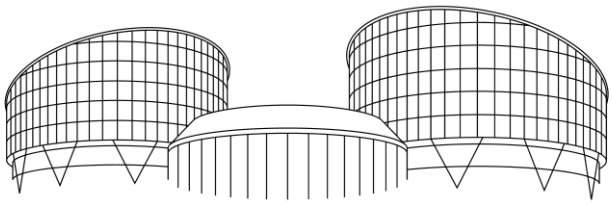

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECTION IV

CASE OF I.G. AND OTHERS v. SLOVAKIA

(Application no. 15966/04)

JUDGMENT

STRASBOURG

13 November 2012

FINAL

29/04/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of I.G. and Others v. Slovakia,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ján Šikuta,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 15966/04) 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 three Slovakian nationals, I.G., M.K. and R.H. ("the applicants"), on 27 April 2004. The President acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Ms V. Durbáková and Ms B. Bukovská, lawyers acting in cooperation with the Centre for Civil and Human Rights, a non-governmental organisation with its registered office in Košice, as well as by Lord Lester of Herne Hill QC, of Blackstone Chambers in London. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

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

4. By a decision of 22 September 2009 the Court declared the application admissible.

5. The applicants and the Government each submitted further written observations (Rule 59 § 1) on the merits. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations. In addition, third-party comments were received from the International Federation of Gynaecology and Obstetrics, which had been given leave by the President to intervene in the written procedure

(Article 36 § 2 of the Convention and Rule 44 § 3). The parties replied to those comments (Rule 44 § 6).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are of Roma ethnic origin. The first applicant, Ms I.G., was born in 1983. The second applicant, Ms M.K., was born in 1981. The third applicant, Ms R.H., was born in 1972. She died on 9 October 2010. Her three children, Ms B.P., Mr D.M. and Mr R.M., expressed the wish to pursue the application in the third applicant's stead.

A. The applicants' sterilisation in Krompachy Hospital

7. The applicants were sterilised in the gynaecology and obstetrics department of Hospital and Health Care Centre in Krompachy (*Nemocnica s poliklinikou Krompachy* – "Krompachy Hospital"), a medical institution which was then under the authority of the Ministry of Health.

1. The case of the first applicant

8. The first applicant was sterilised on 23 January 2000.

9. 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 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 tubal ligation. This was the applicant's second delivery, and also her second delivery by Caesarean section.

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

11. 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.

12. 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.

13. On 28 January 2000 the first applicant was transferred to a hospital in Košice due to an inflammation as a post-surgery complication. On 9 February 2000 she underwent further surgery due to a serious infection and sepsis. This operation was considered life-saving. During the operation the doctors performed a hysterectomy on the first applicant.

14. The first applicant 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 had been signed by the first applicant.

15. The second half of the pre-printed form contained the decision of the district sterilisation committee at Krompachy Hospital dated 23 January 2000. This decision 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.

16. The first applicant submitted that her sterilisation 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.

17. 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.

2. The case of the second applicant

18. The second applicant 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 medical staff of Krompachy Hospital also performed a tubal ligation on the second applicant.

19. At the date of delivery the second applicant was 17 years old (that is to say, a minor) and not legally married. She submitted that neither she nor her parents had been advised of her sterilisation prior to it, and that they had never signed any document consenting to it. According to their statements in the course of civil proceedings on the second applicant's action (for further details see below), the second applicant and her parents stated that the medical staff had informed them orally after the operation.

20. 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 varicose veins 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.

21. 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 was very difficult for the second applicant to find a new partner.

22. The second applicant currently 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 is also suffering serious medical side-effects from her sterilisation.

3. The case of the third applicant

23. The third applicant 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.

24. 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 because she was expecting twins. In the eighth month of her pregnancy she was informed that she would have to deliver by Caesarean section.

25. The third applicant arrived at Krompachy Hospital in the evening of 10 April 2002 after she had begun having 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 felt that her head was spinning. A nurse, with the doctor standing beside her, asked the third applicant to sign a paper. Because she was feeling dizzy 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.

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

27. On 18 April 2002 the third applicant was discharged from Krompachy Hospital at her own request. She stated that 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.

28. 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 appeared to include her signature.

29. 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 compliant with the 1972 Sterilisation Regulation. The document states that there were "medical reasons" for the operation and that the applicant had already had three children.

4. The applicants' treatment in Krompachy Hospital

30. With a view to describing the overall situation and context in which they had been sterilised, 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.

