on the Elimination of All Forms of Discrimination against Women

82. The UN Convention on the Elimination of All Forms of Discrimination against Women was ratified by the former Czechoslovakia. Following the latter's dissolution, Slovakia declared itself bound by it as from 1 January 1993. In its relevant Articles the Convention provides:

Article 1

"For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

..."

Article 12

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

..."

Article 16

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

..."

83. General Recommendation No. 24 adopted by the Committee on the Elimination of Discrimination against Women (CEDAW) in 1999 includes, *inter alia*, the following opinion and recommendations for action by the States parties to the Convention on the Elimination of All Forms of Discrimination against Women:

"20. Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.

21. States parties should report on measures taken to eliminate barriers that women face in gaining access to health care services and what measures they have taken to ensure women timely and affordable access to such services. ...

22. States parties should also report on measures taken to ensure access to quality health care services, for example, by making them acceptable to women. Acceptable services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilization, ... that violate women's rights to informed consent and dignity.

...

31. States parties should also, in particular:

...

(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;

(f) Ensure that the training curricula of health workers includes comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence."

84. At its 41st session (30 June to 18 July 2008) CEDAW considered the combined second, third and fourth periodic report on Slovakia. The concluding observations contain, *inter alia*, the following text (CEDAW/C/SVK/CO/4):

"44. While acknowledging the explanations given by the delegation on the alleged coerced sterilization of Roma women, and noting the recently adopted legislation on sterilization, the Committee remains concerned at information received in respect of Roma women who report having been sterilized without prior and informed consent.

45. Recalling its views in respect of communication No. 4/2004 (*Szijjarto v. Hungary*), the Committee recommends that the State party monitor public and private health centres, including hospitals and clinics, that perform sterilization procedures so as to ensure that patients are able to provide fully informed consent before any sterilization procedure is carried out, with appropriate sanctions being available and implemented in the event of a breach. It calls upon the State party to take further measures to ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's general recommendations Nos. 19 and 24 in relation to women's reproductive health and rights are known and adhered to by all relevant personnel in public and private health centres, including hospitals and clinics. The Committee recommends that the State party take all necessary measures to ensure that the complaints filed by Roma women on grounds of coerced sterilization are duly acknowledged and that victims of such practices are granted effective remedies."

2. WHO Declaration on the Promotion of Patients' Rights in Europe

85. The World Health Organisation (WHO) European consultation meeting on the rights of patients, held in Amsterdam in March 1994, endorsed a document entitled "Principles of the rights of patients in Europe" as a set of principles for the promotion and implementation of patients'

rights in the European Member States of the WHO. Its relevant parts read as follows:

"2. INFORMATION

2.2 Patients have the right to be fully informed about their health status, including the medical facts about their condition; about the proposed medical procedures, together with the potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment; and about the diagnosis, prognosis and progress of treatment.

...

2.4 Information must be communicated to the patient in a way appropriate to the latter's capacity for understanding, minimizing the use of unfamiliar technical terminology. ...

...

3. CONSENT

3.1 The informed consent of the patient is a prerequisite for any medical intervention.

3.2 A patient has the right to refuse or to halt a medical intervention. The implications of refusing or halting such an intervention must be carefully explained to the patient."

3. Universal Declaration on Bioethics and Human Rights

86. The Universal Declaration on Bioethics and Human Rights was adopted by UNESCO's General Conference on 19 October 2005. Its relevant provisions read as follows:

Article 5 – Autonomy and individual responsibility

"The autonomy of persons to make decisions, while taking responsibility for those decisions and respecting the autonomy of others, is to be respected. For persons who are not capable of exercising autonomy, special measures are to be taken to protect their rights and interests."

Article 6 – Consent

"1. Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

87. The applicant complained that she had been subjected to inhuman and degrading treatment on account of her sterilisation and that the authorities had failed to carry out a thorough, fair and effective investigation into the circumstances surrounding it. She relied on Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Alleged ill-treatment of the applicant

1. The parties' submissions

(a) The applicant

88. The applicant contended that she had not given her free, full and informed consent to her sterilisation as required by international standards. Nor had her sterilisation been in compliance with the 1972 Sterilisation Regulation in force at the relevant time. Her signature on the sterilisation form had been obtained during advanced labour, a short time before the delivery itself. Her sterilisation had been forced in the circumstances.

89. The sterilisation had not been a life-saving procedure in her case and it had been carried out without consideration for alternative ways of protecting her from the alleged risks linked to a possible future pregnancy, such as the various methods of contraception available to her and her husband which would not have left her permanently infertile.

90. The procedure was to be seen in the context of the widespread practice of sterilising Roma women which had its origins in the communist regime and in the enduringly hostile attitudes towards persons of Roma ethnic origin.

91. The nature of the procedure as such and the circumstances in which it had been carried out amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

(b) The Government

92. The Government denied the existence of a policy or practice aimed at the sterilisation of women of Roma ethnic origin. They referred, in particular, to the documents issued by the Council of Europe Commissioner for Human Rights as well as the criminal proceedings initiated by the Government Office and the investigation by a group of domestic experts.

