



## Case of K.H and Others v. Slovakia

Application no. 32881/04

**Country:** Slovakia

**Region:** Europe

**Year:** 2009

**Court:** The European Court of Human Rights

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

**Human Rights:** Right of access to information, Right to bodily integrity

### Facts

The applicants are Slovakian females. After their treatment in two Eastern Slovakian hospitals for their pregnancies and deliveries, they could not conceive after multiple attempts. They suspected that a sterilisation procedure must have been conducted during their caesarean delivery.

The lawyers of the plaintiffs attempted to get their medical records from the hospitals but were denied access. The applicants approached the court asking them to order access to the documents and further photocopy the same. The Court allowed access but refused the request for photocopy. Seven applicants were able to make copies under the Health Care Act of 2004 but the eight applicant was only provided with a record of a surgery indicating that a sterilization procedure had been performed.

The complaint was in issue of the right to information concerning their health and reproductive status under Article 8 of the Convention.

### Decision and Reasoning

The Court held that there had been a violation of Article 8 of the Convention. It stated that it was for the document holder to show that there was some compelling reasons for non-disclosure of information or allowing them to photocopy the medical records of the applicants. The Court observed that the 2004 Act had come into play too late.

Further with respect to Article 6(1) of the Convention, the Court agreed with the applicant's contention that due to denial of making copies, they were put in a state of uncertainty in respect to their reproductive ability.

The dissenting opinion stated that it did not agree with the Court's assessment in respect of Article 6(1) as even if they were not allowed to make copies of the medical records, they had sufficient information in their possession to allow effective access to a court.

### Decision Excerpts

It can be accepted that it is for the file holder to determine the arrangements for copying personal data files and whether the cost thereof should be borne by the data subject. However, the Court does not consider that data subjects should be obliged to specifically justify a request to be provided with a copy of their personal data files. It is rather for the authorities to show that there are compelling reasons for refusing this facility. (Para 48)

Obtaining copies of the medical records was essential for an assessment, with the assistance of independent medical experts of the applicants' choice, of the position in their cases and of the prospects of success of any future civil actions. The latter element was important because the applicants, who were living on social benefits, would be ordered to reimburse the other party's costs if the courts dismissed their action. (Para 61)

The Court reiterates that the right of access to a court is an inherent aspect of the safeguards enshrined in Article 6. It secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court. Where the individual's access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and, in particular, whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means

employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, Â§ 57, Series A no. 93).â€• (Para 64)

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