31. In particular, the applicants stated that they had been accommodated separately from non-Roma women, in what were 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.

32. 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 to obtain more social welfare benefits.

33. The Government disputed the above allegations. They relied, *inter alia*, on a statement by a gynaecologist at Krompachy Hospital that 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.

B. The applicants' attempts to obtain redress

1. Criminal investigation

34. In response 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 of the alleged unlawful sterilisation of several women, including the three applicants.

35. 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.

36. The proceedings were formally brought by the regional criminal investigation department in Košice on 31 January 2003.

37. 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 events underlying the investigation had not occurred and that nothing indicated that any offence under the Criminal Code had been committed.

38. On 31 October 2003 the applicants and two others lodged a complaint against the police investigator's decision of 24 October 2003. On 9 March 2004 the regional prosecutor's office in Košice dismissed it, holding that injured parties, including the applicants, were not entitled to lodge complaints 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.

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

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. On 19 February 2008 the Košice regional prosecutor's office dismissed the applicants' complaint, holding that the sterilisations had been carried out in accordance with the law then in force, and that the applicants had been duly advised of their sterilisation. No objective or subjective appearance of any criminal offence had been established in any of the individual cases of sterilisation.

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

47. On 19 May 2008 the latter replied that no reason had been found to reach 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 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.

2. Civil proceedings

48. On 12 February 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 brought a similar action with the Spišská Nová Ves District Court on 7 October 2004.

49. The cases were examined by courts at two levels of jurisdiction. It was established that the Krompachy municipality was to be considered the defendant once Krompachy Hospital had ceased to exist. The applicants' claims were determined as follows.

(a) The action brought by the first applicant

50. On 20 January 2005 the Spišská Nová Ves District Court rejected the first applicant's claim as statute-barred. On 23 May 2005 the Košice Regional Court quashed that decision.

51. Subsequently the District Court heard the parties and witnesses, obtained the opinion of an expert and took documentary evidence. On 12 January 2009 it dismissed the first applicant's claim. In the judgment it admitted that the first applicant's sterilisation had not been life-saving surgery. As the applicant had been under the age of majority, her parents' approval should have been obtained prior to the surgery.

52. With reference to the expert opinion, the court further established that the reason for the first applicant's permanent infertility was the hysterectomy. That operation had been carried out as a life-saving intervention several days after the delivery, for reasons which were unrelated to the sterilisation. The operation had thus had no lasting consequences for the first applicant. The court concluded that there was no causal link between the breach of the first applicant's rights in the context of her sterilisation and its alleged effect on her health, private and family life and position in society.

53. The first applicant appealed. She argued that she had been deprived of the ability to have children by her sterilisation on 23 January 2000. The subsequent hysterectomy could not absolve the defendant from liability for her unlawful sterilisation. She contested the District Court's argument that the sterilisation had not permanently deprived her of the ability to conceive.

54. On 26 October 2009 the Regional Court upheld the first-instance judgment. It held that the District Court had established the relevant facts and had applied the law correctly. A causal link between the unlawful sterilisation of the first applicant and the damage which she alleged she had thereby suffered had ceased to exist with the performance of the hysterectomy. The Regional Court concluded that during the short period between the sterilisation and the hysterectomy the first applicant could not have suffered any damage resulting from an impairment of her position in society, contrary to her allegation. Without further specification the judgment indicated that the first applicant might have suffered damage of a different nature, but that this was not the subject matter of the proceedings.

(b) The action brought by the second applicant

55. On 2 May 2005 the District Court rejected the action of the second applicant. On 6 February 2006 the Regional Court quashed that decision.

56. Subsequently the District Court heard the parties and witnesses and examined documentary evidence. It also obtained the opinion of an expert, the second applicant having previously challenged several other experts appointed by that court.

57. On 11 May 2009 the District Court dismissed the action. On the basis of the expert opinion it established that the second applicant had not suffered serious damage to her health and that the operation had not affected her life and position in society. The judgment stated that the second applicant could become pregnant, for example by means of sterilisation reversal surgery or by assisted reproduction. The applicant had been living with her second partner for four years and she had not shown that her social life had been impaired. Finally, the District Court held that, had the second applicant shown that her health had been damaged as a result of her sterilisation, she would have been entitled to 1,593 euros (EUR) in compensation under the relevant law.

58. On 27 January 2010 the Regional Court quashed that judgment as erroneous. It held that the hospital staff had acted contrary to the law in that they had not obtained the approval of the second applicant's legal guardians prior to her sterilisation.