93. The applicant's sterilisation was to be considered in the broader context, namely with due regard to her health status and her failure to seek the appropriate pre-natal medical care. The applicant's second delivery via Caesarean section had been medically indicated. The doctors on duty had diagnosed a risk of rupture of the uterus in the event of a further pregnancy, which would present a real threat to the applicant's life and/or that of her child. After consultation with the head physician, sterilisation had been considered appropriate with a view to protecting the applicant's health.

94. The applicant had been informed orally of the situation and the medical indications for the procedure, in terms which were comprehensible to her. She had confirmed with her signature that she requested sterilisation. At that time she had not been under the influence of any medication.

95. With reference to the conclusions reached by the civil courts, the Government further argued that the sterilisation procedure had been performed in accordance with the law then in force and that it had not amounted to medical malpractice. The applicant had therefore not been subjected to treatment contrary to Article 3 of the Convention.

(c) FIGO

96. The aim of FIGO is to promote the health and well-being of women worldwide and to improve the practice of gynaecology and obstetrics. Its membership is made up of societies or federations of obstetricians and gynaecologists in 124 countries and territories.

97. In its third-party comments, submitted through H. Rushwan, Chief Executive, FIGO stated that it endorsed, in line with the relevant international instruments, informed and freely given consent of patients intellectually capable of reproductive self-determination, given prior to their treatment, as being essential to their treatment in accordance with the ethical requirements. The implications of the proposed treatment should be made clear to patients' satisfaction in advance of its performance, particularly when the proposed treatment had permanent effects on future child-bearing and the founding of a family.

98. The process of informed choice had to precede informed consent to surgical sterilisation. Recognised available alternatives, especially reversible forms of family planning which might be equally effective, had to be given due consideration. The physician performing the sterilisation had the responsibility of ensuring that the person had been properly advised about the risks and benefits of the procedure and of the alternatives.

99. Efforts should be made to preserve every patient's fertility. The performance of a Caesarean section, when necessary, should not in itself constitute a ground for concluding that sterilisation was indicated so as to prevent the patient from opting for a future pregnancy. Any such proposal should afford the patient ample time for informed deliberation and not be

made as an adjunct to a Caesarean procedure that the patient was about to undergo.

2. The Court's assessment

(a) General principles

100. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy*, no. 26772/95, § 119, ECHR 2000-IV).

101. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 68 and 74, ECHR 2001-III, and *Grori v. Albania*, no. 25336/04, § 125, with further references).

102. Treatment of a person by State agents has been considered to raise an issue under Article 3 when it resulted in bodily harm of a certain degree of severity, such as an injury to a person's leg which caused necrosis and subsequently led to the leg having to be amputated, a gunshot wound to a person's knee, a double fracture of the jaw and facial contusions or an injury to a person's face which required stitches, with three of the person's teeth being knocked out (see *Sambor v. Poland*, no. 15579/05, § 36, 1 February 2011; *Necdet Bulut v. Turkey*, no. 77092/01, § 24, 20 November 2007; *Rehbock v. Slovenia*, no. 29462/95, §§ 76-77, ECHR 2000-XII; and *Mrozowski v. Poland*, no. 9258/04, § 28, 12 May 2009). The Court has further considered the treatment of a person to be capable of raising an issue under Article 3 when, *inter alia*, it was such as to drive the victim to act against his or her will or conscience (see, for example, *Keenan v. the United Kingdom*, no. 27229/95, § 110, ECHR 2001-III).

103. In several cases the Court has examined complaints about alleged ill-treatment in the context of medical interventions to which detained persons were subjected against their will. It has held, *inter alia*, that a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The Court has nevertheless taken the view that it must satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied

with (for a recapitulation of the relevant case-law see *Jalloh v. Germany* [GC], no. 54810/00, § 69, ECHR 2006-IX, with further references).

104. In order for treatment to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment (see *Labita*, cited above, § 120).

105. Finally, the Court reiterates that the very essence of the Convention is respect for human dignity and human freedom. It has held that in the sphere of medical assistance, even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity (see *Pretty v. the United Kingdom*, no. 2346/02, §§ 63 and 65, ECHR 2002-III; *Glass v. the United Kingdom*, no. 61827/00, §§ 82-83, ECHR 2004-II; and *Jehovah's Witnesses of Moscow v. Russia*, no. 302/02, § 135, ECHR 2010-...).

(b) Assessment of the facts of the case

106. The Court notes that sterilisation constitutes a major interference with a person's reproductive health status. As it concerns one of the essential bodily functions of human beings, it bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life. It may be legitimately performed at the request of the person concerned, for example as a method of contraception, or for therapeutic purposes where the medical necessity has been convincingly established.

107. However, in line with the Court's case-law referred to above, the position is different in the case of imposition of such medical treatment without the consent of a mentally competent adult patient. Such a way of proceeding is to be regarded as incompatible with the requirement of respect for human freedom and dignity, one of the fundamental principles on which the Convention is based.

108. Similarly, it is clear from generally recognised standards such as the Convention on Human Rights and Biomedicine, which was in force in respect of Slovakia at the relevant time, the WHO Declaration on the Promotion of Patients' Rights in Europe or CEDAW's General Recommendation No. 24 (see paragraphs 76-77, 83 and 85 above) that medical procedures, of which sterilisation is one, may be carried out only with the prior informed consent of the person concerned. The same approach has been endorsed by FIGO (see paragraphs 97-98 above). The only exception concerns emergency situations in which medical treatment cannot be delayed and the appropriate consent cannot be obtained.

