

FORMER SECTION IV

CASE OF N.B. v. SLOVAKIA

(Application no. 29518/10)

JUDGMENT

STRASBOURG

12 June 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of N.B. v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 May 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. **29518/10**) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Ms N.B. (“the applicant”), on 20 May 2010. The President acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms V. Durbáková and Ms B. Bukovská, lawyers acting in co-operation with the Centre for Civil and Human Rights, a non-governmental organisation with its registered office in Košice. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged a breach of Articles 3, 8, 12, 13 and 14 of the Convention on account of her sterilisation in a public hospital and her subsequent failure to obtain appropriate redress from the Slovakian authorities.

4. On 9 November 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is of Roma ethnic origin. She was born in 1983 and lives in Nálepkovo.

A. Sterilisation of the applicant at the Gelnica Hospital

6. On 25 April 2001, during the delivery of her second child, the applicant was sterilised by means of tubal ligation at the gynaecology and obstetrics department of the hospital in Gelnica (“the Gelnica Hospital”). The Gelnica Hospital was a public hospital administered by the Ministry of Health at that time and until the end of 2002.

7. During her pregnancy the applicant visited her doctor regularly. She was informed that the delivery would be via caesarean section.

8. According to the applicant’s medical records, the applicant was brought to the hospital in labour by an ambulance at 7.50 a.m. on 25 April 2001. At 9 a.m. on the same day, when her contractions were occurring at five minute intervals, the applicant was administered

premedication in view of the envisaged caesarean section. It included a benzodiazepine derivative which is used for its sedative, anxiety-relieving and muscle-relaxing effects.

9. Following a handwritten entry on the administration of the premedication, the medical record contains a typed entry on the next page, according to which the applicant had requested that a sterilisation procedure be carried out on her reproductive organs during the delivery, and that she had been informed about the irreversible nature of such an operation and of her being unable to conceive a child in the future. The entry is signed by a doctor and it also bears the signature of the applicant.

10. The applicant later declared that, after the administration of the premedication, she had been approached by a member of the medical staff who was carrying three A4 size pieces of paper. The staff member had taken her hand to help her sign the papers. The applicant had been in labour and had felt as if she were intoxicated under the influence of the medication. She had neither had the strength nor the will to ask what the documents contained. She remembers a doctor who was present saying that she would die unless she signed the papers. She had therefore not objected to signing the papers with the assistance of the staff member.

11. The applicant's child was born at 9.35 a.m.

12. Another section of the medical records, dated 11 May 2001, indicates that the child was delivered by caesarean section.

13. According to a surgical report in the applicant's medical file, in the course of the operation the doctors discovered a large fissure running the length of the scar from a previous caesarean section on the applicant. After the child's delivery, the doctors discovered a rupture of the applicant's uterus. It had probably been the result of the secondary healing of a suture which had become loose during the course of the applicant's second pregnancy. As a result, the applicant's life had been at risk. The doctors had therefore considered a hysterectomy as a radical solution to the problem. However, in view of the patient's age, they had preferred to carry out reconstructive surgery despite the risk of complications. Since the applicant's uterus was severely damaged, it had been considered certain that a similar situation would occur in any future pregnancy and would pose a grave risk to the life of the applicant and her foetus. After the reconstructive surgery, the doctors had therefore decided to sterilise the applicant in accordance with the request she had made prior to the operation. The report indicates that no complications occurred in the course of the surgery.

14. The applicant was released from the Gelnica Hospital on 11 May 2001.

15. The medical records also contain a copy of a decision of the sterilisation commission established at the Gelnica Hospital. The decision is dated 15 May 2001 and indicates that the commission approved, ex post facto, the applicant's sterilisation, which had been carried out at her request. According to the document, a sterilisation procedure had been justified within the meaning of the Sterilisation Regulation 1972 in view of the applicant's health.

16. At the time of the delivery and sterilisation procedure the applicant was underage. She reached the age of majority ten days later. Her mother, who was the applicant's representative while she was under the age of majority, was not present during the delivery and she had not been asked to give her consent to the sterilisation.

17. The applicant learned about the operation and its nature in December 2002, when her lawyer reviewed her medical file in the Gelnica Hospital.

18. According to the applicant, as a result of the operation, she has suffered from serious physical and mental health problems. The applicant's psychological problems were recognised by a psychologist in a statement dated 7 September 2007. She maintained that she had been ostracised by her husband and the Roma community because of her infertility.

