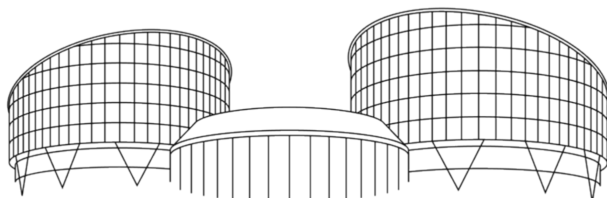

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15966/04
by I.G., M.K. and R.H.
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 22 September 2009 as a Chamber composed of:
Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*
and Lawrence Early, *Section Registrar*,
Having regard to the above application lodged on 27 April 2004,
Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,
Having deliberated, decides as follows:

## THE FACTS

The applicants, Ms I.G., Ms M.K. and Ms R.H., are Slovakian nationals. They are of Roma ethnic origin and were born in 1983, 1981 and 1972 respectively. They were represented before the Court by Ms V. Durbáková,

a lawyer practising in Košice, as well as by Lord Lester of Herne Hill QC, of Blackstone Chambers in London, and Ms B. Bukovská of the Center for Civil and Human Rights in Košice.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

## A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

### *1. The applicants' sterilisation in Krompachy Hospital*

The applicants were sterilised in the gynaecology and obstetrics department of Krompachy Hospital and Health Care Centre in Krompachy (*Nemocnica s poliklinikou Krompachy* – "Krompachy Hospital").

Krompachy Hospital was incorporated as a medical institution under the authority of the Ministry of Health. With effect from 1 January 2003 it was transferred to the administrative supervision of Krompachy municipality.

The companies register available on the Internet indicates that, as from 22 January 2004, a private company, Krompachy Hospital (*Nemocnica Krompachy spol. s r.o.)* extended the scope of its activities to encompass health care services including gynaecology and obstetrics. One of its partners was Krompachy municipality. The latter's share in the company's capital amounts to 52% per cent.

Both the private company and the original Krompachy Hospital have the same address.

The applicants submitted in this context that the public hospital in Krompachy formally still existed, although it did not perform any activities or possess any assets.

#### (a) The case of the first applicant

The first applicant, Ms I.G., was sterilised on 23 January 2000, during the delivery of her second child.

According to the first applicant, after her admittance and preliminary checks, the gynaecologist in the hospital ordered her to be transferred to theatre for a Caesarean section. She was asked to write down the names for her future child on a piece of paper. The first applicant was subsequently transferred to theatre and a Caesarean section was performed on her. During the operation, the first applicant was sterilised by means of tubal ligation. This was the first applicant's second delivery and her second delivery by Caesarean section.

After she woke up from the anaesthetic, the first applicant was told that she had given birth to a girl.

The first applicant submitted that she had not been given any further details about the delivery, nor was she told that she had undergone tubal ligation and that she had been sterilised. Furthermore, she did not receive any information about post-sterilisation treatment.

The next morning she was approached by the doctor treating her, who came into her room and asked her to sign a document. The first applicant was told that she had to sign the document because she had undergone a Caesarean section and all women who had Caesarean sections had to sign it.

Several days after her delivery in 2000 the first applicant experienced medical problems which culminated in a hysterectomy. It was performed in a different hospital in Košice.

She first learned that she had been sterilised during her second delivery while reviewing her medical files with her lawyer on 16 January 2003. The medical file contained a form entitled "Request for authorisation of sterilisation". The form had been filled in using a typewriter. It was dated 23 January 2000 and was signed by the first applicant.

The second half of the pre-printed form contained the decision of the district sterilisation committee at Krompachy Hospital dated 23 January 2000. In it the committee approved the first applicant's sterilisation. It indicated that the sterilisation was required for medical reasons, that the applicant had two children, that she had earlier given birth by Caesarean section and that she had a small pelvis. The conditions laid down in the 1972 Sterilisation Regulation had been met in relation to the applicant's sterilisation. The decision was signed by the president of the committee, the district medical specialist on the issue and the secretary to the sterilisation committee.

The first applicant submitted that her sterilisation had been contrary to Slovakian law as at the relevant time she had been 16 years old and her legal guardians had not consented to the operation.

The first applicant has been living in constant fear that her partner will leave her because she is not able to bear him any more children.

#### (b) The case of the second applicant

The second applicant, Ms M.K., was sterilised in Krompachy Hospital on 10 January 1999. The sterilisation was performed on her during her second delivery by Caesarean section. Shortly after being admitted to Krompachy Hospital, she was transferred to a ward, where she was approached by a nurse who told her that the delivery would have to be by Caesarean section. The Caesarean delivery was then performed. During the operation the medical personnel of Krompachy Hospital also performed a tubal ligation on the second applicant.

At the date of delivery the second applicant was 17 years old (that is to say, a minor) and not legally married. Neither the second applicant nor her

parents were informed of her sterilisation and they never signed any document consenting to it.

The second applicant learned only four years later, during a criminal investigation, that her medical record contained a form entitled “Request for sterilisation” with her signature dated 9 January 1999. The form lists as the reason for the sterilisation “multiple varices in the pelvis minor” and indicates that the applicant had given birth to two children by Caesarean section. The same document contains a decision by the district sterilisation committee approving the request and dated 9 January 1999.

When the second applicant’s partner learned that she would not be able to have another child due to the sterilisation, he left her. Due to her inability to have more children, her social status in her community has fallen and, as a result, it has been very difficult for the second applicant to find a new partner.

Currently, the second applicant has a partner, but she is worried about the future of this relationship because she and her partner want to have a child together and her partner is complaining about her infertility. The second applicant also suffers from serious medical side-effects from her sterilisation.

#### (c) The case of the third applicant

The third applicant, Ms R.H., was sterilised in Krompachy Hospital on 11 April 2002. The sterilisation was performed during her fourth delivery, when she delivered her fourth and fifth children (twins). It was her first delivery by Caesarean section.

Prior to her delivery the third applicant had regular pre-natal check-ups with the chief gynaecologist in Krompachy Hospital. She was told that her pregnancy would be risky since she was expecting twins. In the eighth month of her pregnancy she was informed that she would have to deliver by Caesarean section.

The third applicant arrived at Krompachy Hospital in the evening of 10 April 2002 after she had started feeling contractions. She was admitted to the gynaecology ward at 10.15 p.m. and spent the night there. At approximately 8 a.m. on 11 April 2002 she was taken to theatre. A nurse gave her a pre-medication injection as a precursor to the anaesthetic. The applicant’s head started spinning. A nurse, with the doctor standing beside her, asked the third applicant to sign a paper. Because her head was spinning as a result of the injection, the third applicant was unable to read what was written on the paper. The nurse told the applicant that she had to sign it as she was going to have a Caesarean delivery.

The third applicant alleged that she had signed the document without understanding its contents.

On 18 April 2002 the third applicant was discharged from Krompachy Hospital at her own request. According to her, the doctor in the hospital had

asked her to sign a document prior to her discharge. She was given no time to read the document when signing it. In reply to a question from the applicant the doctor stated that the paper confirmed that she had been sterilised. The doctor refused to give any further explanation to the applicant.

The discharge report indicates that the third applicant was sterilised during the Caesarean delivery. It was only later, on 14 August 2003, during questioning at a police station, that a police investigator showed the applicant the request for sterilisation which apparently contained her signature.