109. In the present case the applicant was sterilised in a public hospital immediately after she had given birth to her second child via Caesarean section. The doctors considered the procedure necessary, as a possible third

pregnancy entailed serious risks to her life and that of her child, in particular a risk of rupture of the uterus.

110. It is not the Court's role to review the assessment by medical doctors of the state of health of the applicant's reproductive organs. However, it is relevant to note that sterilisation is not generally considered as life-saving surgery. There is no indication that the situation was different in the present case; this was confirmed by one of the doctors involved in the domestic proceedings (see paragraph 31 above). As there was no emergency involving imminent risk of irreparable damage to the applicant's life or health, and since the applicant was a mentally competent adult patient, her informed consent was a prerequisite to the procedure, even assuming that the latter was a "necessity" from a medical point of view.

111. The documents available indicate that the applicant was asked to give her consent in writing two and a half hours after she had been brought to hospital, when she was in the process of established labour and in a supine position. The relevant entry in the delivery record was typed and merely indicated "Patient requests sterilisation".

112. In the Court's view, such an approach is not compatible with the principles of respect for human dignity and human freedom embodied in the Convention and the requirement of informed consent laid down in the international documents to which reference is made above. In particular, it does not appear from the documents submitted that the applicant was fully informed about her health status, the proposed procedure and the alternatives to it. Furthermore, asking the applicant to consent to such an intervention while she was in labour and shortly before performing a Caesarean section clearly did not permit her to take a decision of her own free will, after consideration of all the relevant issues and, as she may have wished, after having reflected on the implications and discussed the matter with her partner.

113. In this context no decisive weight can be attached to the Government's arguments concerning the history of the applicant's pregnancies and her failure to undergo regular check-ups. According to the Government, the applicant's sterilisation was aimed at preventing a possibly life-threatening deterioration of her health. Such a threat was not imminent as it was likely to materialise only in the event of a future pregnancy. It could also have been prevented by means of alternative, less intrusive methods. In those circumstances, the applicant's informed consent could not be dispensed with on the basis of an assumption on the part of the hospital staff that she would act in an irresponsible manner with regard to her health in the future.

114. The way in which the hospital staff acted was paternalistic, since, in practice, the applicant was not offered any option but to agree to the procedure which the doctors considered appropriate in view of her situation.

However, in similar situations informed consent was required, promoting autonomy of moral choice for patients.

115. The principle of patients' autonomy in their relationship with health care professionals is explored in the Explanatory Report to the Convention on Human Rights and Biomedicine. A requirement of respect for, *inter alia*, women's right to autonomy and choice in the context of health care is set out in point 31(e) of General Recommendation No. 24 adopted by CEDAW in 1999. The Universal Declaration on Bioethics and Human Rights, albeit subsequent to the facts of the present case, confirms the above considerations. In particular, Article 5 calls for respect for the autonomy of persons to make decisions while taking responsibility for those decisions. Shortcomings in the domestic law and practice in this regard were acknowledged in the expert report of the Ministry of Health of 28 May 2003, which stated that medical personnel and individuals were not on an equal footing and that individuals' rights and responsibilities in matters of health care had been limited. In this context, the applicant's sterilisation should be considered also in the light of the requirement to respect a person's dignity and integrity embodied in Article 1 of the Convention on Human Rights and Biomedicine, which was ratified by Slovakia with effect from 1 December 1999 and was published in the Collection of Laws on 10 February 2000.

116. The Court notes that the sterilisation procedure grossly interfered with the applicant's physical integrity as she was thereby deprived of her reproductive capability. At the time of her sterilisation the applicant was twenty years old and therefore at an early stage in her reproductive life.

117. The procedure was not an imminent necessity from a medical point of view. The applicant did not give her informed consent to it. Instead, she was asked to sign the typed words "Patient requests sterilisation" while she was in a supine position and in pain resulting from several hours' labour. She was prompted to sign the document after being told by medical staff that she or her baby would die in the event of a further pregnancy.

118. Thus, the sterilisation procedure, including the manner in which the applicant was requested to agree to it, was liable to arouse in her feelings of fear, anguish and inferiority and to entail lasting suffering. As to the last-mentioned point in particular, the applicant experienced difficulties in her relationship with her partner and, later, husband as a result of her infertility. She cited her infertility as one of the reasons for her divorce in 2009. The applicant suffered serious medical and psychological after-effects from the sterilisation procedure, which included the symptoms of a false pregnancy and required treatment by a psychiatrist. Owing to her inability to have more children the applicant has been ostracised by the Roma community.

119. Although there is no indication that the medical staff acted with the intention of ill-treating the applicant, they nevertheless displayed gross

disregard for her right to autonomy and choice as a patient. In the Court's view, the treatment to which she was subjected as described above attained the threshold of severity required to bring it within the scope of Article 3.