19. With a view to describing the overall situation and context in which she had been sterilised, the applicant submitted that she had experienced inferior treatment during her stay at the Gelnica Hospital. In particular, the applicant indicated that patients in the gynaecological and obstetrics ward had been segregated according to their ethnic origin. The applicant had been accommodated in a "Gypsy room" separated from women who were not of Roma ethnic origin. The applicant considered that her ethnic origin had played a decisive

role in the decision of the medical staff to sterilise her. Citing a number of international reports,¹ the applicant submitted that discrimination against Roma in Slovakia extended to all facets of their lives.

20. The Government were in disagreement with the applicant's allegations.

B. Civil proceedings

21. On 8 December 2004 the applicant sued the Gelnica Hospital for damages before the Spišská Nová Ves District Court. Apart from the relevant provisions of the Slovakian Civil Code, she also relied on Articles 3, 8 and 12 of the Convention. The applicant argued that she had been sterilised contrary to the relevant provisions of Slovak law, as her mother had not given consent to the operation. It had also run counter to relevant international human rights standards. The applicant claimed the equivalent of 17,310 euros (EUR) in damages and also claimed reimbursement of her costs.

22. Following the privatisation of the Gelnica Hospital, the District Court substituted the Gelnica Municipality as the defendant in the proceedings on 25 May 2005.

23. On 10 February 2006 the District Court dismissed the applicant's action. With reference to the evidence available, it concluded that the operation had been necessary with a view to saving the applicant's life. As such, it could have been performed without her prior consent.

24. On 28 March 2006 the applicant appealed. She maintained, *inter alia*, that her ethnic origin had motivated the doctors to sterilise her.

25. On 28 February 2007 the Košice Regional Court quashed the first-instance judgment. It expressed the view that the sterilisation operation on the applicant could not be considered as life-saving surgery and ordered the first-instance court to re-examine the case in light of that opinion.

26. An expert opinion submitted to the District Court indicated that during the caesarean section the doctors had discovered an extensive injury to the applicant's uterus. A hysterectomy, which they had originally considered carrying out, would have been, in the expert's view, acceptable medical practice in the circumstances. The expert considered the alternative solution which the doctors had chosen, namely reconstructive surgery of the uterus, as an intervention which had saved the applicant's life in the circumstances. However, the subsequent sterilisation of the applicant had not been indispensable with a view to preventing an imminent danger to her life.

27. On 7 September 2007 a psychology centre conducted an examination of the applicant and issued a report at the request of the applicant's representative. It was noted that during the examination the applicant had indicated that there was conflict in her marriage, as her husband frequently reproached her for her inability to have more children. The applicant had further indicated that she suffered from stomach pains, loss of appetite and breathing problems. The psychologist concluded that the depressive and pessimistic moods from which the applicant suffered were possibly related to her inability to conceive.

28. In her submissions to the District Court the applicant also relied on views expressed by several experts on sociology and Roma culture indicating that the inability to have children strongly diminished the position of a woman and her family in the Roma community.

29. On 14 May 2008 the District Court ordered the defendant to pay the equivalent of EUR 1,593 to the applicant. It further held that none of the parties were entitled to have the costs of the proceedings reimbursed.

30. The District Court established that the medical staff had failed to obtain informed consent to the applicant's sterilisation prior to the operation. At the relevant time, the applicant had been underage and her legal representative had not signed the request. It determined the amount of compensation with reference to Regulation 32/1965. The court did not consider it necessary to avail itself of its right to increase the award of compensation above the rates indicated in the regulation. It noted that the applicant had married the father of

her children since bringing the action and had not shown that her position in the Roma community had deteriorated.

31. By an additional judgment of 11 June 2008 the District Court formally rejected the remainder of the applicant's claims and ordered the defendant to reimburse the State's costs incurred in the proceedings.

32. On 23 June 2008 the applicant appealed. She argued that the compensation awarded to her was insufficient in view of the scope and consequences of the damage which she had suffered, and complained that the District Court had dismissed her request for reimbursement of her legal costs.

33. On 27 October 2009 the Regional Court upheld the first-instance judgment on the merits to the extent that it was challenged by the applicant. The Regional Court referred to the opinion of an expert indicating that a third pregnancy would be highly risky for both the applicant and the foetus. If the applicant had not agreed to her sterilisation, she would have been required to confirm in writing that she had been advised that any future pregnancy would threaten her life. Albeit that it could not be established with absolute certainty that such a situation would occur, the existence of such a risk nevertheless justified the conclusion that an increase in compensation under sections 6(2) and 7(3) of Regulation 32/1965 was not justified in the circumstances.