59. On 15 June 2010 the District Court ordered the defendant to pay EUR 1,593.3 to the second applicant. It found no reason to avail itself of its right under Regulation 32/1965 to grant a higher award.

60. On 10 November 2010 the Košice Regional Court upheld the District Court's judgment of 15 June 2010 while holding that the compensation award was appropriate in the circumstances of the case. It did not consider relevant the second applicant's argument that it was not clear whether she could become pregnant as a result of sterilisation reversal surgery or assisted reproduction, and that such methods were not accessible to her. For the appeal court, it had not been reliably established that the second applicant and her partner would have had children if she had not been sterilised. Finally, the Regional Court held that the award could not be increased on the ground of the alleged impairment of the applicant's position as a member of a socially excluded Roma community. That issue was to be assessed from the perspective of cultural norms shared in society as a whole, under which infertile men and women were no longer subject to denigration and mockery.

(c) The action brought by the third applicant

61. On 24 October 2011 the District Court discontinued the proceedings in respect of the third applicant. It held that under the relevant law the right claimed had been extinguished upon her death.

3. Constitutional proceedings

(a) The applicants' complaint of 24 May 2004

62. On 24 May 2004 the applicants lodged a complaint with the Constitutional Court. 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 3, 8, 12, 13 and 14 of the Convention and several constitutional provisions had been breached.

63. 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. It ordered the regional prosecutor's office in Košice to reimburse the applicants' costs and expenses in the constitutional proceedings.

(b) The applicants' complaint of 30 November 2005

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

65. 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.

66. 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.

67. The Constitutional Court awarded the equivalent of EUR 1,430 to each of the applicants. It ordered the regional prosecutor's office to reimburse the applicants' costs.

(c) The applicants' complaint of 24 April 2008

68. 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 about that decision to the General Prosecutor's Office by way of an extraordinary remedy, and that the latter had not yet replied to them.

69. 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.

70. 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 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.

(d) The first applicant's complaint of 10 March 2010

71. On 10 March 2010 the first applicant complained about the proceedings leading to the Košice Regional Court's judgment of 26 October 2009. She alleged a breach of Articles 3, 6, 8, 12, 13 and 14 of the Convention, as well as of her rights under several other international treaties and the Constitution.

72. On 7 September 2010 the Constitutional Court declared the complaint manifestly ill-founded. It held that the Regional Court's judgment was not arbitrary or otherwise contrary to the first applicant's rights.

(e) The second applicant's complaint of 9 March 2011

73. On 9 March 2011 the second applicant alleged a breach of, *inter alia*, Articles 3, 6, 8, 13 and 14 of the Convention in the context of the

proceedings leading to the Regional Court's judgment of 10 November 2010.

74. On 13 July 2011 the Constitutional Court dismissed the complaint as manifestly ill-founded. It held that the manner in which the ordinary courts had determined the amount of compensation due to the second applicant was not arbitrary or otherwise contrary to her fundamental rights and freedoms.

C. Accounts of sterilisation practices in Slovakia

1. Information submitted by the applicants

75. The applicants referred to a number of publications pointing to a history of 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. They also referred to the Body and Soul Report and a number of other reports and statements by human rights organisations, both in Slovakia and abroad, including governmental and inter-governmental bodies, requesting the Slovakian authorities to conduct an impartial and fair investigation of the allegations of forced and coerced sterilisation of Roma women in Slovakia, or criticising the absence of such an investigation (for further details see also *V.C. v. Slovakia*, no. 18968/07, §§ 43-47, 8 November 2011).

2. Information relied upon by the respondent Government

76. The Government cited a report of 28 May 2003 drawn up by a group of experts established by the Ministry of Health with a view to investigating allegations of unlawful sterilisations and segregation of Roma women (for further details see *V.C. v. Slovakia*, cited above, §§ 50-55).

77. In their opinion on the Body and Soul Report representatives of the Slovakian Society for Planned Parenthood and Parenthood Education admitted that the requirement of prior informed consent to sterilisation had been absent from the regulatory framework in Slovakia at the relevant time. However, in the case of Roma women it was frequently the only opportunity for medical personnel to inform them about contraception and sterilisation shortly before or during delivery. According to the opinion, the medical practitioners involved in sterilisations acted in good faith and in accordance with the law in force.

78. In a letter 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.

79. In the area covered by Krompachy Hospital the post-natal mortality rate of Roma children had fallen from twenty-five per thousand in 1990 to

five per thousand in 2002. The majority of deliveries in the hospital concerned Roma women; the perinatal mortality rate was around 10 per thousand, approximately the same as in other hospitals within the region.