120. There has therefore been a violation of Article 3 of the Convention on account of the applicant's sterilisation.

B. Alleged failure to conduct an effective investigation

1. The parties' submissions

(a) The applicant

121. The applicant maintained that the respondent State had failed to comply with its obligation under the procedural limb of Article 3 to carry out an effective investigation into her sterilisation. A criminal investigation into the case should have been started at the initiative of the authorities after they had been informed about the interference. The general investigation into the sterilisation of Roma women which the Government had initiated could not be considered effective in respect of the applicant's own case. Similarly, the civil proceedings brought by the applicant had not complied with the requirements of Article 3. In particular, the applicant had been placed in a difficult position as the courts had been bound to examine the case only in the light of the parties' submissions, and the burden of proof had lain on the latter. Those proceedings had not led to the identification and punishment of those responsible.

(b) The Government

122. The Government disagreed with the applicant's arguments. In their view, there had been no breach of Article 3 under its procedural limb, given that the alleged practice of forced sterilisation of Roma women had been thoroughly examined in the context of the criminal proceedings initiated by the Government Office and a group of experts established by the Ministry of Health. Any specific obligations incumbent on the State in respect of the applicant's case had been complied with in the context of the civil proceedings initiated by her.

2. The Court's assessment

(a) General principles

123. Articles 1 and 3 of the Convention impose positive obligations on the Contracting Parties, designed to prevent and provide redress for various forms of ill-treatment. In particular, in a similar manner to cases raising an issue under Article 2 of the Convention, there is a requirement to conduct an effective official investigation (see, for example, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions*

1998-VIII, and *Biçici v. Turkey*, no. 30357/05, § 39, 27 May 2010, with further references).

124. The investigation in such cases must be thorough and expeditious. However, the failure of any given investigation to produce conclusions does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of result, but of means" (see *Mikheyev v. Russia*, no. 77617/01, §§ 107-109, 26 January 2006, with further references).

125. In cases raising issues under Article 2 of the Convention in the context of alleged medical malpractice the Court has held that where the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, §§ 90, ECHR 2004-VIII; and *Byrzykowski v. Poland*, no. 11562/05, § 105, 27 June 2006).

(b) Assessment of the facts of the present case

126. The Court has found above that the way in which the hospital staff acted was open to criticism, given that the applicant had not given her informed consent to the sterilisation. However, the information available does not indicate that the doctors acted in bad faith, with the intention of ill-treating the applicant (see also paragraph 119 above). In this respect the present case differs from other cases in which the Court held that the domestic authorities should start a criminal investigation of their own initiative once the matter had come to their attention (see, for example, *Muradova v. Azerbaijan*, no. 22684/05, § 123, 2 April 2009).

127. The applicant had the possibility of requesting a criminal investigation into her case but did not avail herself of it. She sought redress by means of an action under Articles 11 et seq. of the Civil Code for protection of her personal integrity. In the context of the civil proceedings she was entitled to submit her arguments with the assistance of a lawyer, indicate evidence which she considered relevant and appropriate and have an adversarial hearing on the merits of her case. The civil proceedings lasted for two years and one month over two levels of jurisdiction, and the Constitutional Court subsequently decided on the applicant's complaint concerning her relevant rights under the Convention within thirteen months. Hence, the applicant had an opportunity to have the actions of the hospital staff which she considered unlawful examined by the domestic

authorities. The domestic courts dealt with her case within a period of time which is not open to particular criticism.

128. In view of the foregoing, the applicant's argument that the respondent State failed to carry out an effective investigation into her sterilisation, contrary to its obligations under Article 3, cannot be accepted.

129. There has therefore been no procedural violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

130. The applicant complained that her right to respect for her private and family life had been breached on account of her sterilisation without her full and informed consent. She relied on Article 8 of the Convention which, in its relevant parts, provides:

> "1. Everyone has the right to respect for his private and family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicant

131. The applicant submitted that the interference had not satisfied the requirements of paragraph 2 of Article 8 and that the Slovakian authorities had failed to comply with their positive obligation under Article 8 as they had not provided her with information about ways of protecting her reproductive health, including information on the characteristics and consequences of sterilisation and alternative methods of contraception.

132. The provisions of the 1972 Sterilisation Regulation had not been complied with as there had been no genuine declaration signed by the applicant and the procedure had not been pre-approved by a sterilisation committee. Furthermore, that Regulation did not provide an appropriate framework for ensuring that patients could give free and informed consent in similar circumstances, as required by the relevant international instruments.

133. Sterilisation via tubal ligation was not life-saving surgery. Had that been the case, there would have been no need to obtain the applicant's signature on the delivery record. The circumstances under which she had signed the relevant document excluded the possibility of her giving full and informed consent to the procedure, which had grossly affected her private and family life.

134. The applicant considered her infertility to be irreversible, as a future *in vitro* fertilisation was not accessible to her for both religious and financial reasons. Her sterilisation had resulted in the deterioration of her relationship with the father of her children and impaired her standing in the Roma community of which she was a member, and was one of the reasons for her divorce in 2009.

2. The Government

135. The Government maintained that there had been gynaecological and obstetric indications for the applicant's sterilisation as there was a serious risk of damage to both her health and life and those of her child in the event of a further pregnancy. The sterilisation had been performed at the applicant's request. As it had been performed on unhealthy reproductive organs, the head physician of the hospital department had been authorised, in accordance with section 2(a) of the 1972 Sterilisation Regulation, to decide whether indications for sterilisation existed.