The form had been filled in using a typewriter and was dated 10 April 2002. The second part contains the decision of the sterilisation committee dated 10 April 2002 approving the operation as being compliant with the 1972 Sterilisation Regulation. The document states that there existed "medical reasons" for the operation and that the applicant already had three children.

The third applicant submitted that she had not given informed consent of her own free will to her sterilisation.

The sterilisation has had serious consequences for the private and family life of the third applicant, as she cannot have any more children with her partner; she has also suffered medical side-effects from the sterilisation.

#### (d) The applicants' treatment in Krompachy Hospital

The applicants submitted that they had received inferior treatment during their stay in Krompachy Hospital. In their view, racial prejudice on the part of medical personnel had played a significant role in the quality of the treatment they received.

In particular, the applicants stated that they had been accommodated separately from non-Roma women in so called "Gypsy rooms". They had been prevented from using the same bathrooms and toilets as non-Roma women and could not enter the dining room where there was a television set. The second applicant had also experienced verbal abuse from health care personnel during her stay in Krompachy Hospital.

With reference to the Body and Soul Report (see below), the applicants stated that the chief gynaecologist at Krompachy Hospital had admitted that patients were categorised and separated according to their "adaptability" and level of hygiene. That categorisation was carried out by him on an individual basis. According to the Body and Soul Report the same physician had also stated that Roma did not know the value of work, that they abused the social welfare system and that they had children simply in order to obtain more social welfare benefits.

The Government disputed the above allegations. They relied, *inter alia*, on the statement of a gynaecologist at Krompachy Hospital, according to whom there had been no deliberate segregation of Roma women. On the

contrary, due to the similarity of their habits Roma women themselves asked to be placed in rooms together; they even moved without authorisation to other rooms for that purpose. There were also cases where Roma women with a higher social status requested isolation from other patients of Roma origin.

### 2. *The applicants' attempts to obtain redress*

#### (a) Criminal investigation

In reaction to the publication by the Centre for Reproductive Rights and the Centre for Civil and Human Rights of *Body and Soul: Forced and Coercive Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia* ("the Body and Soul Report"), the Human Rights and Minorities Section of the Office of the Government of Slovakia initiated a criminal investigation into the alleged unlawful sterilisation of several women, including the three applicants.

The first and third applicants joined the Office of the Government in their criminal complaint and, together with the second applicant, also acted as witnesses and injured parties in the proceedings.

The proceedings were formally brought by the regional criminal investigation department in Košice on 31 January 2003 and concerned the alleged offence of genocide.

In a decision of 24 October 2003 the regional criminal investigation department in Žilina, to which the case had been transferred, discontinued the criminal investigation, finding that the alleged facts underlying the investigation had not occurred and that nothing indicated that any offence under the Criminal Code had been committed.

The decision comprises 30 pages and refers to statements by 13 women, including the applicants, who were sterilised in Krompachy Hospital and who acted as injured parties in the proceedings, statements by 23 other women who were sterilised in Krompachy Hospital, statements by 30 physicians and a number of other witness statements. The police authority also had regard to a report by the Ministry of Health dated 28 May 2003 (see below) on an investigation relating to the alleged genocide and segregation of persons of Roma ethnic origin in gynaecology and obstetrics departments and to compliance with the instructions governing sterilisation.

The police authority obtained an expert opinion submitted by the Faculty of Medicine of the Comenius University in Bratislava, addressing the circumstances under which the women in question had been sterilised. The opinion concluded that the sterilisations in 22 of the cases under review, including those of the applicants, had been lawful. As to the first and the second applicants, they had been sterilised for medical reasons, namely repeated delivery by Caesarean section, a small pelvis and varices in the

minor pelvis. The absence of consent by their legal representatives was of a formal character, as the sterilisation of the patients concerned had been indicated for medical reasons independent of the will of their legal representatives. The third applicant had been sterilised on the ground that she already had several children, that is, for social rather than medical reasons. In all cases the operation had been approved by a sterilisation committee and had been in conformity with the 1972 Sterilisation Regulation.

The expert opinion further indicated that surgery in the context of a Caesarean section resulted in scars on the uterus which affected its tissues. A third pregnancy following two deliveries by Caesarean section was dangerous for a mother and her child as there was a high risk of rupture of the uterus resulting in fatal bleeding during the pregnancy. The contemporary scientific view was that it was necessary to prevent further pregnancy in such cases. Sterilisation was not an operation aimed at the immediate saving of a woman’s life. However, where sterilisation was to be carried out, it was appropriate to do so in the context of surgery in the course of which the abdominal cavity was being opened, such as a Caesarean section.

On 31 October 2003 the applicants and two other persons filed a complaint against the police investigator’s decision of 24 October 2003.

On 9 March 2004 the regional prosecutor’s office in Košice dismissed the complaint, holding that the injured persons, including the applicants, were not entitled to file a complaint against the decision of 24 October 2003. In a separate letter of 9 March 2004 the regional prosecutor addressed the arguments of the complainants and found that the police investigator’s decision had been lawful and correct.

On 15 April 2004 the applicants filed a request for the General Prosecutor to submit a complaint about a breach of law to the Supreme Court. The General Prosecutor’s Office considered it as a request for review of the lawfulness of the criminal proceedings. On 10 June 2004 it informed the applicants that their request had been rejected, and that the General Prosecutor fully approved the proceedings and the decision to terminate the investigation.

On 1 June 2005 the Constitutional Court quashed the decision given by the regional prosecutor’s office in Košice on 9 March 2004 for the reasons set out below.

On 28 September 2005 a public prosecutor of the regional prosecutor’s office in Košice dismissed a further complaint against the police investigator’s decision of 24 October 2003. The public prosecutor found that all the available and necessary evidence had been gathered with a view to determining the issue. It had not been shown that the medical doctors concerned had taken unauthorised actions with a view to preventing the

birth of children or that they had otherwise acted in a manner contrary to the law.

Following the Constitutional Court's judgment of 13 December 2006 (see below) the Košice regional prosecutor's office, on 9 February 2007, quashed the investigator's decision of 24 October 2003 to discontinue the criminal proceedings.

Subsequently, the police investigator examined and cross-examined the applicants and the medical staff. On 28 December 2007 the investigator again discontinued the proceedings, concluding that no criminal offence had been committed.

On 4 January 2008 the applicants lodged a complaint. They argued that the investigator had failed to deal with all relevant aspects of the case and had not remedied the shortcomings to which the Constitutional Court had pointed in the judgment of 13 December 2006. In particular, the legal representatives of the first and the second applicants had not consented to the applicants' sterilisation as required by the law and the third applicant had not given her informed consent to the operation.

