



I.G. and Others v. Slovakia

App. No. 15966/04

Country: Slovakia

Region: Europe

Year: 2012

Court: European Court of Human Rights

Health Topics: Health care and health services, Hospitals, Informed consent, Medical malpractice, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right of access to information, Right to family life

Facts

Three applicants of Roma ethnic origin were all sterilized in a public hospital during Caesarean section deliveries.

The first applicant was not told that she had been sterilized. After the delivery, a doctor asked her to sign a document that all women who had Caesarean sections had to sign. Five days after the delivery she was transferred to a hospital due to a post-surgery complication, because of which doctors performed a hysterectomy. She learned about the sterilization three years later. The first applicant submitted that her sterilization had been contrary to Slovakian law, as at the relevant time she was 16 years old and her legal guardians had not consented to the operation. She was living in constant fear that her partner would leave her because she cannot bear him anymore children.

The second applicant was told she needed a Caesarean delivery, during which tubal ligation was also performed. She was 17 and neither she nor her parents signed any document. She learned about the sterilization four years later. Due to her inability to have more children, her partner left her and her social status in her community fell and, as a result, it was very difficult for the second applicant to find a new partner. The second applicant suffered serious medical side-effects from her sterilization.

The third applicant was told she would have to deliver her twins by Caesarean section. She was given a pre-medication injection which made her dizzy. She was then asked to sign a paper because she was going to have a Caesarean section. The third applicant died eight years later, from causes unstated in the case. The third applicant's children pursued the application.

All three applicants also claimed they received inferior treatment because of racial prejudice. In particular, the applicants stated that they had been accommodated separately from non-Roma women. 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.

A long process of criminal and civil proceedings was instituted which ended in the General Prosecutor's Office finding that contrary to what the prosecuting authorities at the lower level had held, the applicants could not be considered injured parties for the purpose of the criminal proceedings, as they had suffered no harm to their health, nor any other damage, and their rights had not been infringed. As for civil proceedings, the first applicant was not entitled to compensation since she had undergone a hysterectomy several days after her sterilization. The second applicant was compensated 1,593.3 euros. The third applicant's proceedings were discontinued by the court because under the relevant law the right claimed had been extinguished upon her death. The applicants also lodged a complaint with the Constitutional Court which ultimately said it lacked jurisdiction 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 applicants then filed a complaint before the European Court of Human Rights, alleging violations of articles 3 (freedom from torture or and inhuman or degrading treatment or punishment), 8 (right to private and family life), 12 (right to marry and found a family), 13 (right to remedy), and 14 (freedom from discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention").

Decision and Reasoning

The Court found Slovakia in violation of articles 3 (freedom from torture or and inhuman or degrading treatment or punishment) and 8 (right to private and family life) of the European Convention.

The Court first held that the children of the third applicant did not have standing to pursue their application. Because the complaints concern Articles 3, 8, 12 and 14 of the Convention which, in view of their factual background, are so closely linked to the person of the original applicant, they are not transferable.

As for the first and second applicants, the Court held that their sterilizations were substantive violations of Article 3 as they were incompatible with the requirement of respect for human freedom and dignity, and attained a level of severity bringing such treatment within the scope of Article 3. The sterilization was not a life-saving intervention and no informed consent was obtained. The applicants were susceptible to feeling debased and humiliated when they learned that they had been sterilized without their or their legal guardians' prior informed consent. The Court cited *V.C. v Slovakia*, where the Court held that the sterilization of a Roma woman without her informed consent was a breach of Article 3.

The Court held that there was a procedural violation of Article 3 as well because the investigations by the domestic authorities were prolonged significantly and was not compatible with the requirement of promptness and reasonable expedition.

The Court also found a violation of Article 8 because in both cases the sterilization was carried out contrary to the requirements of domestic law, as the national courts acknowledged. The State failed to comply with its positive obligation under Article 8 and there was an absence of safeguards giving special consideration to the reproductive health of the applicants as Roma women.

The Court held that it was not necessary to examine the complaint separately under Article 12 because the Court already found the sterilization breached Article 8. The Court held that a further examination of whether the facts of the case also give rise to a breach of their right to marry and to found a family is not called for.

The Court held there was no breach of Article 13, taken together with Articles 3, 8, and 12. To the extent that the first and second applicants may be understood as alleging a breach of Article 13 on the ground that the deficiencies in the domestic law were at the origin of their sterilization, the Court reiterated that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law.