34. The Regional Court further quashed the first-instance decision as to the costs of the proceedings and ordered the District Court to re-examine the issue.

C. Criminal complaint

35. On 26 August 2008 the applicant filed a criminal complaint with the District Prosecutor's Office in Spišská Nová Ves. She alleged that the sterilisation operation had been unlawful and had caused her serious bodily harm. The applicant also relied on her rights under the Convention.

36. On 20 October 2008 the District Directorate of the Office of the Judicial and Criminal Police in Spišská Nová Ves dismissed the applicant's complaint. It concluded that no offence had been committed, as the medical staff involved had acted with a view to protecting the applicant's life and health. Furthermore, it was still possible for the applicant to conceive by means of *in vitro* fertilisation.

37. On 14 November 2008 the Spišská Nová Ves District Prosecutor's Office dismissed the applicant's complaint against that decision.

38. On 14 January 2009 the Košice Regional Prosecutor's Office quashed the lower prosecutor's decision as being premature.

39. Subsequently, the police started a criminal investigation. They took statements from the applicant, her mother and a doctor from the Gelnica Hospital. The doctor stated that complications had occurred in the course of the delivery, as a result of which the applicant's life had been at risk. It had therefore been decided to perform a sterilisation, with the applicant's approval, as a life-saving procedure. In contrast, an expert provided an opinion to the effect that it had not been necessary to sterilise the applicant during the delivery with a view to saving her life. Both the doctor and the expert concurred that the operation had not prevented the applicant from becoming pregnant by means of assisted reproduction.

40. On 31 July 2009 the police closed the investigation, concluding that no criminal offence had been committed.

41. On 16 September 2009 the Spišská Nová Ves District Prosecutor's Office dismissed the applicant's complaint against that decision. It held, with reference to an expert opinion, that the operation had become necessary as, in the course of the delivery, extensive bleeding had occurred due to a rupture of the applicant's uterus. In that situation, the doctors had had to take a decision immediately. After consultation with the head physician, they had decided not to carry out a hysterectomy, which was normally indicated in similar situations, but had elected to reconstruct the uterus with a view to preserving it. The surgical team had then carried out a sterilisation by means of tubal ligation so that the applicant could lead a normal

life. The applicant had not suffered irreversible damage to her health and she had given her consent to the procedure. She had reached the age of majority only ten days thereafter. Prior to the delivery she had lived with her partner and had taken care of one child.

42. On 18 November 2009 the Košice Regional Prosecutor's Office, in response to a complaint by the applicant, upheld the findings reached by the police and the District Prosecutor's Office. The letter informing the applicant of this decision further stated that the above-mentioned findings of the civil courts in relation to the case did not bind the prosecuting authorities.

43. At the applicant's request, a prosecutor from the General Prosecutor's Office reviewed the case. In a letter of 8 March 2010 the prosecutor admitted that the operation had not been consented to by the applicant's representative, contrary to the relevant law. That did not mean, however, that the doctors had committed an offence. In particular, they had acted in good faith with a view to protecting the applicant, as they had considered the operation necessary in view of the applicant's health.

44. The public prosecutor noted that the applicant had signed the request while experiencing labour pains and that her sterilisation had not been a life-saving intervention. The provisions of the Sterilisation Regulation 1972 had been interpreted and applied for many years in such a manner that, where it was medically indicated and where the prior agreement of the woman concerned was obtained, sterilisation was carried out immediately after delivery by means of caesarean section.

D. Constitutional proceedings

45. On 18 January 2010 the applicant lodged a complaint with the Constitutional Court. She alleged a breach, in the above civil and criminal proceedings, of her rights under Articles 3, 8, 13 and 14 of the Convention, of several provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, of the Convention on the Elimination of All Forms of Discrimination against Women, and a number of constitutional provisions. As regards the civil proceedings, she also alleged a breach of Article 6 of the Convention.

46. The Constitutional Court dismissed the complaint on 5 May 2010. It held that the prosecuting authorities involved could not be held liable for the alleged breach of the applicant's substantive rights which had primarily resulted from her sterilisation in the Gelnica Hospital. As to the civil proceedings, the Constitutional Court found that the Košice Regional Court had given sufficient and relevant reasons for its judgment of 27 October 2009, which had therefore not been arbitrary. There was no appearance of a breach of Article 6 § 1 of the Convention in the proceedings leading to that judgment. The Constitutional Court further found no causal link between the Regional Court's judgment and the other rights on which the applicant had relied.