On 19 February 2008 the Košice regional prosecutor's office dismissed the applicants' complaint. The relevant parts of the decision read as follows:

> "...The investigation showed that not a single sterilisation was carried out with the aim of preventing the birth of children in the Roma ethnic community in Slovakia. The expert opinion in the field of gynaecology and obstetrics submitted by the Medical Faculty of the Comenius University in Bratislava ... showed that in each individual case the sterilisation of Roma women pursued the aim of protecting their health; in several cases it resulted in saving ... their life. The sterilisations were carried out in accordance with the law then in force, namely [the 1972 Sterilisation Regulation]...
>
> Witness statements and documentary evidence show that all the patients of Roma origin who were sterilised were advised by the physician involved and gave written consent to their sterilisation...
>
> [The applicants] allege that they did not give their 'informed' consent to sterilisation; they signed a form which they believed confirmed the fact that they had undergone a Caesarean section, or did not know what they were signing. A cross-examination was carried out of [the applicants] and [the four physicians involved] after which the latter firmly reiterated that the [applicants] had been duly advised of their sterilisation.
>
> [The applicants'] statements contradict the other evidence taken. The bulk of witnesses of Roma origin who were sterilised stated that they had been advised, even repeatedly, and that they had understood the nature and consequences of sterilisation.
>
> Witnesses [M.K., J.K. and K.Š.], physicians in the gynaecology and obstetrics department of Krompachy Hospital, categorically denied having sterilised women on their own initiative and without any medical indication or legal grounds. Their only aim in carrying out the operations had been the preservation of the health and life of the patients and their foetus... The expert opinion indicated, as a serious example of a patient's refusal to consent to sterilisation, the case of [M.H.] who in 1999 had died, together with her child, because of her refusal to consent to her sterilisation.

The expert opinion explains ... that in accordance with current medical opinion it is necessary to prevent further pregnancy in women who have undergone two Caesarean sections as there is a risk of complications which could result in the patients' death. Sterilisation is a reliable method of preventing further pregnancy after two Caesarean sections...

Witness statements [of three physicians in the gynaecology and obstetrics department of Krompachy Hospital] indicate that the sterilisation committee, composed of the hospital's director, the head physician and the head nurse of the department, met as the need arose; in urgent cases its members were convened even when they were not on duty... In the cases of [the first and second applicants], who were minors and whose state of health required urgent surgery, it had been impossible to obtain the consent of their legal representatives. Witnesses [K.Š. and M.P.] ... stated that [the second applicant] had been an undisciplined patient without any interest in her pregnancy and that she had failed to attend ante-natal consultations. A similar statement was made by [B.B.], district gynaecologist, according to whom all Roma women including [the first applicant] knew what sterilisation implied; none of the patients had complained afterwards that they had been sterilised against their will.

Witness [J.K.] stated that, in accordance with the charter of patients' rights, the consent of a patient who was over the age of 16 sufficed where the physician concluded that the patient's mind and will were sufficiently mature to be able to assess the consequence of his or her decision. That condition was met in the cases [of the first and the second applicants], who had previously given birth...

Witness [J.P.], the legal representative of [the first applicant] and witness [B.K.], the legal representative of [the second applicant], stated that, if asked, they would certainly have given their agreement to sterilisation...

It was also examined in the context of the investigation whether ... the physicians had not committed other criminal offences [than genocide]. No objective or subjective appearance of any criminal offence was established in any of the individual cases of sterilisation.

In the present case no offence of causing harm to the rights of other persons within the meaning of Article 209 § 1 of the Criminal Code was committed, as the investigation showed that the injured persons had given their informed consent to sterilisation.

... The decision of [the police investigator] is correct and lawful."

On 16 March 2008 the applicants complained about that decision to the General Prosecutor's Office.

On 19 May 2008 the latter replied that no reason had been found for reaching a different conclusion. In particular, the prosecuting authorities had considered all relevant aspects of the case and had correctly concluded that no criminal offence had been committed. The General Prosecutor's Office expressed the view that, contrary to what the prosecuting authorities at lower level had held, the applicants could not be considered as injured parties for the purpose of the criminal proceedings as they had suffered no harm to their health or other damage, and their rights had not been infringed.

#### (b) Civil proceedings

In 2003 the applicants unsuccessfully requested doctors to assess the damage they had suffered, in accordance with Regulation No. 32/1965 as amended, so that they could claim damages before a court.

On 5 September 2003 the Spišská Nová Ves District Court rejected their request for an interim measure ordering the doctors concerned to submit an opinion enabling the damage to be quantified. The court found that such an obligation could be imposed on medical professionals only in the context of regular proceedings concerning a claim for damages.

On 12 February 2004 and 2 June 2004 respectively the first and second applicants claimed damages from Krompachy Hospital. They relied on Articles 420 and 444 of the Civil Code and claimed that they had been unlawfully sterilised by the defendant's employees. The third applicant filed a similar action with the Spišská Nová Ves District Court on 7 October 2004.

As regards the above mentioned civil actions of the first and the third applicants, the Regional Court in Košice, in 2005, quashed the first-instance decisions according to which the right claimed had lapsed. The Regional Court sent the cases back to the District Court in Spišská Nová Ves. On 22 March 2006 the District Court sought an expert opinion.

As regards the proceedings concerning the civil action of the second applicant, the court of appeal returned the case to the court of first instance on 6 February 2006.

In the context of appeal proceedings it was established that the private company which had started providing health care services including gynaecology and obstetrics in January 2004 was not the legal successor to Krompachy Hospital.

On 28 March 2006 the district prosecutor's office in Spišská Nová Ves admitted, in reply to the applicants' complaint, that Krompachy municipality had been under an obligation to formally liquidate Krompachy Hospital after the above-mentioned private company had started providing health care services. On 4 July 2006 the prosecutor informed the applicants that the municipality envisaged doing so before the end of 2006.

All three sets of proceedings are pending.

#### (c) Constitutional proceedings

##### *(i) Complaint of 24 May 2004*

On 24 May 2004 the applicants lodged a complaint with the Constitutional Court under Article 127 § 1 of the Constitution. They referred to the above decisions by the police investigator of the regional criminal investigation department in Žilina and the regional prosecutor's office in Košice of 24 October 2003 and 9 March 2004 respectively, and alleged that their rights under Articles 12 § 2, 16 § 2, 19 § 2 and 41 § 1 of

the Constitution and Articles 3, 8, 12, 13 and 14 of the Convention had been breached.

As regards Article 12 of the Convention in particular, the applicants alleged that in the absence of their genuine consent they had lost the possibility of having more children, as a result of which their relationships with their partners as well as their position within the family and the Roma community had been affected.

On 16 March 2005 the Constitutional Court declared admissible the complaints under Articles 3, 8, 13 and 14 of the Convention and their constitutional equivalents relating to the above decisions of the criminal investigation department and the regional prosecutor's office. It declared inadmissible the remainder of the applicants' complaint. In particular, it found no causal link between the decisions of the police investigator and the public prosecutor and the applicants' right under Article 12 of the Convention to found a family.

On 1 June 2005 the Constitutional Court found that the regional prosecutor's office in Košice had violated the applicants' rights under Articles 13 and 3 of the Convention in that it had erroneously rejected their complaint against the police investigator's decision of 24 October 2003 without addressing its merits. The Constitutional Court quashed the decision of the regional prosecutor's office of 9 March 2004 and ordered that authority to examine the applicants' complaint. That order, together with the finding of a violation of the applicants' rights, was held to constitute sufficient just satisfaction in the circumstances of the case. The Constitutional Court did not accept that there had also been a violation of Articles 8 and 14 of the Convention as the assessment of those complaints depended on the outcome of the future proceedings before the prosecuting authorities. Finally, the Constitutional Court ordered the regional prosecutor's office in Košice to reimburse the applicants' costs and expenses in the constitutional proceedings.

*(ii) Complaint of 30 November 2005*

On 30 November 2005 the applicants complained that the authorities involved in the above criminal proceedings had failed to ensure that the persons responsible for their sterilisation be prosecuted and that the applicants be awarded compensation. The applicants alleged a violation of Articles 3, 8, 13 and 14 of the Convention. They also relied on several constitutional rights.