136. The applicant had requested sterilisation some two and a half hours after she had been admitted to the hospital and she had been placed under anaesthesia approximately one hour later. Until that moment no substances had been administered to her capable of affecting her cognitive functions. The Government maintained that the applicant had herself requested the procedure after she had been advised, in an appropriate manner, about the risks resulting from a possible third pregnancy and the consequences of sterilisation. As established by the domestic courts, the interference had been in accordance with the relevant law and necessary for protecting the applicant's own life and health. The Government left it to the Court to assess to what extent the procedure had complied with the relevant international standards.

137. It was still possible for the applicant to become pregnant, for example by means of *in vitro* fertilisation. At the hearing the Government indicated that they were prepared to cover the costs of such a procedure. However, owing to the serious risks inherent in a further pregnancy, the applicant would have to agree to undergo frequent medical check-ups throughout its duration.

B. The Court's assessment

1. General principles

138. "Private life" is a broad term, encompassing, *inter alia*, aspects of an individual's physical, psychological and social identity such as the right to personal autonomy and personal development, the right to establish and develop relationships with other human beings and the right to respect for both the decisions to have and not to have a child (see *Evans v. the United*

Kingdom [GC], no. 6339/05, § 71, ECHR 2007-I, and *E.B. v. France* [GC], no. 43546/02, § 43, 22 January 2008).

139. The essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. Any interference under the first paragraph of Article 8 must be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" for one or more of the legitimate aims listed therein. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, for example, *A, B and C v. Ireland* [GC], no. 25579/05, §§ 218-241, 16 December 2010).

140. In addition, the Contracting States are under a positive obligation to secure to persons within their jurisdiction effective respect for their rights under Article 8. For the assessment of such positive obligations it must be borne in mind that the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. Compliance with requirements imposed by the rule of law presupposes that the rules of domestic law must provide a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention.

141. Whilst Article 8 contains no explicit procedural requirements, it is important for the effective enjoyment of the rights guaranteed by this provision that the relevant decision-making process is fair and such as to afford due respect to the interests safeguarded by it. What has to be determined is whether, having regard to the particular circumstances of the case and notably the nature of the decisions to be taken, an individual has been involved in the decision-making process, seen as a whole, to a degree sufficient to ensure the requisite protection of his or her interests (for recapitulation of the relevant principles see, in particular, *Airey v. Ireland*, 9 October 1979, § 32, Series A no. 32; *Tysiąc v. Poland*, no. 5410/03, §§ 107-113, ECHR 2007-I; and *A, B and C*, cited above, §§ 247-249).

142. The principles set out above are relevant also as regards a person's right to respect for his or her family life. That notion under Article 8 of the Convention presupposes the existence of a family, but it is not confined to marriage-based relationships and may encompass other *de facto* "family" ties where the parties are living together outside marriage (see, for example, *E.B.*, cited above, § 41; *Anayo v. Germany*, no. 20578/07, §§ 55, 58 and 63, 21 December 2010; *Keegan v. Ireland*, 26 May 1994, §§ 49-55, Series A no. 290; and *Nolan and K. v. Russia*, no. 2512/04, §§ 84-88, 12 February 2009, all with further references).

2. Compliance with Article 8

143. The applicant's sterilisation affected her reproductive health status and had repercussions on various aspects of her private and family life. It

therefore amounted to interference with her rights under Article 8. This was not disputed between the parties.

144. In so far as the applicant complains that her sterilisation without her full and informed consent violated her right to respect for her private and family life, in the light of its finding that the sterilisation was in breach of the applicant's rights under Article 3 of the Convention the Court does not find it necessary to examine this complaint separately under Article 8 of the Convention.

145. The Court nevertheless considers it important to examine whether the respondent State complied with its positive obligation under Article 8 to secure through its legal system the rights guaranteed by that Article, by putting in place effective legal safeguards to protect the reproductive health of women of Roma origin in particular.

146. The Court notes that the documents before it indicate that the issue of sterilisation and its improper use affected vulnerable individuals belonging to various ethnic groups. However, the Council of Europe Commissioner for Human Rights was convinced that the Roma population of eastern Slovakia had been at particular risk. This was due, *inter alia*, to the widespread negative attitudes towards the relatively high birth rate among the Roma compared to other parts of the population, often expressed as worries of an increased proportion of the population living on social benefits. In the Commissioner's view, the Slovakian Government had an objective responsibility in the matter because of systemic shortcomings in the procedures permitted and, in particular, for failing to put in place adequate legislation and exercise appropriate supervision of sterilisation practices (see paragraph 78 above).

147. Similarly, in its third report on Slovakia, ECRI stated that public opinion towards the Roma minority in Slovakia remained generally negative. That minority remained severely disadvantaged in most areas of life. The view was expressed that more adequate safeguards should be put in place (see paragraph 80 above).

148. In the concluding observations of its 2008 periodic report on Slovakia, CEDAW expressed its concern at information received in respect of Roma women who reported having been sterilised without their prior and informed consent. It recommended that the Government take steps to ensure that patients were able to provide fully informed consent before any sterilisation procedure (see paragraph 84 above).