II. RELEVANT DOMESTIC LAW, PRACTICE AND RELEVANT INTERNATIONAL MATERIALS

47. The relevant domestic law, practice and international materials are set out in the judgment of *V.C. v. Slovakia*, no. 18968/07, §§ 57-86, 8 November 2011.

48. In addition, the following information is relevant to the present case.

49. The Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine (Council of Europe Treaty Series No. 164) was ratified by Slovakia on 15 January 1998 and entered into force in respect of Slovakia on 1 December 1999. The corresponding notification, together with the text of the Convention, was published in the Collection of Laws under number 40/2000 on 10 February 2000. Article 6 § 2 reads as follows:

“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.”

50. Section 13(1) of the Health Care Act 1994 (“the 1994 Act”), in force at the relevant time, made medical treatment subject to the patient’s consent. A patient’s consent to medical procedures of a particularly serious character or which substantially affected a person’s future life had to be given in writing or in another provable manner (section 13(2)).

51. Pursuant to section 13(5) of the 1994 Act, in the case of patients under the age of majority consent to medical procedures of a particularly serious character within the meaning of section 13(2) was to be given by their representative upon the recommendation of a group of at least three experts. Patients over the age of sixteen who were deemed to be intellectually capable of assessing the envisaged procedure had to give their consent to such a procedure as well. The only exception to the foregoing concerned indispensable medical procedures which could not be delayed (section 13(6)).

52. Regulation 32/1965 (“the Regulation”) governed compensation for pain and impediments to a person’s integration in society which resulted from an injury, occupational disease or other damage to one’s health. It was repealed with effect from 1 January 2009.

53. Section 2(1) of the Regulation provided for compensation for pain resulting from damage to a person’s health, and for subsequent medical treatment and the elimination of the effects of such damage. The amount of the compensation for pain was to be determined in accordance with the principles and rates attached to the Regulation. It was to correspond to the scope of the damage to one’s health and the course of its treatment.

54. Section 4(1) of the Regulation governed compensation for damage to one’s health which demonstrably entailed negative consequences for the everyday life of the person concerned, for satisfying his or her living and social needs or for fulfilling his or her role in society. The compensation granted was to correspond to the nature of such negative consequences and their expected prognosis, and should reflect the extent to which a person’s life and integration in society were affected.

55. Pursuant to section 6(1) of the Regulation, compensation under section 4(1) of the Regulation was to be determined pursuant to the number of points which a medical expert attributed to a particular case on the basis of the rates attached to the Regulation. Paragraph 2 of section 6 allowed for the number of points assigned to be increased by up to one hundred per cent, depending on: (i) the prospects which the injured person had at the moment when his or her health was damaged; (ii) the injured person’s family life; or (iii) the injured person’s involvement in politics, culture or sport, their profession and/or their level of education.

56. Section 7 of the Regulation governed the amount of compensation. Its paragraph 2 limited the overall compensation to the equivalent of approximately EUR 8,000. Finally, paragraph 3 of section 7 entitled the courts to increase the award over and above the sums foreseen by the Regulation where it was justified by particular circumstances.

THE LAW

I. THE GOVERNMENT’S OBJECTION AS TO THE STATUS OF THE APPLICANT AS A VICTIM

57. The Government argued that the applicant had lost her status as a victim because the domestic courts had acknowledged, in substance, a breach of her rights and had granted compensation to her in that respect. In the domestic proceedings the applicant had not shown that the impact of the sterilisation justified a higher compensation award.

58. The applicant maintained that the domestic authorities had neither acknowledged a breach of her rights, nor had they granted appropriate compensation to her.

59. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status under Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, Reports of Judgments and Decisions 1996-III; or *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

60. In the present case, the applicant relied on her rights under Articles 3, 8 and 12 of the Convention in the civil proceedings. The civil courts acknowledged that her sterilisation had been unlawful due to the fact that her mother had not signed the request. However, they did not accept the applicant's arguments about the particularly serious character of the breach of her rights (see paragraphs 30 and 33 above). It does not appear from their reasoning that the civil courts considered the circumstances of the case from the perspective of the international standards on which the applicant had relied (compare and contrast *R.R. v. Poland*, no. 27617/04, §§ 101-102, 26 May 2011).