On 13 December 2006 the Constitutional Court found that by its decision of 28 September 2005 the regional prosecutor's office in Košice had violated the applicants' rights under Articles 3 and 8 of the Convention in their procedural aspect as well as the constitutional equivalents of those rights. The decision stated that it had not been appropriate to discontinue the criminal proceedings in the circumstances of the case. In particular, the

prosecuting authorities had not duly examined whether the applicants had been sterilised with their informed consent and whether or not an offence had been committed in that context.

The Constitutional Court quashed the decision in issue and ordered the regional prosecutor's office to re-examine the case taking into account the applicants' rights under Articles 3 and 8 of the Convention. The decision indicated the issues which the prosecuting authorities were required to clarify.

The Constitutional Court awarded 50,000 Slovakian korunas (SKK) (the equivalent of 1,430 euros (EUR)) to each of the applicants. It ordered the regional prosecutor's office to reimburse the applicants' costs.

*(iii) Complaint of 24 April 2008*

On 24 April 2008 the applicants complained under Articles 3, 8, 13 and 14 of the Convention about the Košice regional prosecutor's decision of 19 February 2008 and the fact that their case had not been investigated in a prompt and efficient manner. The applicants indicated that they had also complained of that decision to the General Prosecutor's Office by means of an extraordinary remedy and that the latter had not yet replied to them.

On 3 June 2008 the applicants sent the Constitutional Court a copy of the letter of the General Prosecutor's Office of 19 May 2008 rejecting their complaint about the regional prosecutor's decision.

The Constitutional Court rejected the applicants' complaint on 29 July 2008. It held that the decision of the Košice regional prosecutor's office of 19 February 2008 had been reviewed by the General Prosecutor's Office at the applicants' request. Any interference with the applicants' rights which the Constitutional Court was entitled to examine in the context of the proceedings complained of therefore stemmed from the decision which the General Prosecutor's Office had given on 19 May 2008. Since the applicants had exclusively challenged the decision of the regional prosecutor's office and since the Constitutional Court was bound by the way in which they had specified the subject-matter of their complaint, the court concluded that it lacked jurisdiction to deal with the complaint.

### 3. *Accounts of sterilisation practices in Slovakia*

#### (a) Information submitted by the applicants

The applicants 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 they believed had influenced their own sterilisation.

In particular, they 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 governmental efforts “to control the highly unhealthy Roma population through family planning and contraception.”

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.

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.

The applicants further referred to a number of reports and statements by human rights organisations, both in Slovakia and abroad, including governmental and inter-governmental bodies such as the European Commission against Racism and Intolerance, the UN Human Rights Committee, the US Helsinki Commission, Amnesty International, the European Roma Rights Centre, Human Rights Watch and the International Helsinki Federation for Human Rights, requesting the Slovakian authorities to conduct an impartial and fair investigation into the allegations of forced and coerced sterilisation of Roma women in Slovakia or criticising the absence of such an investigation.

In 2002 the Center for Reproductive Rights in collaboration with Centre for Civil and Human Rights conducted a fact-finding mission involving private interviews with more than 230 women in almost 40 Romani settlements in eastern Slovakia on topics including sterilisation practices, treatment by health-care professionals in maternal health-care facilities and access to reproductive health-care information. They also interviewed Slovak hospital directors, doctors, nurses, patients, government officials, activists, and non-governmental organisations on the same issues.

In 2003 the above organisations published “*Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*”. In it the authors concluded that there had been widespread violations of Romani women’s human rights in eastern Slovakia, such as coerced and forced sterilisation, misinformation in reproductive health matters, racially discriminatory access to health-care resources and treatment, physical and verbal abuse by medical care providers and denial of access to medical records. The publication also includes a set of recommendations with a view to remedying to the situation.[1]

[1] The text of the publication is available at web site:
http://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo_slov_part1_0.pdf

On 12 December 2005 the applicants submitted a statement by Julia Van Rooyen, M.D., written on behalf of Physicians for Human Rights. The statement expressed the view that accepted medical standards had been violated in the applicants' cases. In particular, the author stated that sterilisation had never been a life-saving procedure, that full and informed consent must always be obtained prior to tubal ligation and that the medical literature supported the practice of vaginal birth after Caesarean section as safe and medically indicated where previous Caesarean sections had been low transverse sections.

**(b) Information relied upon by the respondent Government**

*(i) Report of the Ministry of Health*

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.

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 10 years had been reviewed.

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

In the absence of official statistical data concerning the ethnic origin of the population, the expert group was able to assess the position as regards women of Roma ethnic origin only indirectly. 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 frequency of sterilisations was statistically insignificantly higher in the Prešov and Košice regions than in other regions of Slovakia.

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 established in several cases. However, they affected the whole population regardless of patients' ethnic origin. Hospitals in which administrative errors had been discovered had adopted measures with a view to eliminating them.

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.

The report also contained a set of recommendations in the field of legislation and education of both medical personnel and persons of Roma ethnic origin. It indicated that due to the situation existing during the preceding decades, medical personnel and individuals were not on an equal footing as regards 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 were recommended to ensure that individuals received the necessary information with a view to being able to give informed consent to their treatment or refuse it. Individual requests for medical intervention were to be made in a legally valid manner enabling the persons concerned to express their own free will after receiving the appropriate information. The measures recommended in the report comprised an amendment to the statutory rules on sterilisation.

*(ii) Position of the Slovakian Society for Planned Parenthood*

Representatives of the Slovakian Society for Planned Parenthood and Parenthood Education submitted a position on the Body and Soul Report. The authors of the position contested the allegation that obsolete and inappropriate medical methods were used in Slovakia when performing Caesarean sections. They argued that 80% of births after a previous Caesarean section in Slovakia were by vaginal delivery. Admittedly, the requirement of prior informed consent to sterilisation was absent in the regulatory framework in Slovakia. Informing the women concerned about the necessity of sterilisation in the process of delivery did not enable them to be informed in an optimal manner so that they could fully assess the repercussions of their decision to consent to the procedure. However, it was frequently the case with Roma women that they failed to visit ante-natal care centres. The only possibility for medical personnel to inform them about contraception and sterilisation was therefore the short period during the delivery. The medical practitioners involved in sterilisations acted in good faith and in accordance with the law in force.

*(iii) Position of Krompachy Hospital*

In a letter to the spokesman of the Ministry of Health dated 3 February 2003 the director of Krompachy Hospital contested the allegation that Roma women had been forcibly sterilised in his hospital. The letter contained the following information.

In the area covered by Krompachy Hospital the post-natal mortality rate of Roma children had fallen from 25 per thousand in 1990 to 5 per thousand in 2002. The majority of deliveries in the hospital concerned Roma women; the peri-natal mortality rate was around 10 per thousand, that is, approximately the same as in other hospitals within the region.

The Richnava Roma settlement (where the first and second applicants lived) was outside the area served by Krompachy Hospital. However, its

staff did not refuse to treat inhabitants of that settlement, as it was closer than the hospital to which they administratively belonged. Between 1990 and 2003 150 women from Richnava settlement had given birth by vaginal delivery and 18 Roma women (that is, 12 per cent) had delivered by Caesarean section. The ratio was around 15 per cent nationwide.

During the same period 801 Roma women had given birth in the hospital, of whom 75 (that is, 9.3 per cent) had undergone a Caesarean section. There had been a further 768 deliveries by women who were not of Roma origin. Of the latter, 139 women (that is, 18 per cent) had delivered by Caesarean section.