80. The Roma settlement in R. (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 R. settlement had given birth by vaginal delivery and eighteen Roma women (that is, 12%) had delivered by Caesarean section. The ratio was around 15% nationwide.

81. During the same period 801 Roma women had given birth in the hospital, of whom seventy-five (that is, 9.3%) 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%) had delivered by Caesarean section.

82. Between 1999 and February 2003 there had been twenty-eight sterilisations performed on women of Roma origin and sixty-five sterilisations of non-Roma patients. All patients had been duly advised and had signed the relevant request.

83. Furthermore, Krompachy Hospital had carried out ninety-six procedures on Roma women who were experiencing difficulty in conceiving. In several cases the patients had become pregnant thereafter.

84. 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 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, fourteen days after the scheduled date of delivery of her ninth child. Due to severe haemorrhagic shock she could not be saved.

II. RELEVANT DOMESTIC LAW, PRACTICE AND INTERNATIONAL MATERIALS

85. The relevant domestic law and practice, as well as pertinent international documents, are set out in detail in *V.C. v. Slovakia*, cited above, §§ 57-86 and *N.B. v. Slovakia*, no. 29518/10, §§ 49-56, 12 June 2012.

86. In addition, the following information is relevant in the present case.

87. The relevant provisions of the Civil Code read as follows:

Article 420

"1. Everyone shall be liable for any damage he or she causes by breach of a statutory duty.

2. Damage is considered to have been caused by a legal person ... when it has arisen in the context of an activity carried out by other persons whom [that legal person] has entrusted with carrying out that activity" ...

Article 444

"Indemnification for damage to health shall consist of a lump-sum payment for suffering and impairment of one's position in the society."

88. In November 2009 the UN Committee Against Torture considered its second periodic report on Slovakia, which covered the period from 1 January 2001 to 31 December 2006. In its concluding observations the Committee expressed deep concern about allegations of continued involuntary sterilisation of Roma women. It recommended that Slovakia should:

"(a) Take urgent measures to investigate promptly, impartially, thoroughly and effectively all allegations of involuntary sterilization of Roma women, prosecute and punish the perpetrators and provide the victims with fair and adequate compensation;

(b) Effectively enforce the Health-care Act (2004) by issuing guidelines and conducting training of public officials, including on the criminal liability of medical personnel conducting sterilizations without free, full and informed consent, and on how to obtain such consent from women undergoing sterilization."

THE LAW

I. THE LOCUS STANDI OF THE THIRD APPLICANT'S CHILDREN

89. In view of their request the Court must first examine whether Ms B.P., Mr D.M. and Mr R.M., the children of the third applicant, Ms R.H., have standing to pursue the application originally lodged by their mother, who died on 9 October 2010, in the course of the proceedings.

90. The Court has held that the relevant factors for determining similar issues are (i) the ties between the deceased applicant and those wishing to pursue the application in his or her stead, (ii) whether the rights in issue can be regarded as transferable, and (iii) whether the case under consideration involves an important question of general interest transcending the person and the interests of the applicant (for recapitulation of the relevant case-law

see *M.P. and Others v. Bulgaria*, no. 22457/08, §§ 97-98, 15 November 2011, with further references).

91. In the present case the request to pursue the proceedings in the third applicant's stead was submitted by her direct descendants. However, the complaints concern issues falling under Articles 3, 8, 12 and 14 of the Convention which, also in view of their factual background, are so closely linked to the person of the original applicant that they cannot be regarded as transferable (see also *Angelov and Angelova v. Bulgaria* (dec.), no. 16510/06, 7 December 2010). Therefore, the Court finds that the third applicant's children do not have standing to continue the proceedings in their mother's stead.

92. Moreover, the Court addressed similar complaints in the context of two different applications earlier (see *V.C. v. Slovakia and N.B. v. Slovakia*, both cited above), and it will examine complaints similar to those raised by the third applicant in so far as they were also raised by the first and second applicants in the present case. The Court therefore considers that there exists no general interest which necessitates proceeding with the examination of the complaints raised by the third applicant, and finds that the conditions in which those complaints may be struck out of its list, as provided in Article 37 § 1 of the Convention, are satisfied.

93. Accordingly, the Court decides to strike the application out of its list of cases pursuant to Article 37 § 1 (c) of the Convention in so far as it has been brought by the third applicant, Ms R.H..