61. In the context of the criminal proceedings, the prosecuting authorities concluded that the applicant had not suffered irreversible damage to her health and that the doctors involved had not committed an offence.

62. Subsequently, the Constitutional Court did not deal with the substance of the applicant's complaints under the Convention. It addressed only the procedural aspects of the case (see paragraph 46 above). The Court reiterates that it qualified a similar approach, in a different case which also concerned the sterilisation of a Roma woman, as amounting to excessive formalism (see *V.C. v. Slovakia* (dec.), no. 18968/07, 16 June 2009).

63. Even assuming that by their judgments the civil courts acknowledged to an acceptable extent the breach of the rights which the applicant alleges, the Court notes that they awarded her the equivalent of EUR 1,593. In the judgment of *V.C. v. Slovakia* (cited above, §§ 120, 155 and 184), which also concerned sterilisation of a Roma woman in a public hospital, the Court found a breach of Articles 3 and 8 of the Convention and awarded the applicant EUR 31,000 as just satisfaction. The Court is therefore of the view that, having regard to the circumstances of the case, the award at the domestic level cannot be regarded as financial redress commensurate with the nature of the damage alleged by the present applicant.

64. The Government's objection that the applicant ceased to be a victim within the meaning of Article 34 of the Convention must accordingly be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65. The applicant complained that she had been subjected to inhuman and degrading treatment on account of her sterilisation without her and her representative's full and informed consent, and that the authorities had failed to carry out a thorough, fair and effective investigation into the circumstances surrounding her sterilisation. She relied on Article 3 of the Convention, which reads as follows:

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

66. The Government contested that argument.

A. Admissibility

67. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged ill-treatment of the applicant

(a) The parties' submissions

(i) *The applicant*

68. The applicant, with reference to the arguments which she had raised in the domestic proceedings, maintained that her sterilisation had not been a life-saving intervention and that it had had a lasting impact on her physical and psychological health, her relationship with her husband, and on her family and had affected her position within the Roma community. It had amounted to treatment contrary to Article 3 of the Convention.

(ii) *The Government*

69. The Government argued that the applicant's medical records included a sterilisation request signed by her and that the sterilisation committee had approved the procedure. It had been established in the course of the delivery that the applicant's uterus was seriously damaged to an extent which had justified, from the medical point of view, a hysterectomy. Despite a risk of complications, the doctors had decided to carry out reconstructive surgery instead, in view of the applicant's age and also for the sake of maintaining the applicant's menstrual cycle. Subsequently, they had carried out the sterilisation in accordance with the wish which the applicant had earlier expressed and confirmed in writing.

70. The Government maintained that the applicant had not been subjected to treatment contrary to Article 3 of the Convention, as the doctors had acted with the intention of protecting her life and health, as well as the life of her child. Had the doctors deliberately wished to deprive the applicant of her reproductive capacity, they would have carried out a hysterectomy which, as an expert had confirmed, would have been considered as a life-saving intervention given the state of the applicant's reproductive organs. While it was true that the applicant's mother had not formally agreed to the procedure, it was to be noted that the applicant had previously given birth to a child and that she had reached the age of majority only ten days after her sterilisation.

(b) The Court's assessment

(i) *Recapitulation of the relevant principles*

71. The relevant principles established in the Court's case-law are set out, for example, in *V.C. v. Slovakia*, judgment cited above, §§ 100-105, with further references.

72. That case concerned the sterilisation of a Roma woman without her informed consent. The procedure had been carried out immediately after she had delivered a child via a caesarean section on the basis of a consent which she had been asked to give while in labour.

73. In *V.C. v. Slovakia* (see §§ 106-120) the Court held that sterilisation as such was not, in accordance with generally recognised standards, a life-saving medical intervention. Where sterilisation was carried out without the informed consent of a mentally competent adult, it was incompatible with the requirement of respect for human freedom and dignity. In that case the Court concluded that, although there was no indication that the medical staff had acted with the intention of ill-treating the applicant, they had nevertheless acted with gross disregard for her right to autonomy and choice as a patient. Such treatment had been in breach of Article 3 of the Convention.