Between 1999 and February 2003 there had been 28 sterilisations performed on women of Roma origin and 65 sterilisations of non-Roma patients. All patients had been duly advised and had signed the relevant request.

Furthermore, Krompachy Hospital had carried out 96 procedures on Roma women who were experiencing difficulties in conceiving. In several cases the patients had become pregnant thereafter.

The letter also mentioned the case of a Roma woman who had delivered her eighth child in 1998. As she had been brought to the hospital in a state of shock, the staff could not inform her about sterilisation prior to the delivery, which was carried out by Caesarean section. No sterilisation was performed and she was subsequently advised to undergo sterilisation after the post-natal period. The patient did not follow the medical advice. One year later she was brought to the hospital with bleeding, 14 days after the scheduled date of her ninth child's delivery. Due to severe haemorrhagic shock she could not be saved.

## B. Relevant domestic law and practice

### 1. *Constitution, Constitutional Court Act 1993 and relevant practice*

#### (a) Constitution of the Slovak Republic

Article 7 § 5 provides, *inter alia*, that international treaties on human rights and fundamental freedoms as well as international treaties which directly establish rights or obligations of natural or legal persons take precedence over the law provided that they were ratified and promulgated by means laid down by law.

Article 12 § 2 guarantees fundamental rights and freedoms to everybody without distinction as to sex, race, colour, language, belief and religion, political or other opinion, national or social origin, membership of a national or ethnic group, property, birth or other position. Nobody may suffer any harm or be put in a position of advantage or disadvantage on these grounds.

Article 16 § 2 provides that nobody may be subjected to cruel, inhuman or degrading treatment or punishment.

Article 19 § 2 guarantees to all persons protection from unjustified interference with their private and family life.

Article 41 § 1 provides that marriage, parenthood and the family are protected by law. Special protection is afforded to children and juveniles.

Article 127, which came into effect on 1 January 2002, provides in its relevant part as follows:

> “1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. Where the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person’s rights or freedoms as set out in paragraph 1 have been violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash any such decision, measure or other interference. Where the violation found is the result of a failure to act, the Constitutional Court may order [the authority] which violated the rights or freedoms in question to take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that the authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.
>
> 3. In its decision on a complaint the Constitutional Court may grant appropriate financial satisfaction to the person whose rights under paragraph 1 have been violated.”

**(b) The Constitutional Court Act 1993**

Section 20(1) of the Constitutional Court Act 1993 provides that a request for proceedings to be started before the Constitutional Court must indicate, *inter alia*, the matter concerned, the person against whom the complaint is directed and the decision which the plaintiff seeks to obtain; it must also specify the reasons for the request and indicate evidence in support of the complaint.

Under paragraph 3 of section 20, the Constitutional Court is bound by a request from a plaintiff for proceedings to be started unless the Act expressly provides otherwise.

Section 51 provides that the parties to proceedings on complaints lodged by natural or legal persons are the plaintiff and the person against whom the complaint is directed.

Under section 53(1), a complaint to the Constitutional Court is admissible only where the applicant has used effective remedies provided for by the law to protect his or her fundamental rights.

**(c) Practice of the Constitutional Court**

The Constitutional Court addressed the scope of its jurisdiction to interfere with decisions given by the authorities dealing with criminal cases, including public prosecutors, in its judgment II. ÚS 58/1998 of 13 January 1999[1]. In particular, it held that it had power to examine such decisions exclusively from the point of view of their compliance with the Constitution and with international treaties governing human rights and freedoms ratified by the Slovak Republic. The Constitutional Court further held that it could review the alleged unlawfulness of an action by the authority concerned provided that it was relevant for the protection of a person's constitutional rights.

On 27 June 2003 the Constitutional Court delivered judgment III. ÚS 70/01, in which it found a violation of Article 16 § 2 of the Constitution as a result of the failure of the public prosecution authorities at three levels to ensure an effective official investigation into the ill-treatment to which the plaintiff had been subjected by the police in the context of criminal proceedings brought against him. The judgment stated, *inter alia*, that a violation of Article 16 § 2 of the Constitution and of Article 3 of the Convention could occur where the State authorities failed to protect such rights by prosecuting those responsible. With reference to the practice of the European Court of Human Rights the Constitutional Court held, in particular, that the State authorities were under an obligation to take measures with a view to preventing violations of such rights from occurring or to impose sanctions in cases where such violations occurred.

In judgment I. ÚS 22/01 of 10 July 2002 the Constitutional Court stressed that the public authorities were obliged to ensure effective protection of the rights guaranteed by the Constitution and by the relevant international treaties on human rights and fundamental freedoms.[2]

In proceedings I. ÚS 13/00 the plaintiff complained of her removal from a municipal flat. She relied on her rights under Articles 19, 20, 21 and 41 of the Constitution, which guarantee respect for private and family life and the home, protection of ownership rights, protection of parenthood and protection of children and juveniles. In its judgment of 10 July 2001 the Constitutional Court found that the Prešov Regional Court, which had dealt with the case at last instance, had violated the above rights of the plaintiff.

In its judgment the Constitutional Court held, with reference to its practice, that it was entitled to review decisions of the ordinary courts where the proceedings before them or their decisions resulted in a breach of individuals' fundamental rights or freedoms.

[1] Collection of Findings and Decisions of the Constitutional Court of the Slovak Republic 1999, pp. 194-199

[2] Collection 2002 (2nd half), p. 497

In proceedings III. ÚS 51/08 a woman of Roma origin complained that she had been subjected to sterilisation in a hospital without her informed consent and that she had been unable to obtain redress as a result of the conduct and decision of the court which dealt with her claim for damages at last instance. On 14 February 2008 the Constitutional Court dismissed the complaint as being manifestly ill-founded. The decision stated that the ordinary court could not be held liable for any violation of the plaintiff's substantive rights under, *inter alia*, Articles 3, 8 and 12 of the Convention, as such rights were related to the legal relationship existing between the plaintiff and the hospital concerned. Any failure of the court involved to comply with the Constitution and the international treaties could only result in a breach of the plaintiff's rights of a procedural nature. The Constitutional Court pointed out that it lacked jurisdiction to examine alleged errors of fact or law in proceedings before the ordinary courts unless they were clearly unsubstantiated or arbitrary and thus untenable from the point of view of the Constitution, and unless the effects of such conclusions entailed a breach of fundamental rights or freedoms guaranteed by the Constitution or an international treaty. A prerequisite for such review by the Constitutional Court was, however, a complaint by the plaintiff of a breach of Article 6 § 1 of the Convention or its constitutional equivalent.

In proceedings III. ÚS 123/01 the plaintiff complained, *inter alia*, about shortcomings in criminal proceedings against him conducted by the police investigator and supervised by the Bratislava regional prosecutor's office. On 13 December 2001 the Constitutional Court rejected the complaint. It held that the plaintiff, apart from availing himself of his rights under the Code of Criminal Procedure, could have sought redress before the General Prosecutor's Office (which was hierarchically superior to the regional prosecutor's office) pursuant to Act 153/2001 Coll. (the Prosecution Service Act).

The Constitutional Court has declared itself bound, in accordance with section 20(3) of the Constitutional Court Act 1993, by the submissions of a party aimed at initiating proceedings before it.

*2. The 1972 Sterilisation Regulation*

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

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 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 not affected by disease (section 2(b)).