The Court held that it was not necessary to examine the complaint separately under Article 14 because the discrimination complaint is most naturally entertained in conjunction with Article 8.

The Court awarded the first applicant 28,500 euros, the second applicant 27,000 euros, and 4,000 euros each for costs and expenses.

Decision Excerpts

118. 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 was in breach of Article 3 of the Convention.

119. In *N.B. v. Slovakia* (judgment cited above, ¶¶ 74-81), the Court found that the sterilisation of the applicant, then below the age of majority, had not been a life-saving medical intervention and that it had been carried out without the informed consent of the applicant and/or her representative. Such a procedure was found incompatible with the requirement of respect for the applicant's human freedom and dignity. As in the case of *V.C.*, the Court further found in the case of *N.B.* that, in the circumstances, the procedure and its repercussions resulted in the applicant being subjected to treatment contrary to Article 3.

121. It must therefore be determined whether, in the circumstances, the treatment complained of by the first applicant can be qualified as incompatible with Article 3. In that respect the Court reiterates that a person's treatment is considered to be "degrading" when it humiliates or debases an individual, showing a lack of

respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority; it may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, Â§ 220, ECHR 2011). To fall within the scope of Article 3 such treatment must attain a minimum level of severity. The assessment of such a minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, Â§ 96, 24 January 2008).

122. The first applicant was sterilised in the context of a delivery by Caesarean section. Her sterilisation was not a life-saving intervention, and neither the applicant's nor her legal guardians' informed consent had been obtained prior to it. The procedure was therefore incompatible with the requirement of respect for her human freedom and dignity, similarly to the cases of *V.C.* (cited above, Â§ 76-77), and *N.B.* (also cited above, Â§ 74). The fact that the doctors had considered the procedure necessary because the first applicant's life and health would be seriously threatened in the event of a further pregnancy cannot affect the position.

123. The Court accepts that the first applicant was susceptible to feeling debased and humiliated when she learned that she had been sterilised without her or her legal guardians' prior informed consent. Taking into account the nature of the intervention, its circumstances, the age of the applicant and also the fact that she belongs to a vulnerable population group (see *V.C. v. Slovakia*, cited above, Â§ 146 and 178), the Court considers that the treatment complained of attained a level of severity which justifies its qualification as degrading within the meaning of Article 3.

125. For reasons set out in paragraph 122 above in the context of the case of the first applicant, which are equally relevant in respect of the second applicant, and also in view of the consequences the operation entailed for her (see paragraphs 21-22 above), the Court concludes that the second applicant's sterilisation was also incompatible with the requirement of respect for her human freedom and dignity, and attained a level of severity bringing such treatment within the scope of Article 3 (see also, *mutatis mutandis*, *N.B. v. Slovakia*, cited above, Â§ 77-81). 126. Accordingly, there has been a substantive violation of Article 3 of the Convention on account of the sterilisation of the second applicant.

129. 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 of 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 on the part 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, Â§ 123-125, with further references).

143. In addition, the Court has previously held, with reference to both international and domestic documents, that at the relevant time an issue had arisen in Slovakia as regards sterilisations and their improper use, including disregard for the 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, Â§ 146-149 and 152-153).

155. In the present case, the first and second applicants were able to have their case reviewed by civil courts at two levels of jurisdiction; it was acknowledged that they had been sterilised contrary to the relevant law. Furthermore, the relevant facts of the case were assessed from the perspective of the criminal law by prosecuting authorities at three levels. They were further able to have the alleged breaches of their rights under the Convention and their constitutional equivalents examined by the Constitutional Court. The first and second applicants thus had effective remedies within the meaning of Article 13 in respect of their complaint about their sterilisation. (see also, *mutatis mutandis*, *V.C. v. Slovakia*, cited above, Â§ 166 and *N.B. v. Slovakia*, cited above, Â§ 86-87).

165. 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, in the present case it cannot be established, as in the cases of *V.C.* and *N.B.*, that the doctors involved acted in bad faith, that the first and second applicants' 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 affect members of the Roma community in particular (see *V.C. v. Slovakia*, cited above, ¶¶ 177-178; *N.B. v. Slovakia*, cited above, ¶¶ 121-122).

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