(ii) *Assessment of the facts of the case*

74. It has not been disputed between the parties that the present applicant's sterilisation was not a life-saving medical intervention and that it was carried out without the informed consent of the applicant and/or her representative. Similarly as in the case of *V.C.*, the procedure was therefore incompatible with the requirement of respect for the applicant's human freedom and dignity. The fact that the doctors had considered the procedure necessary because the applicant's life and health would be seriously threatened in the event of her further pregnancy cannot affect the position (see also *V.C. v. Slovakia*, cited above, §§ 76-77 and 105, with further references).

75. It therefore remains to be determined whether the procedure and its repercussions attained a level of severity justifying its qualification as treatment contrary to Article 3.

76. The applicant submitted, and it was not contradicted by the medical records or contested by the Government, that she had been asked to sign a typed text indicating that she requested sterilisation after tranquilising premedication had been administered in preparation for the envisaged caesarean section. Thus the applicant was in labour and was under the influence of medication. A member of the medical staff asked her to sign the sterilisation request, and she was prompted by one of the doctors present to do so with an explanation that she would otherwise die. The applicant therefore did not object to signing the paper with the assistance of a hospital staff member.

77. For the Court, such a way of proceeding, by removing one of the important capacities of the applicant and making her formally agree to such a serious medical procedure while she was in labour, when her cognitive abilities were affected by medication, and then wrongfully indicating that the procedure was indispensable for preserving her life, violated the applicant's physical integrity and was grossly disrespectful of her human dignity.

78. Similarly as in *V.C. v. Slovakia* (cited above, § 119), the information available does not indicate that the medical staff acted with the intention of ill-treating the applicant. They nevertheless acted with gross disregard for her human freedom, including the right to freely decide, together with her representative and after having had the possibility of discussing the matter with her partner, whether she consented to the procedure.

79. The Court notes that at the time of the procedure the applicant was seventeen years old, still legally underage, and at an early stage of her reproductive life. The sterilisation grossly interfered with her physical integrity, as she was thereby deprived of her reproductive capacity.

80. Given its serious nature and consequences, the sterilisation procedure, including the manner in which the applicant was asked to agree to it, was liable to arouse in her feelings of fear, anguish and inferiority and to entail lasting suffering. As to the last-mentioned point, a psychologist admitted that the applicant's depressive and pessimistic moods could be linked to her inability to conceive. In view of the documents which the applicant produced in the domestic proceedings (see paragraph 28 above), the Court finds no reason to doubt that her inability to have children strongly diminished her position as a woman living within a Roma community and entailed mental suffering. The treatment to which the applicant was subjected as described above attained the threshold of severity required to bring it within the scope of Article 3.

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

2. Alleged failure to conduct an effective investigation

82. The applicant maintained that the investigation into her case had not been effective as required by Article 3.

83. The Government argued that the relevant aspects of the case had been examined in detail by prosecuting authorities at three levels in the context of the criminal proceedings instituted by the applicant, as well as in the context of the civil proceedings which had led to the finding that the sterilisation had been contrary to the relevant law.

84. The Court reiterates that Articles 1 and 3 of the Convention impose procedural obligations on the Contracting Parties to conduct an effective official investigation which must be thorough and expeditious. However, the failure of any given investigation to produce conclusions does not, by itself, mean that it was ineffective: an obligation to investigate is not an obligation of result, but of means. Furthermore, in the specific sphere of medical negligence the obligation to carry out an effective investigation may, for instance, also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages

and for the publication of the decision, to be obtained (for recapitulation of the relevant principles see *V.C. v. Slovakia*, cited above, §§ 123-125, with further references).

85. In the present case, the civil courts acknowledged that the applicant's sterilisation had been in disregard of the statutory requirements and awarded compensation to her. In addition, the applicant's criminal complaint was examined by prosecuting authorities at three levels. The General Prosecutor's Office acknowledged that the applicant had been sterilised contrary to the relevant law as her representative had not consented to the procedure. That action did not, however, constitute a criminal offence in the particular circumstances.

86. Thus the applicant had the opportunity to have the actions of the hospital staff which she considered unlawful examined by the domestic authorities and the liability of those involved established. While it is true that the civil proceedings lasted four years and nine months, the Court notes that during that period courts at two levels of jurisdiction examined the case twice, and that the proceedings concerning the applicant's criminal complaint, which lasted eighteen months, were conducted expeditiously.

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

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

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

89. The applicant complained that her right to respect for her private and family life had been violated as a result of her sterilisation, which had been carried out contrary to the requirements of the relevant law and without her and her mother's full and informed consent. She relied on Article 8 of the Convention which, in its relevant parts, provides:

"1. Everyone has the right to respect for his private and family life, ...