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Exhaustion of domestic remedies

94. The Government, as at the admissibility stage, argued that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. In particular, they should have sought redress also by means of an action for protection of their personal rights under Articles 11 et seq. of the Civil Code. That remedy allowed for compensation for damage of a non-pecuniary nature due to interference with one's personal rights. The determination of the amount of such compensation was within the courts' discretion. As regards the alleged procedural breach of Article 3 in the context of criminal proceedings, the applicants had not lodged their complaint to the Constitutional Court of 24 April 2008 in accordance with the formal requirements.

95. The first and second applicants disagreed with those arguments.

96. In its decision on the admissibility of the present application the Court noted that the applicants had been unable to obtain redress in the context of the criminal proceedings, notwithstanding that they had provided

the prosecuting authorities and the Constitutional Court with ample opportunity to redress the breach of their rights which they alleged before the Court. The Court held 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 sees no reason to depart from that conclusion at this stage of the proceedings.

97. In the decision on the admissibility the Court further held that, in the particular circumstances, it was not prevented from examining the merits of the case, notwithstanding that the proceedings relating to the applicants' civil actions were pending. The decision stated, *inter alia*, that in the context of the present case the question arose whether domestic law and practice provided sufficient safeguards to protect the applicants' rights. It had not been shown that that issue was likely to be addressed by the domestic authorities involved in the applicants' case.

98. Subsequently the civil courts determined the first and second applicants' actions under Articles 420 and 444 of the Civil Code, which allow for compensation for damage to health and for impairment of position in society. The Constitutional Court then examined their complaints, in which they relied on the same rights, breach of which they now allege before the Court.

99. In these circumstances, the Court is satisfied that the first and second applicants used the domestic remedies which could be considered effective and sufficient, as required by Article 35 § 1 of the Convention.

100. As to the remedy available under Articles 11 et seq. of the Civil Code to which the Government referred, the Court reiterates that 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). It does not find it established that the remedy cited by the Government was likely to be successful in respect of the first applicant in the circumstances of the case and the courts' conclusion on her action. Similarly, it has not been shown that an action under Articles 11 et seq. offered prospects of more extensive redress in respect of the second applicant than the remedy to which the first and second applicants had recourse. In respect of the Government's argument that in proceedings on a claim under Articles 11 et seq. of the Civil Code the amount of compensation was within the courts' discretion, the Court notes that in proceedings on the present applicants' action Regulation 32/1965 allowed an award to be increased over and above the sums foreseen by that Regulation where it was justified by particular circumstances (see also *N.B. v. Slovakia*, cited above, § 56).

101. The Court further notes that in *V.C. v. Slovakia* (cited above, §§ 28-40) the applicant unsuccessfully used the remedy under Articles 11 et seq. of the Civil Code while relying, similarly to the applicants in the present case, on the relevant international human rights standards, several of which the Court, unlike the domestic authorities, ultimately found to have been breached. It is further relevant that in *N.B. v. Slovakia* the Court did not require the applicant, who had used under the Civil Code the same remedy as the first and second applicants in the present case, to additionally seek redress by means of an action for protection of her personal rights under Articles 11 et seq. of the Civil Code.

102. The Government's objection as to the failure by the first and second applicants to exhaust domestic remedies must therefore be dismissed.

B. The first and second applicants' status as victims

103. The Government further objected that the first and second applicants had lost their victim status, within the meaning of Article 34 of the Convention, in view of the redress which (i) the second applicant had obtained in the context of the civil proceedings, and (ii) both the first and second applicants had obtained from the Constitutional Court in respect of the alleged breach of their procedural rights under Article 3 of the Convention.

104. The first and second applicants disagreed.

105. 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).

106. In *N.B. v. Slovakia* (cited above, §§ 60-64), the Court dismissed the Government's objection relating to the victim status of the applicant. It considered relevant, in particular, that (i) the civil courts had not accepted the applicant's arguments about the particularly serious nature of the breach of her rights resulting from her sterilisation, (ii) they had not considered the circumstances of the case from the perspective of the international standards on which the applicant had relied, and (iii) the applicant had been unable to obtain redress in the context of criminal proceedings and before the Constitutional Court. In addition, in *N.B.* the Court held that, even assuming that by their judgments the civil courts had acknowledged to an acceptable extent the breach of the rights alleged by the applicant, their award (namely EUR 1,593) could not be regarded as financial redress commensurate with the nature of the damage alleged by the applicant.