149. In its report of 28 May 2003 a group of experts set up by the Ministry of Health concluded that certain shortcomings that had been identified in terms of health care and non-compliance with the regulations on sterilisation affected the whole population equally, regardless of patients' ethnic origin. The report nevertheless contained a set of recommendations regarding the education of medical staff, focusing on "cultural differences in

regions with an increased concentration of Roma communities" (see paragraphs 54-55 above).

150. The Court has noted in this regard that the entry in the "Medical history" part of the record of the applicant's pregnancy and delivery, under the sub-section entitled "Social and working conditions, especially during the pregnancy", simply stated: "Patient is of Roma origin". Moreover, in the proceedings before the Slovakian civil courts, one of the doctors at Prešov Hospital considered that the applicant's situation was "the same as other similar cases" (see paragraph 32 above).

151. The Government explained that the reference to the applicant's Roma origin had been necessary as Roma patients frequently neglected social and health care and therefore required special attention. Even assuming this to have been the reason for the entry, the reference in the record to the applicant's ethnic origin without further details being given indicates, in the view of the Court, a certain mindset on the part of the medical staff as to the manner in which the medical situation of a Roma woman should be managed. Certainly, it does not suggest that special care was to be, or was in fact, exercised to ensure that the full and informed consent of such a patient was obtained before any sterilisation was contemplated, or that the patient was involved in the decision-making process to a degree permitting her interests to be effectively protected.

152. Both the 1972 Sterilisation Regulation and the Health Care Act 1994 required patients' consent prior to medical intervention. However, those provisions, in view also of their interpretation and implementation in the applicant's case, did not provide appropriate safeguards. In particular, they allowed a situation to occur in which an intervention of a particularly serious nature was carried out without the applicant's informed consent as defined in the Convention on Human Rights and Biomedicine, by which Slovakia was bound at the relevant time.

153. Specific measures aimed at the elimination of such shortcomings and ensuring compliance with the international standards were introduced with the enactment of the Health Care Act 2004, which became operative on 1 January 2005. In contrast to the 1972 Sterilisation Regulation and the Health Care Act 1994, the new legislation governs in detail the provision of information to patients and their informed consent. In particular, section 40 spells out the prerequisites for a person's sterilisation. These include a written request and written consent following prior information concerning, *inter alia*, alternative methods of contraception, planned parenthood and the medical consequences of sterilisation. No sterilisation may be carried out until at least thirty days after informed consent has been given. The Court welcomes these developments but notes that they cannot affect the applicant's situation as they are subsequent to the relevant facts of the present case.

154. Accordingly, the absence at the relevant time of safeguards giving special consideration to the reproductive health of the applicant as a Roma woman resulted in a failure by the respondent State to comply with its positive obligation to secure to her a sufficient measure of protection enabling her to effectively enjoy her right to respect for her private and family life.

155. There has therefore been a breach of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

156. The applicant complained that the facts of the case amounted to a breach of Article 12 of the Convention, which provides:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

157. The applicant contended that her right to found a family had been breached on account of her sterilisation without her full and informed consent, and that the Government had failed to establish appropriate safeguards preventing such situations from occurring.

158. The Government maintained that the applicant's inability to become pregnant by natural means was the consequence of her sterilisation, which she had undergone of her own free will. Furthermore, the evidence submitted before the domestic courts indicated that existing methods made it possible for the applicant to become pregnant if she so decided despite the risks involved.

159. The Court reiterates that Article 12 of the Convention secures the fundamental right of a man and woman to marry and to found a family. Its exercise is subject to the national laws of the Contracting States but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired (see *Muñoz Díaz v. Spain*, no. 49151/07, § 78, 8 December 2009, with further references). The exercise of the right to marry and found a family gives rise to personal, social and legal consequences as a result of which there is a close affinity between the rights under Articles 8 and 12 of the Convention (see *Frasik v. Poland*, no. 22933/02, § 90, ECHR 2010-... (extracts)).

160. In the present case, the sterilisation performed on the applicant had serious repercussions on her private and family life, and the Court has found above that it was in breach of Article 8 of the Convention. That finding absolves the Court from examining whether the facts of the case also give rise to a breach of the applicant's right to marry and to found a family.

161. It is therefore not necessary to examine separately the applicant's complaint under Article 12 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

162. The applicant complained that she had had no effective remedy at her disposal in respect of her complaints about the infringement of her rights guaranteed by Articles 3, 8 and 12 of the Convention. She relied on Article 13, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

163. The applicant argued, in particular, that the domestic authorities had an obligation to carry out an effective investigation into her sterilisation. However, no such action had been taken at the initiative of the authorities and the examination of her case in the civil proceedings brought by the applicant had not been effective.

164. The Government disagreed and maintained that the applicant had had effective remedies at her disposal, namely an action under Articles 11 et seq. of the Civil Code for protection of her personal rights and, ultimately, a complaint to the Constitutional Court.

165. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. Its effect is to require the provision of a domestic remedy capable of dealing with the substance of an "arguable complaint" under the Convention and of granting appropriate relief (see, amongst other authorities, *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI). The word "remedy" within the meaning of Article 13 does not, however, mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *mutatis mutandis*, *Bensaid v. the United Kingdom*, no. 44599/98, § 56, ECHR 2001-I).

166. In the present case the applicant was able to have her case reviewed by the civil courts at two levels of jurisdiction, albeit unsuccessfully. She thus had an effective remedy in respect of her complaint about her sterilisation without informed consent. It is true that the Constitutional Court subsequently rejected the applicant's complaint for reasons which the Court, in its admissibility decision, characterised as excessively formalistic when examining compliance with the requirement under Article 35 § 1. This does not, however, affect the position under Article 13, given the remedy which was available to the applicant before the civil courts. In addition, it was open to the applicant to request a criminal investigation into her case.

167. The Court has found a breach of Article 8 on account of the respondent State's failure to incorporate appropriate safeguards in the domestic law (see paragraph 152). To the extent that the applicant alleges a breach of Article 13 on the ground that the deficiencies in the domestic law were at the origin of her sterilisation and the subsequent dismissal of

her action, the Court reiterates that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law (see *Iordachi and Others v. Moldova*, no. 25198/02, § 56, 10 February 2009).

168. In these circumstances, the Court finds no breach of Article 13 of the Convention taken together with Articles 3, 8 and 12.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

169. The applicant complained that in the context of her sterilisation she had been discriminated against, on the grounds of her race and sex, in the enjoyment of her rights under Articles 3, 8 and 12 of the Convention. She alleged a violation of Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The applicant

170. The applicant considered that her ethnic origin had played a decisive role in the decision by the medical personnel of Prešov Hospital to sterilise her. Her complaint about discriminatory treatment was to be examined in the light of the sterilisation policies and practice existing under the communist regime and also in the context of the widespread intolerance towards the Roma in Slovakia. That climate had influenced the attitudes of the medical personnel. The indication in her medical record that she was of Roma ethnic origin and her treatment as a patient in Prešov Hospital demonstrated the climate in that hospital with regard to Roma patients and the overall context in which her sterilisation had taken place. After the hearing the applicant specified that she did not wish to complain separately about the segregation of Roma patients in Prešov Hospital.

171. In addition to having been subjected to racial discrimination, the applicant alleged that she had been subjected to discrimination on the ground of her sex as she had been subjected to a difference in treatment in connection with her pregnancy. Referring to documents from CEDAW, the applicant argued that a failure by health services to accommodate the fundamental biological differences between men and women in reproduction was in breach of the prohibition of discrimination on the ground of sex. The sterilisation performed on her without her full and informed consent amounted to a form of violence against women. As such it was contrary to Article 14.

2. The Government

172. The Government denied any practice of targeted discrimination of Roma patients in medical institutions in Slovakia, including Prešov Hospital, and disputed the applicant's allegations in that regard.

173. The applicant's sterilisation had been indicated for medical reasons and had been performed at her request. In other similar cases doctors had proceeded in the same way regardless of patients' race or skin colour.

174. While it was true that the medical documents included an entry indicating that the applicant was of Roma origin, that entry had been made in the delivery record, in the part describing the applicant's medical history. The medical staff of Prešov Hospital specifically mentioned the Roma origin of patients in documents, as those patients' social and health care had been frequently neglected and they therefore required special attention.

3. FIGO

175. FIGO considered it unethical for a physician to perform a sterilisation procedure as an adjunct to a Caesarean section because he or she considered it desirable in the patient's interest, unless the physician had fully discussed the matter with the patient before delivery and received her voluntary consent. Given the irreversible nature of many sterilisation procedures, physicians should not allow any language, cultural or other differences between themselves and their patients to leave the latter unaware of the nature of the sterilisation procedures being proposed to them and for which they were requested to provide prior consent.

B. The Court's assessment

176. The applicant alleged a breach of Article 14 read in conjunction with Articles 3, 8 and 12 of the Convention. In the circumstances of the case, the Court considers it most natural to consider the discrimination complaint in conjunction with Article 8 as the interference at issue affected one of her essential bodily functions and entailed numerous adverse consequences for her private and family life in particular.

177. The materials before the Court indicate that the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups. The Court has held that the information available is not sufficient to demonstrate in a convincing manner that the doctors acted in bad faith, with the intention of ill-treating the applicant (see paragraph 119). Similarly, and notwithstanding the fact that the applicant's sterilisation without her informed consent calls for serious criticism, the objective evidence is not sufficiently strong in itself to convince the Court that it was part of an organised policy or that the hospital staff's conduct was intentionally racially motivated (see, *mutatis*

mutandis, *Mižigárová v. Slovakia*, no. 74832/01, §§ 117 and 122, 14 December 2010).

178. Nevertheless, it is relevant from the viewpoint of Article 14 that in their materials both the Human Rights Commissioner and ECRI identified serious shortcomings in the legislation and practice relating to sterilisations. They expressed the view that those shortcomings were liable to particularly affect members of the Roma community, who were severely disadvantaged in most areas of life. The same was implicitly admitted by the group of experts established by the Ministry of Health, who recommended special measures in respect of the Roma population.