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

A. Admissibility

90. The Government admitted that a medical intervention without the informed consent of the person concerned amounted to an interference with that person's private life.

91. 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 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

92. The applicant maintained that her private and family life had been severely affected as a result of the sterilisation procedure.

93. The Government pointed to the fact that the domestic courts had acknowledged that the requirements of domestic law had not been complied with in the applicant's case. They further argued that the medical staff had considered the procedure necessary with a view to protecting the applicant's life and health.

94. The relevant case-law is recapitulated in *V.C. v. Slovakia*, cited above, §§ 138-142.

95. The applicant's sterilisation affected her reproductive health status and had repercussions on various aspects of her private and family life. It therefore amounted to interference with her rights under Article 8. It was carried out contrary to the requirements of domestic law, as the applicant's mother had not given her consent to the procedure. This was not disputed between the parties.

96. In addition, the Court has previously held, with reference to both international and domestic documents, that at the relevant time an issue arose in Slovakia as regards sterilisations and their improper use, including disregard for informed consent – required by the international standards by which Slovakia was bound. Such practice was found to affect vulnerable individuals belonging to various ethnic groups. However, Roma women had been at particular risk due to a number of shortcomings in domestic law and practice at the relevant time (see *V.C. v. Slovakia*, cited above, §§ 146-149 and 152-153).

97. For reasons which are set out in detail in that judgment and which are relevant as regards the circumstances of the present case (see also paragraph 44 above), the Court finds that the respondent State failed to comply with its positive obligation under Article 8 to secure through its legal system the rights guaranteed by that Article, by putting in place effective legal safeguards to protect the reproductive health of, in particular, women of Roma origin.

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

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

IV. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

100. The applicant further complained that her right to found a family had been breached on account of her sterilisation. She relied on 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.”

101. The applicant maintained, in particular, that her marital life continued to be problematic due to her inability to conceive and that the domestic courts had disregarded her arguments in that respect.

102. The Government argued that the applicant herself had agreed to her sterilisation. That procedure was not irreversible. If the applicant wished to have more children, it was open to her to undergo a sterilisation reversal operation or conceive from *in-vitro* fertilisation. The Government expressed their readiness to bear the costs of such an operation. They cautioned, however, that a fresh pregnancy would represent a serious danger to the applicant and her child given the applicant’s health status.

103. The Court notes that this complaint is linked to the ones examined above and must therefore likewise be declared admissible.

104. The sterilisation performed on the applicant had serious repercussions on her private and family life, and the Court found above that it was in breach of Article 8 of the Convention. In view of that finding, and also in regard of the fact that the applicant married and has lived with the father of her children after the sterilisation procedure, the Court considers that a further examination of whether the facts of the case also give rise to a breach of her right to marry and to found a family is not called for.

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

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

107. The Government contested that argument.

108. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. Its effect is to require the provision of a domestic remedy capable of dealing with the substance of an “arguable complaint” under the Convention and of granting appropriate relief (see, amongst other authorities, *Aksoy v. Turkey*, 25 September 1996, § 95, *Reports* 1996-VI). The word “remedy” within the meaning of Article 13 does not, however, mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *mutatis mutandis*, *Bensaid v. the United Kingdom*, no. 44599/98, § 56, ECHR 2001-I).

109. In the present case, the applicant was able to have her case reviewed by civil courts at two levels of jurisdiction which acknowledged that she had been sterilised contrary to the relevant law and made a compensation award under Regulation 32/1965. Furthermore, the relevant facts of the case were assessed from the perspective of the criminal law by prosecuting authorities at three levels. Shortcomings in the sterilisation procedure were confirmed in that context (see paragraphs 43 and 44 above). The applicant thus had effective remedies within the meaning of Article 13 in respect of her complaint about her sterilisation. The fact that no person was convicted of a criminal offence and that the Constitutional Court subsequently refused to address the substance of the applicant’s complaints under Articles 3, 8 and 14 of the Convention does not affect the position (see also *V.C. v. Slovakia*, cited above, § 166).

110. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

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

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

A. Admissibility

112. The Government argued that the applicant had not exhausted domestic remedies, as she had failed to submit relevant arguments in the domestic proceedings concerning her case. It had been also open to the applicant to seek redress in respect of her alleged discriminatory treatment by means of an action for protection of her personal rights under Articles 11 et seq. of the Civil Code. In any event, the complaint was manifestly ill-founded, as the applicant had failed to show that the hospital staff had discriminated against her in the context of the sterilisation procedure.