107. In the present case the courts, in civil proceedings, acknowledged that the hospital staff had acted contrary to the law, in that they had not obtained the approval of the second applicant's legal guardians prior to her sterilisation, and ordered the defendant to pay her EUR 1,593.3. The Regional Court held in that context that the award could not be increased on the ground of the alleged impairment of the second applicant's position as a member of the socially excluded Roma community. Subsequently the Constitutional Court dismissed as manifestly ill-founded the second applicant's complaint, in which she alleged a breach of Articles 3, 6, 8, 13 and 14 of the Convention.

108. In these circumstances, for similar reasons as in *N.B. v. Slovakia*, the Court does not accept that the second applicant ceased to be a victim within the meaning of Article 34 of the Convention as a result of the civil courts' judgments on her case.

109. The Court further notes that in the context of the criminal investigation the Constitutional Court found, on 1 June 2005 and 13 December 2006, that the regional prosecutor's office in Košice had twice violated the first and second applicants' procedural rights. It quashed the relevant decisions, ordered that authority to re-examine the case, to reimburse the plaintiffs' costs and, in the decision of 13 December 2006, it also awarded the equivalent of EUR 1,430 to the first and second applicants each. However, in the subsequent proceedings the prosecuting authorities concluded that the first and second applicants and the other Roma women concerned could not be considered injured parties for the purpose of the criminal proceedings, as they had suffered no harm to their health or other damage, and that their rights had not been infringed. Their constitutional complaint was to no avail.

110. Thus the first and second applicants obtained only partial redress in the context of criminal investigation, namely in respect of procedural shortcomings at their initial stage. In these circumstances, and also having regard to the amount of just satisfaction awarded by the Constitutional Court's judgment of 13 December 2006, the Court considers that such redress was not sufficient to deprive the first and second applicants of their status as victims in respect of the breaches of the Convention which they allege.

111. The Government's objection relating to the victim status of the first and second applicants must accordingly be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

112. The first and second applicants complained that they had been subjected to inhuman and degrading treatment on account of their sterilisation without their and their representatives' full and informed consent, and that the authorities had failed to carry out a thorough, fair and

effective investigation of the circumstances surrounding their sterilisation. They 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."

A. Alleged ill-treatment of the first and second applicants

1. The parties' submissions

113. The first and second applicants 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.

114. 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. The fact that the formal approval of their legal guardians had not been obtained as requested by the law was not relevant from the viewpoint of Article 3 of the Convention as, in view of their age and the fact that they lived with partners and children, they could be considered mature enough to decide on their own health. They had therefore not been subjected to treatment contrary to Article 3 of the Convention.

115. In its third-party comments, submitted through H. Rushwan, Chief Executive, the International Federation of Gynaecology and Obstetrics (FIGO) stated that the organisation endorsed, in line with the relevant international instruments, informed and freely given consent of patients intellectually capable of reproductive self-determination, given prior to their treatment, as essential to their treatment in accordance with the ethical requirements. The implications of the proposed treatment should be made clear to patients' satisfaction in advance of that treatment being carried out, particularly when the proposed treatment had permanent effects on future child-bearing and the founding of a family. The process of informed choice had to precede informed consent to surgical sterilisation. The performance of a Caesarean section, when necessary, should not in itself constitute a ground for concluding that sterilisation was indicated so as to prevent the patient from opting for a future pregnancy. Any such proposal should afford the patient ample time for informed deliberation and not be made as an adjunct to a Caesarean procedure that the patient was about to undergo. The

above principles were also valid in respect of adolescents. However, physicians should display particular care before contemplating proposing that their adolescent patients be sterilised. The question whether adolescent patients had the intellectual capacity or maturity to make decisions on their health for themselves fell to be determined by their individual capacity to understand the effects and implications of their choices.

2. The Court's assessment

(a) Recapitulation of the relevant principles

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

117. 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 Caesarean section, on the basis of consent which she had been asked to give while in labour.

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.

(b) Application of the relevant principles to the present case

(i) The sterilisation of the first applicant

120. The first applicant's case differs from those of *V.C.* and *N.B.* in that she learned about her sterilisation only some three years later and that, due to a post-surgery complication, the doctors had to carry out a hysterectomy on her, with a view to saving her life, several days after the delivery. When

deciding on her civil claim the domestic courts concluded that a causal link between the first applicant's sterilisation and the damage which could attract compensation under the provisions of the Civil Code on which she had relied had ceased to exist once the hysterectomy had been performed. In their view, during the short period between the sterilisation and the hysterectomy the first applicant had suffered no damage which required compensation under the relevant law.