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"). A request to the sterilisation committee was to be lodged in writing either by the person requesting sterilisation or, subject to that person's consent, the physician treating him or her (section 6).

Pursuant to section 7, in the case of minors or persons whose legal capacity was restricted and whose request for sterilisation fell to be determined by a sterilisation committee, those persons' legal representatives were required to approve such requests.

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

1. During and after a repeat Caesarean section, where this method of delivery was necessary for reasons which were most likely to persist during a further pregnancy and where the woman concerned did not wish to deliver again via Caesarean section.

2. 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.

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

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

### *3. The Health Care Act 1994*

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.

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 his or her future life had to be given in writing or in another provable manner (section 13(2)). Where such serious procedures concerned persons who were under the age of majority but more than 16 years old, their consent as well as the consent of their legal representatives was required, except in the case of procedures which could not be delayed (sub-sections 4-6 of section 13).

Under section 15(1) the physician 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 physician 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 physician in view 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.

*4. The Health Care Act 2004*

The Health Care, Health Care Services and Amendment Act 576/2004 (*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.

Section 6 governs the information and informed consent of 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 between proposed procedures and the risks connected with refusal to accept treatment. The above obligation to inform extends, *inter alia*, to the person to be treated or another person chosen by the former, or 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.

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.

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.

Under 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.

Section 40 reads as follows:

> "Sterilisation
>
> (1) Sterilisation for the purposes of this law shall be the prevention of fertility without the removal or impairment of a person's reproductive organs.
>
> (2) Sterilisation can only be performed on the basis of a written request and written informed consent following previous information of a person with full legal capacity or of 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 contain information about:

(a) alternative methods of contraception and planned parenthood;

(b) possible changes in the life circumstances which prompted the request for sterilisation;

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

(d) the possible failure of sterilisation.

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

(5) Sterilisation may not be carried out earlier than 30 days after informed consent has been given. "

Section 50 repeals the 1972 Sterilisation Regulation.

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 has been committed in aggravating circumstances (sub-paragraph 2).

## C. International materials

### *1. The Universal Declaration on Bioethics and Human Rights*

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."

*2. The Convention on Human Rights and Biomedicine*

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) entered into force in respect of Slovakia on 1 December 1999. The relevant provisions read:

> "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 6 – Protection of persons not able to consent
>
> Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.
>
> Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.
>
> The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity."

*3. The WHO Declaration on the Promotion of Patients' Rights in Europe*

The World Health Organisation's (WHO) European consultation meeting on the rights of patients, held in Amsterdam in March 1994, endorsed the document entitled *Principles of the rights of patients in Europe* as a set of principles for the promotion and implementation of patients' rights in European Member States of the WHO. Its relevant parts read:

“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.”

### *4. Council of Europe Commissioner for Human Rights*

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]

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

"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

[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

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

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."

### *5. ECRI reports on Slovakia*

The European Commission against Racism and Intolerance (ECRI) published its third report on Slovakia on 27 January 2004. Its 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. In the past, during the Communist period, an official policy existed according to which Roma women were offered financial incentives to undergo sterilisations. This policy was discontinued in 1989 after the fall of Communism, but, according to the report, the practice of sterilising Roma women without the necessary safeguards to ensure that they are fully aware of - and in agreement with - the implications of the procedure has continued in some

hospitals. According to the report, some women have been asked to sign consent forms while under anaesthesia for caesarean sections, some have been told that the sterilisation was necessary since further pregnancies would prove fatal for themselves or their babies, and some have been presented with consent forms for signature after the operation had taken place. A number of the cases mentioned in the report concerned the sterilisation of minors. The report also claims that some hospitals are practising segregation of Roma women in maternity care, for example by allocating them to separate rooms or by holding separate antenatal consultation sessions for Roma women.

94. After the publication of the above-mentioned report, the authorities opened different avenues of investigation which are underway at the time of writing. Since the beginning of these investigations, some steps have been taken to improve the methods used, for example by nominating female police officers responsible for collecting evidence rather than allocating this task to locally-based male police officers as was initially the case. It also appears that the initial investigation carried out in only one hospital by the Ministry of Health is being extended to other hospitals. The authorities have also made a public call for any women concerned to come forward to their local police stations. The procedures in place for regulating sterilisations are also under review with the aim of improving safeguards, for example by allowing for a 72 hour "reflection period" between consent and the operation.

95. However, a number of concerns have been raised by the authors of the report concerning the way in which the investigations have been carried out so far. They note, for example, that the only crime currently being investigated is that of genocide, which seems unlikely to lead to any prosecution; and that attention has been focused mainly on whether signed consent forms can be produced whereas the issue at stake is the extent to which women signed with full knowledge and consent of the procedure in question. It is further stated that the attitudes displayed by some police officers in questioning alleged victims have been extremely unhelpful and unlikely to encourage other women to come forward, while cases being brought by some women are being hindered by attempts to block access to hospital files for the lawyers representing the women. The possibility of bringing criminal proceedings against the authors of the report – either for spreading panic in society if the allegations are untrue or for not informing the authorities at an earlier stage and not providing more details if they are true – has also been publicly raised by the authorities.

However, ECRI notes that, in May 2003, Representatives of the Office of the Prosecutor General stated that a criminal complaint has not been filed against report's authors, that they would not be prosecuted and that they had only used their right to freedom of expression.

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. The extent to which best medical knowledge, practice and ethics have been applied in the advice given to women and procedures followed should also be closely examined. It would also be necessary to ascertain the extent to which Roma women and women from the majority community may have received differential treatment, both as regards the issue of sterilisation and in general access to health care during pregnancy and birth.

97. Given the public and serious nature of the reports concerning sterilisations of Roma women without their full and informed consent, it is necessary to ensure that the investigation is seen to be as impartial and transparent as possible: the involvement of international experts might be valuable in this respect. Particular care should be taken to ensure that women who may wish to come forward, or who have already done so, are treated with the utmost sensitivity and are in no way subjected to harassment or threats. In this context, ECRI considers that the possibility raised by the authorities that the authors of the report will face prosecution is likely to have a very negative effect on the confidence of possible victims in the justice system and should therefore be publicly abandoned. Access to medical files and other relevant information for women and their legal representatives should be ensured. ECRI also feels that the charges which might possibly be brought in connection with the investigation should be left more open until a clearer picture of the situation has been obtained.

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."

In its next periodic report (fourth monitoring cycle) on Slovakia, published on 26 May 2009, ECRI concluded the following:

"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."

### *6. UN Convention on the Elimination of All Forms of Discrimination against Women*

The UN Convention on the Elimination of All Forms of Discrimination against Women provides, in its relevant Articles:

"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;

..."

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.
>
> ...”

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.”

## COMPLAINTS

1. The applicants complained under Article 3 of the Convention that (i) they had been victims of forced and unlawful sterilisation in a public hospital and (ii) the Slovakian authorities had failed to undertake a thorough, effective and prompt investigation into the circumstances of their sterilisation.

2. Under Article 8 of the Convention the applicants complained that their sterilisation had seriously interfered with their private and family lives and that the Slovakian authorities had failed to comply with their positive obligation to protect their rights in that context.

3. The applicants alleged a violation of Article 12 of the Convention in that they had been denied their right to found a family as a result of their sterilisation.

4. The applicants complained under Article 13 of the Convention that they had no effective remedy at their disposal for their complaints under Articles 3, 8 and 12.