179. In that connection the Court has found that the respondent State failed to comply with its positive obligation under Article 8 of the Convention to secure to the applicant a sufficient measure of protection enabling her, as a member of the vulnerable Roma community, to effectively enjoy her right to respect for her private and family life in the context of her sterilisation.

180. In these circumstances, the Court does not find it necessary to separately determine whether the facts of the case also gave rise to a breach of Article 14 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

182. The applicant argued that the interference with her rights had been of a particularly serious nature and had had lasting repercussions. She claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

183. The Government considered that claim overstated. They argued that the applicant had given her consent to the sterilisation procedure and that she could undergo *in vitro* fertilisation if she wished to have more children. The Government pointed out that, at the hearing before the Court, they had offered to cover the costs of such a procedure.

184. Having regard to the breaches of the Convention established and their factual background, the Court awards the applicant EUR 31,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

185. The applicant claimed EUR 38,930.43. That sum comprised EUR 34,621.59 in respect of the legal costs related to her representation both in the domestic proceedings and before the Court. It further comprised EUR 4,308.84 in respect of costs and expenses related to the preparation and photocopying of documents, communications and postage, and expenses related to the participation of the applicant's representatives at the hearing on 22 March 2011, as well as irrecoverable costs incurred in connection with the hearing scheduled for 7 September 2010 (see paragraph 6 above).

186. The Government submitted that the claim was unreasonably high and that the Court should grant the applicant compensation only in respect of those costs and expenses which she had reasonably incurred.

187. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were reasonable as to quantum (see *Sanoma Uitgevers B.V. v. the Netherlands*, no. 38224/03, § 109, ECHR 2010-...., with further references).

188. In the present case the Court considers that the sum claimed is excessive, in particular as regards the fees of the applicant's representatives. Regard being had to the information in its possession and the above-mentioned criteria, the Court considers it reasonable to award the global sum of EUR 12,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

189. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a substantive violation of Article 3 of the Convention;

2. *Holds* unanimously that there has been no procedural violation of Article 3 of the Convention;

3. *Holds* unanimously that there has been a violation of Article 8 of the Convention;

4. *Holds* unanimously that it is not necessary to examine separately the complaint under Article 12 of the Convention;

5. *Holds* unanimously that there has been no violation of Article 13 of the Convention;

6. *Holds* by six votes to one that a separate examination of the complaint under Article 14 of the Convention is not called for;

7. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
(i) EUR 31,000 (thirty-one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* by six votes to one the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mijović is annexed to this judgment.

N.B.
F.A.

DISSENTING OPINION OF JUDGE MIJOVIC

While I have no difficulty in sharing the majority's view that there have been violations of both Articles 3 and 8 of the Convention, to my regret, my opinion on the Article 14 complaint differs significantly from the conclusion reached by the majority. The Chamber decided that no separate examination of the complaint under Article 14 of the Convention was called for. To me, that complaint was the very essence of this case and should have been dealt with on its merits, with a finding of a violation of Article 14.

In its case-law the Court has established that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. Against the background of the principles of the Court's case-law as confirmed in *D.H. and Others v. the Czech Republic* ([GC], no. 57325/00, §§ 175-181, ECHR 2007) and *Oršuš and Others v. Croatia* ([GC], no. 15766/03, §§ 147-153, ECHR 2010), I am compelled to disagree totally with the Chamber's finding and regret that the discrimination to which the applicant was clearly subjected is given scant attention in the judgment.

The facts of the case confirm that the applicant had a medical record and that under the "Medical history" sub-section, the words "Patient is of Roma origin" appeared. The Government explained that that entry in the delivery record indicating the applicant's ethnic origin had been necessary as Roma patients' social and health care had frequently been neglected and they therefore required "special attention".

I find this argument totally unacceptable since the "special attention" was in fact the applicant's sterilisation, which has been found to be in breach of both Articles 3 and 8 of the Convention. Finding violations of Articles 3 and 8 alone in my opinion reduces this case to the individual level, whereas it is obvious that there was a general State policy of sterilisation of Roma women under the communist regime (governed by the 1972 Sterilisation Regulation), the effects of which continued to be felt up to the time of the facts giving rise to the present case. Additionally, and in order to illustrate that not many things had changed regarding State policy towards the Roma population, in its third report on Slovakia ECRI stated that public opinion towards the Roma minority remained generally negative. Furthermore, ECRI expressed particular concern about reports indicating that Roma women had been, on an ongoing basis, subjected to sterilisation in some hospitals without their full and informed consent. The fact that there are other cases of this kind pending before the Court reinforces my personal conviction that the sterilisations performed on Roma women were not of an

accidental nature, but relics of a long-standing attitude towards the Roma minority in Slovakia. To my mind, the applicant was "marked out" and observed as a patient who had to be sterilised just because of her origin, since it was obvious that there were no medically relevant reasons for sterilising her. In my view, that represents the strongest form of discrimination and should have led to a finding of a violation of Article 14 in connection with the violations found of Articles 3 and 8 of the Convention.

For the above reasons I also voted against the Chamber's finding that the remainder of the applicant's claim for just satisfaction should be dismissed, since I am of the opinion that a violation of Article 14, if found, would have led to the acceptance of these claims.