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, § 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, § 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, §§ 76-77), and *N.B.* (also cited above, § 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, §§ 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.

124. There has accordingly been a substantive violation of Article 3 of the Convention on account of the sterilisation of the first applicant.

(ii) The sterilisation of the second applicant

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, §§ 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.

B. Alleged failure to conduct an effective investigation

127. The first and second applicants maintained that the actions of the authorities in respect of their sterilisation 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.

128. The Government argued that the relevant aspects of the case had been examined in detail by three levels of prosecuting authorities in the context of the criminal investigation, as well as in the context of the civil proceedings. The latter had led to the finding that the first and second applicants' sterilisation had been contrary to the relevant law. The Government maintained that the authorities had carried out an effective investigation of the allegations of inhuman and degrading treatment of the applicants, and that they had displayed due diligence in that context.

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, §§ 123-125, with further references).

130. In the present case, the civil courts examined the circumstances surrounding the first and second applicants' sterilisation, and they acknowledged that in both cases it had been in disregard of the statutory requirements. They awarded compensation to the second applicant and

concluded that the first applicant was not entitled to compensation, as she had undergone a hysterectomy several days after her sterilisation.

131. The case was also examined by three levels of prosecuting authorities and by the Constitutional Court. While the prosecuting authorities concluded that no criminal offence had been committed in the context of the sterilisation of Roma women, including the first and second applicants, they addressed the relevant facts. Thus the first and second applicants had the opportunity to have the actions of the hospital staff which they considered unlawful examined by the domestic authorities. The liability of those involved was thereby established in the civil proceedings.

132. As to the requirement that the investigation must be expeditious, the Court notes that the civil proceedings in respect of the first applicant's action lasted five years and eight months, during which period the case was examined twice by courts at two levels of jurisdiction. The proceedings on the second applicant's action lasted six years and five months. The appeal court twice quashed the first-instance court judgment as erroneous. The criminal proceedings lasted more than five years and three months. It is true that the investigation was complex, in view of the subject matter and the number of people involved, and that several authorities were involved, including police investigators, public prosecutors at three levels and the Constitutional Court. However, the Constitutional Court twice established that the prosecuting authorities had failed to deal with the case correctly. As a result, the investigation was prolonged significantly.

133. In the above circumstances, the way in which the domestic authorities proceeded with the case was not compatible with the requirement of promptness and reasonable expedition (see also, to the contrary, *N.B. v. Slovakia*, cited above, §§ 86-87, and *V.C. v. Slovakia*, cited above, § 127).

134. There has therefore been a procedural violation of Article 3 of the Convention in respect of both the first and second applicants.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

135. The first and second applicants complained that their sterilisations 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 relied on 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."

136. The first and second 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. The circumstances under which they had been sterilised excluded the possibility of their giving full and informed consent to the procedure.

137. 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.

138. Finally, the first and second applicants alleged that at the time of their sterilisation there existed no appropriate group of specific regulations and policies to ensure that procedures of that kind were carried out only with the full and informed consent of patients, as required by internationally recognised standards.

139. With reference to the conclusion the Court had reached under Article 8 of the Convention in the case of *V.C. v. Slovakia*, the Government admitted that the first and second applicants' complaint under Article 8 was not manifestly ill-founded.

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

141. It was not disputed between the parties that Article 8 is applicable to the circumstances of the case in so far as it relates to the first and second applicants' right to respect for their private and family life. The Court finds no reason to reach a different conclusion on this point.

142. In both cases the sterilisation was carried out contrary to the requirements of domestic law, as the national courts acknowledged.

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, §§ 146-149 and 152-153).

144. For reasons which are set out in detail in that judgment and which are relevant to the circumstances of the present case, as they had also been found relevant in respect of the case of *N.B. v. Slovakia* (judgment cited above, §§ 95-99), 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.

145. 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 first and second applicants as Roma women resulted in a failure by the respondent State to comply with its positive obligation to secure to them a sufficient measure of protection enabling them to effectively enjoy their right to respect for their private and family life.

146. There has therefore been a breach of Article 8 of the Convention in respect of both the first and second applicants.

V. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

147. The first and second 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."

148. 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.

149. The Government maintained that the facts of the case did not give rise to a breach of Article 12 of the Convention.

150. The Court found above that the sterilisation performed on the first and second applicants was in breach of Article 8 of the Convention. In view of that finding, and also in regard of all the circumstances, the Court considers 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.