5. The applicants also alleged that their sterilisations had been based on grounds of sex, race, colour, membership of a national minority and ethnicity. They relied on Article 14 of the Convention in conjunction with Articles 3, 8 and 12.

## THE LAW

### A. Exhaustion of domestic remedies

The Government objected that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

Firstly, the civil proceedings for damages initiated by the applicants pursuant to Articles 420 et seq. of the Civil Code were still pending. In addition, it was also open to the applicants to seek redress by means of an action under Articles 11 et seq. of the Civil Code for protection of their personal rights in respect of any non-pecuniary damage resulting from the alleged interference with, in particular, their rights under Article 8 of the Convention.

Secondly, the applicants had failed to complain to the Constitutional Court about the alleged failure of the Slovakian authorities to display the required promptness when dealing with the case. As to their third constitutional complaint, it had been rejected on 29 July 2008 as the applicants had not lodged it in accordance with the formal requirements as interpreted and applied by the Constitutional Court. That court had therefore been prevented from addressing the merits of the applicants' complaints, in particular those under Articles 3 and 8 of the Convention.

The applicants disagreed. They considered that neither a civil action for damages nor the constitutional remedy constituted effective remedies which they were required to exhaust.

With regard to a possible complaint under Article 127 of the Constitution in particular, the applicants maintained that the Constitutional Court could deal with the procedural aspect of their case but lacked jurisdiction to examine whether their substantive rights under the Convention had been breached. It had previously refused to review similar grievances, for example in proceedings III. ÚS 51/08. It had expressed the same view in its decision on the applicants' complaints of 16 March 2005 and 13 December 2006.

Civil actions were not capable of leading to the identification and punishment of those responsible for their sterilisation and, in any event, for an effective protection of the applicants' rights in issue a criminal-law remedy was required. In civil proceedings the applicants had to bear the burden of proof. The prospects of success of their actions were questionable given that Krompachy Hospital remained in existence only formally and had no assets and that the newly established private hospital in Krompachy had not succeeded to the former hospital's obligations. The civil courts were likely to rely on the existing expert opinions dismissing the applicant's arguments.

As to the criminal proceedings, the applicants referred to the position of the General Prosecutor's Office of 19 May 2008 according to which they could not be considered as injured parties.

The applicants further argued that the domestic authorities involved had consistently disregarded the principal issue in their case, namely the fact that they had not given their full and informed consent to the procedure.

In any event, the applicants considered that special circumstances justified the examination of their case by the Court, as there existed an administrative practice of coercive sterilisation of Roma women in Slovakia and the Government had failed to address the issue in the proper manner.

The Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before the domestic authorities, at least in substance, and in

compliance with the formal requirements laid down in domestic law. Among other things the Court must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust available domestic remedies (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III; *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006; and *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 91, 29 November 2007).

In the present case the applicants attempted to obtain redress in the context of criminal proceedings instituted in response to complaints about their sterilisation and that of several other Roma women. That attempt was unsuccessful as the regional prosecutor's office three times endorsed the police investigator's conclusion that no criminal offence had been committed. Ultimately, on 19 May 2008, the General Prosecutor's Office held that the applicants had suffered no harm to their health, or other damage, and that their rights had not been infringed.

In the same context the Constitutional Court twice quashed the regional prosecutor's decision and ordered a more thorough investigation into the case. In particular, in the decision of 13 December 2006 it ordered a re-examination of the case from the perspective of the applicants' rights under Articles 3 and 8 of the Convention and specified the issues which the prosecuting authorities were required to determine.

The investigator then took further evidence and concluded that no offence had been committed. The regional prosecutor, on 19 February 2008, dismissed the applicants' complaint against that decision. The applicants then lodged their third complaint with the Constitutional Court. They informed the latter that they had challenged the public prosecutor's decision before the General Prosecutor's Office. On 3 June 2008 they submitted to the Constitutional Court a copy of the General Prosecutor's position dismissing their petition.

On 29 July 2008 the Constitutional Court held that the decision of the Košice regional prosecutor's office of 19 February 2008 had been reviewed by the General Prosecutor's Office at the applicants' request. Any interference with the applicants' rights which the Constitutional Court was entitled to examine in the context of the proceedings complained of therefore stemmed from the decision which the General Prosecutor's Office had given on 19 May 2008. Since the applicants had exclusively challenged the decision of the regional prosecutor's office and since the Constitutional Court was bound by the way in which they had specified the subject-matter of their complaint, the court concluded that it lacked jurisdiction to deal with the complaint.

In this connection the Court considers relevant that in the first set of proceedings leading to its decision of 1 June 2005 the Constitutional Court allowed the applicants' complaint against the regional prosecutor's decision of 9 March 2004, notwithstanding the fact that the General Prosecutor's

Office, at the applicants' request, had reviewed that decision on 10 July 2004. Before the Constitutional Court the applicants had not complained separately about the position of the General Prosecutor's Office. Furthermore, in the third set of proceedings, which led to the decision of 29 July 2008, the Constitutional Court was informed that the applicants' complaint to the General Prosecutor's Office had been rejected, on 19 May 2008, on the ground that none of their rights had been infringed. It was thus aware that, despite its earlier judgments, the applicants' repeated attempts to obtain redress before the prosecuting authorities at all levels had failed.

Having regard to the above and the nature of the case, the Court considers that the Constitutional Court's decision of 29 July 2008 to reject the applicants' third complaint on the ground that they had not directed it expressly against the position of the General Prosecutor's Office amounted to excessive formalism in the circumstances of the case. It thus takes the view that the applicants provided the prosecuting authorities and the Constitutional Court with ample opportunity to redress the breach of their rights which they alleged before the Court.

As to the argument that it was open to the applicants to seek redress by means of civil-law remedies and that the proceedings on their action for damages were still pending, the Court reiterates that where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention. Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were also available but probably no more likely to be successful (see *Adamski v. Poland* (dec.), no. 6973/04, 27 January 2009, with further references).

In its decisions of 1 June 2005 and 30 December 2006 the Constitutional Court admitted that the outcome of the criminal proceedings was relevant for determination of the applicants' complaints under Articles 3, 8 and 14 of the Convention. Their choice to seek redress by means of criminal-law remedies cannot therefore be said to have been inappropriate.

The Court also finds relevant the applicants' arguments outlined above pointing to practical difficulties in their civil cases resulting from the fact that Krompachy Hospital had *de facto* ceased to exist, from the duration of the proceedings and from the limited scope of redress available, in particular with regard to the establishment of individual liability on the part of the persons responsible for their sterilisation. It cannot be overlooked that in their reports of 2006 and 2009 respectively, cited above, the Council of Europe Commissioner for Human Rights and ECRI similarly pointed to persistent difficulties and practical shortcomings impairing the chances for applicants to obtain redress through the courts.

In view of the above, the Court takes the view that, in the particular circumstances, it is not prevented from examining the merits of the case notwithstanding that the proceedings relating to the applicants' civil actions are still pending.

Furthermore, the rights under Articles 3 and 8 of the Convention have been found to comprise positive obligations and procedural safeguards which States are required to comply with (see, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, §§ 149-151, ECHR 2003-XII, with further references, and *İlhan v. Turkey* [GC], no. 22277/93, § 92, ECHR 2000-VII). In the context of the present case the question arises whether domestic law and practice provided sufficient safeguards to protect the applicants' rights. It has not been shown that that issue was likely to be addressed by the domestic authorities involved in the applicants' case.