113. The applicant maintained that at the relevant time no anti-discrimination laws had been enacted in Slovakia and that the Government’s objection relating to exhaustion of domestic remedies should be dismissed. The applicant further argued that she had unsuccessfully sought redress as regards her allegation that sterilisation had been performed on her due to her ethnic origin in both criminal and civil proceedings and, ultimately, before the Constitutional Court.

114. The Court notes that in the context of the civil proceedings the applicant argued that her ethnic origin had motivated the doctors to sterilise her. Subsequently, she alleged a breach of her rights, including those under Article 14 of the Convention, before the Constitutional Court, which is the supreme judicial authority in Slovakia charged with the protection of

individuals' fundamental rights and freedoms guaranteed by the Constitution and also by the Convention.

115. Thus the applicant afforded the domestic authorities the opportunity to redress by their own means the violation of her Convention right in issue. As regards the argument that the applicant should have sought redress by means of an action for protection of her personal rights, the Court recalls that an applicant who has used a remedy which is apparently effective and sufficient cannot be required 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). It is also relevant in this respect that the Constitutional Court did not indicate in its decision that the applicant should have used the other civil remedy cited by the Government prior to lodging her constitutional complaint.

116. In the above circumstances, the Government's objection relating to the applicant's failure to exhaust domestic remedies cannot be upheld.

117. The Court further 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 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

118. The applicant reiterated that her race/ethnic origin had played a determining role in her sterilisation and that she had also been discriminated against on the grounds of her sex in that respect.

119. The Government were in disagreement with the applicant.

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

121. The Court has previously found that the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups. In view of the documents available, it cannot be established that the doctors involved acted in bad faith, that the applicant's sterilisation was a part of an organised policy, or that the hospital staff's conduct was intentionally racially motivated. At the same time, the Court finds no reason for departing from its earlier finding that shortcomings in legislation and practice relating to sterilisations were liable to particularly affect members of the Roma community (see *V.C. v. Slovakia*, cited above, §§ 177-178; and also paragraphs 96-97 above).

122. In that connection, the Court has found that the respondent State failed to comply with its positive obligation under Article 8 of the Convention to secure to the applicant a sufficient measure of protection enabling her, as a member of the vulnerable Roma community, to effectively enjoy her right to respect for her private and family life in the context of her sterilisation (see paragraphs 98-99 above).

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. Article 41 of the Convention provides:

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

A. Damage

125. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. She submitted that she had been sterilised at an early stage of her reproductive life and that the procedure had had lasting consequences for her.

126. The Government considered the sum claimed excessive. In case of a finding of a breach of the applicant's rights, they submitted that any award should be proportionate to the circumstances of the case.

127. The Court notes that the applicant obtained partial redress at the domestic level (see paragraph 29 above). Having regard to the circumstances of the case seen as a whole and deciding on equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

128. The applicant also claimed EUR 10,436.07 for costs and expenses incurred in both the domestic proceedings and before the Court. That sum included EUR 9,848.07 in respect of the costs of her legal representation and EUR 588 in respect of administrative expenses.

129. The Government objected that the sum claimed for the legal costs was excessively high and that any reimbursement of administrative costs and expenses should correspond to sums demonstrably incurred.

130. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection relating to the applicant's status as a victim;
2. *Declares* the complaints under Articles 3, 8, 12 and 14 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a substantive violation of Article 3 of the Convention;
4. *Holds* that there has been no procedural violation of Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention;
6. *Holds* that there is no need to examine separately the complaint under Article 12 of the Convention;
7. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention;
8. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Nicolas Bratza

Deputy Registrar President

¹ The applicant relies upon, in particular:

- Regular Report on Slovakia's Progress towards Accession (2002) issued by the European Commission;
- Stigmata: Segregated Schooling of Roma in Central and Eastern Europe (2004), published by the European Roma Rights Centre;
- Amnesty International Report 2003;
- Discrimination in the Slovak Judicial System, Roma Rights 1/2002, European Roma Rights Centre;
- Human Rights Practices: Slovak Republic 2001, 2002, Bureau of Democracy, Human Rights and Labor, U.S. State Department; and
- Monitoring the EU Accession Process: Minority Protection in Slovakia, 2001, Open Society Institute.

N.B. v. SLOVAKIA JUDGMENT

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