



## N.B. v Slovakia

N.B. v Slovakia, App. No. 29518/10, Eur. Ct. H.R. (2012).

**Country:** Slovakia

**Region:** Europe

**Year:** 2012

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

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

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to family life

### Facts

Ms. N.B. was of Roma ethnic origin. She was sterilized at a public hospital, at the age of 17, during the birth of her second child. Ms. N.B. asserted that she had been coerced into signing authorizations for her sterilization, that she was segregated within the hospital due to her ethnicity and that the decision to sterilize her was discriminatory. She further asserted that she had suffered mental and physical health difficulties as a result of her sterilization, and had been ostracized by her husband and community.

Ms. N.B. brought a civil action against the hospital in the SpiÅšskÃ¡ NovÃ¡ Ves District Court, which dismissed the action, stating that the sterilization was required to save her life, and therefore did not require consent. Ms. N.B. then appealed to the KoÅšice Regional Court, which found that the sterilization was not required to save her life. The District Court ordered damages be paid to Ms. N.B. in the amount of EUR 1,593; finding that valid consent had not been provided, because under domestic law, as a minor, a parentâ€™s consent was required. Ms. N.B. also brought a criminal action and filed a complaint with the Constitutional Court, both were dismissed.

Ms. N.B. argued under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) that she had been subjected to inhuman and degrading treatment, from both her sterilization and the Stateâ€™s failure to satisfactorily investigate the incident. She also argued under Article 8 that her private and family life had been negatively impacted, under Article 12 that her sterilization interfered with her ability to found a family, and under Article 13 that an effective remedy was unavailable under Articles 3, 8 and 12. The applicant also argued under Article 14 that she had been discriminated against on the basis of sex and ethnic origin, submitting that at the time of her sterilization, no anti-discrimination laws were effective in Slovakia.

The State argued that the compensation awarded to Ms. N.B. was appropriate, and that she was only 10 days from the age of majority when she signed the consent documents. The State also argued that the medical staff had acted in good faith to protect the lives of both Ms. N.B. and her child, and that the medical staff had elected not to remove Ms. N.B.â€™s uterus after having discovered a rupture, but instead chose to reconstruct her uterus and render a tubular sterilization. Therefore, Ms. N.B. was not permanently infertile, she could choose to undergo an operation to reverse her sterilization, or pursue in-vitro fertilization.

### Decision and Reasoning

The Court found a violation of Ms. N.B.â€™s rights under Article 3, determining that Ms. N.B. had suffered physical and mental anguish, as well as suffered from a diminished status within her community. Further the Court found that the Stateâ€™s investigation into the circumstances was sufficient and did not constitute a procedural breach of Article 3. The Court found that the Stateâ€™s failure to provide sufficient legal protections of the reproductive health of Roma women was in violation of Article 8. The Court declined to examine a violation of Article 12, given that a violation had been found under Article 8. Under Article 13, the Court found that effective domestic remedy was available in regards to Ms. N.B.â€™s sterilization. The Court examined Article 14 in conjunction with Article 8, but given precedent, did not find it necessary to re-examine the issue in this case. Under Article 4, the Court awarded Ms. N.B. EUR 25,000 in non-pecuniary damages and EUR 5,000 in litigation costs.

### Decision Excerpts

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 sterilization grossly interfered with her physical integrity, as she was thereby deprived of her reproductive capacity. • Page 13.

121. The Court has previously found that the practice of sterilization 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 sterilization was a part of an organized 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 sterilizations 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 sterilization. • Page 20.