151. It is therefore not necessary to examine the first and second applicants' complaint separately under Article 12 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

152. The first and second 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."

153. The Government argued that the applicants had remedies at their disposal before the civil courts, in the context of the criminal investigation and before the Constitutional Court.

154. 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).

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, § 166 and *N.B. v. Slovakia*, cited above, §§ 86-87).

156. The Court has found a breach of Article 8 on account of the respondent State's failure to incorporate appropriate safeguards in the domestic law (see paragraphs 145-146 above). 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 sterilisation, the Court reiterates that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law (see *Iordachi and Others v. Moldova*, no. 25198/02, § 56, 10 February 2009).

157. In these circumstances, the Court finds no breach of Article 13 of the Convention taken together with Articles 3, 8 and 12.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

158. Finally, the first and second applicants complained 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."

159. They argued, in particular, 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.

160. The applicants further alleged that they had also suffered discrimination on the ground of their sex due to the failure by health services to accommodate the fundamental biological differences between men and women in reproduction. The applicants argued that they 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.

161. The applicants concluded 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. 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.

162. The Government maintained that the applicants had not been treated differently from other patients in a similar position. They had therefore not been discriminated against contrary to Article 14 of the Convention.

163. In its third-party comments FIGO expressed the view that, given the irreversible nature of many sterilisation procedures, physicians should not allow any language, cultural or other differences between themselves and their patients to leave the latter unaware of the nature of the sterilisation procedures being proposed to them and for which they were requested to provide prior consent.

164. The Court notes that the first and second applicants 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.

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).

166. 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 first and second applicants a sufficient measure of protection enabling them, as members of the vulnerable Roma community, to effectively enjoy their right to respect for their private and family life in the context of their sterilisation (see paragraphs 145-146 above).

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. 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

169. The first and second applicant claimed EUR 70,000 each in respect of non-pecuniary damage.

170. The Government objected to the sums claimed as excessive.

171. The Court notes that the applicant obtained partial redress at the domestic level (see paragraphs 59 and 67 above). Having regard to the circumstances of the case seen as a whole and deciding on an equitable basis, the Court awards EUR 28,500 to the first applicant and EUR 27,000 to the second applicant in respect of non-pecuniary damage.

B. Costs and expenses

172. The first and second applicants submitted that they were liable to pay, jointly with the third applicant, EUR 21,564.32 in respect of their legal representation at the domestic level and in the proceedings before the Court, as well as EUR 4,794.71 in respect of costs and expenses.

173. The Government requested the Court to determine this claim in accordance with the principles established by its practice.

174. 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 4,000 each to the first and second applicants, covering costs and expenses under all heads.

C. Default interest rate

175. 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

1. *Decides* by six votes to one to strike the application out of its list of cases under Article 37 § 1 (c) of the Convention, in so far as it has been brought by the third applicant, Ms R.H.;

2. *Dismisses* unanimously the Government's preliminary objections;

3. *Holds* unanimously that there has been a substantive violation of Article 3 of the Convention on account of the first and second applicants' sterilisation;

4. *Holds* unanimously that there has been a procedural violation of Article 3 of the Convention in respect of the first and second applicants;

5. *Holds* unanimously that there has been a violation of Article 8 of the Convention in respect of the first and second applicants;

6. *Holds* unanimously that there is no need to examine separately the complaint under Article 12 of the Convention;

7. *Holds* unanimously that there has been no violation of Article 13 of the Convention;

8. *Holds* unanimously that there is no need to examine separately the complaint under Article 14 of the Convention;

9. *Holds* unanimously
(a) that the respondent State is to pay the applicants, 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 28,500 (twenty-eight thousand five hundred euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 27,000 (twenty-seven thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 4,000 (four thousand euros) to the first and second applicants each, plus any tax that may be chargeable to the applicants, 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;

10. *Dismisses* unanimously the remainder of the first and second applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, a declaration of Judge Bratza is annexed to this judgment.

N.B.
T.L.E.

DECLARATION OF JUDGE BRATZA

I disagree with the majority's decision to strike the application out of its list of cases under Article 37 § 1 (c) of the Convention, in so far as it has been brought by the third applicant, Ms R.H.. In my opinion, having regard to the disturbing circumstances of the case the *locus standi* of the third applicant's children should have been accepted. The case-law relied on by the majority is of course correct. However, the respect for the third applicant's human rights should have prevailed and the Court should have examined her application on the merits (Article 37 § 1 in fine).