The Government's objection as to non-exhaustion of domestic remedies must therefore be dismissed.

## B. Article 3 of the Convention

The applicants complained that they had been subjected to inhuman and degrading treatment on account of their sterilisation and that the authorities had failed to carry out a thorough, fair and effective investigation into the circumstances surrounding their sterilisation. They relied on Article 3 of the Convention, which provides:

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

The Government argued that the sterilisation procedures had been performed in a medical institution in accordance with the law and with the aim of protecting the applicants' health and lives. The applicants themselves had requested their sterilisation and had signed the relevant documents. They had therefore not been subjected to treatment contrary to Article 3 of the Convention. With reference to the various materials available the Government further disputed the allegation that there had been a practice of forced sterilisations in Slovakia and that the medical methods used had been obsolete.

Finally, with reference to the steps taken in the context of the above criminal proceedings, the Government maintained that the Slovakian authorities had fully complied with their procedural obligation to carry out an effective investigation into the alleged inhuman and degrading treatment of the applicants and that they had displayed due diligence in that context.

The applicants first maintained that they had been in a vulnerable position and that their sterilisation had been abusive and humiliating. It had violated their physical and psychological dignity and had had lasting consequences in terms of physical and mental suffering. The procedures

performed had been contrary to domestic law and internationally recognised medical standards. Their signatures on the sterilisation request forms could not be considered valid and, in any event, did not constitute informed consent to the procedure.

The applicants further argued that the Slovakian authorities had failed in their obligation to provide them with adequate protection against treatment contrary to Article 3 of the Convention. The actions of the Slovakian authorities had not complied with the standards of an effective investigation, and had thus violated their obligation under the procedural head of Article 3 of the Convention. In particular, the authorities had found that the applicants' sterilisation complied with the legal requirements. That conclusion ran contrary to the facts of the case. The authorities had failed to clarify why they considered tubal ligation to be a life-saving operation. By favouring the medical personnel in the investigation, they had acted contrary to their obligation to conduct an effective investigation. The authorities had not displayed due diligence and the case had ultimately been set aside without having been submitted to a court.

Finally, the applicants alleged that there was a practice of forced sterilisation of women of Roma origin which had its origin in the former Czechoslovakia in the 1970s. Evidence existed showing that there had been a practice of forced sterilisation in Slovakian hospitals even after the fall of the communist regime.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

### C. Article 8 of the Convention

The applicants complained that their sterilisation had seriously interfered with their private and family lives and that the Slovakian authorities had failed to comply with their positive obligation to protect their rights in that context. They invoked Article 8 of the Convention which, in its relevant part, 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."

The Government argued that the interference complained of had been in accordance with the relevant law and necessary for protecting the applicants' own health. With regard to the first and second applicants in particular, sterilisation had been indicated for medical reasons, namely a narrow pelvis and the risk of uterine rupture due to repeated Caesarean sections. As to the third applicant, in the course of her fourth delivery, preceded by a pregnancy complicated by cervical cerclage, she had given birth to twins. The delivery had had to be carried out by Caesarean section because of the position of the foetuses.

All three applicants had given consent to their sterilisation. They had signed the relevant forms to that effect and their requests had been approved by the sterilisation committee. In view of the first and second applicants' mental capacity, the doctors had not considered it necessary to also ask their legal representatives for approval. In the course of the criminal proceedings the latter confirmed that they would have consented to the sterilisation of the first and second applicants if doctors had recommended it in order to protect the applicants' health. In any event, the absence of such approval did not in itself entail a breach of Article 8 in the circumstances.

The sterilisation procedures performed on the fallopian tubes of the applicants had been carried out in accordance with the applicable medical standards. Their effects were not irreversible as there was a possibility either of recanalisation of the fallopian tubes or of fertilisation *in vitro*.

The applicants referred to their arguments in respect of their complaint under Article 3 and submitted that the interference had been neither in accordance with the law nor necessary in a democratic society as required by paragraph 2 of Article 8. They maintained that sterilisation by means of tubal ligation was not life-saving surgery. Had such been the case, there would have been no need to obtain their consent. The circumstances under which they had signed the relevant documents excluded the possibility of their giving full and informed consent to the procedure.

The Slovakian authorities had failed to comply with their positive obligation under Article 8 in that they had not provided the applicants with information about ways of protecting their reproductive health, including information on the characteristics and consequences of sterilisation and alternative methods of contraception.

Finally, the applicants alleged that, at the time of their sterilisation, there existed no appropriate framework comprising specific regulations and policies with a view to ensuring that procedures of that kind were carried out only with the full and informed consent of patients, as required by internationally recognised standards.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within

the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

### D. Article 12 of the Convention

The applicants complained that they had been denied their right to found a family as a result of their sterilisation. They alleged 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."

With reference to their arguments under Article 8, the Government maintained that the facts of the case did not give rise to a breach of Article 12 of the Convention.

The applicants contended that their right to found a family had been breached on account of their sterilisation without their full and informed consent as required by the law, and that the Government had failed to establish appropriate safeguards to prevent such situations from occurring.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

### E. Article 13 of the Convention

The applicants complained that they had no effective remedy at their disposal in respect of the complaints under Articles 3, 8 and 12 of the Convention. They 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."

The Government argued that the applicants had remedies at their disposal before the civil courts, in the context of the criminal proceedings and before the Constitutional Court. The right to an effective remedy within the meaning of Article 13 did not guarantee a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of the complaint.

The applicants disagreed.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the

determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

## F. Article 14 of the Convention

Finally, the applicants alleged that they had been discriminated against in the enjoyment of their rights under Articles 3, 8 and 12 of the Convention. They 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."

The Government referred to their arguments concerning the complaint under Article 3 of the Convention and maintained that the applicants had not been treated differently from other patients in a similar position.

The applicants argued that their complaint was to be considered in the context of the intolerance to which persons of Roma origin were subjected in general in Slovakia and which was also prevalent among medical personnel. That was proved by the applicants' segregation during their stay in Krompachy Hospital. The applicants also relied on statements by several politicians and Government members addressing the public's fears concerning high Roma birth rates and calling for the regulation of Roma fertility. These factors indicated *prima facie* that they were subjected to racial discrimination.

The applicants further alleged that they had also suffered discrimination on the ground of their sex. That conclusion was supported by the views expressed by international bodies such as the Committee on the Elimination of Discrimination against Women, who asserted that failure by health services to accommodate the fundamental biological differences between men and women in reproduction violated the prohibition on sex discrimination. The applicants had been subjected to less favourable treatment during pregnancy and childbirth, that is, while they were in a vulnerable position. Their sterilisation, performed without their full and informed consent, was a form of violence against women which was discriminatory. Their ensuing infertility resulted in a psychological and social burden which was much heavier on women, in particular in the Roma community where a woman's status was often determined by her fertility.

The applicants maintained that they had suffered a double burden of discrimination as their sex and race had played a decisive role in the violation of their human rights in issue.

Finally, the applicants argued that there had been no objective and reasonable justification for their differential treatment. Their non-consensual sterilisation had pursued no legitimate aim. There existed no race-neutral explanation justifying their sterilisation during Caesarean delivery.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

For these reasons, the Court unanimously

*Declares* the application admissible, without prejudging the merits of the case.

| Lawrence Early | Nicolas Bratza |
| --- | --- |
| Registrar | President |