The fine line between the 'medically necessary' and the degrading: A Study of the Case of V.C. v. Slovakia

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Abstract

The article describes a case of a Slovakian national of Roma origin against the Government of Slovakia, which appeared at the European Court of Human Rights in 2007-2012, and examines the implications this case had for the rights of EU citizens. The twenty-year old woman, who had been sterilised at a Slovakian hospital during the birth of her second child, claimed that the procedure took place without her full and informed consent, and argued that the doctors' decision was connected to the society's long-standing negative attitude towards Roma people. After presenting the background of the case and the legal proceedings, the article analyses relevant national and European law in order to explain the positions of both sides and the rulings of the courts. Moreover, the article puts the case of the applicant in a wider context of racial discrimination in the EU and, finally, provides policy analysis regarding both the Slovakian and the European policies toward the Roma minority.

Keywords: *Roma minority, minority rights, racial discrimination, sterilisation, medical necessity, Slovakia, European Court of Human Rights, European Convention on Human Rights*

Introduction

When does a 'medically necessary' procedure justify itself and when can it do more harm than good? Is a mere signature on a form enough to presume a patient's consent, regardless of the circumstances in which the signature was obtained? How can we determine whether a doctor was acting solely with the intention of helping her patient? However philosophical and ethnical these questions may seem, the answers to them are strictly regulated by law, which needs to be constantly improved, revised, and made comprehensible for citizens.

The case I wish to analyse in the light of these questions is one that appeared at the European Court of Human Rights ("the Court") in 2011. The complaint was lodged by a Slovakian national of Roma origin, a young woman with the initials V.C., against the Government of Slovakia. She claimed that her treatment at a public Slovakian hospital had been conducted in a way that violated her rights under the European Convention on Human Rights ("the Convention"). In the end, the court acknowledged a violation of Article 3 (*Prohibition of torture*) and Article 8 (*Right to respect for private*

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and family life) of the Convention. I will therefore restrict myself to the analysis of the procedures concerning these two Articles and, in addition, Article 14 (*Prohibition of discrimination*), which, despite not being considered violated, appeared as particularly controversial and its alleged violation was dismissed only on the grounds of lack of evidence as well as lack of appropriate judicial regulations.

The background of the case

In 2000, a 20-year-old woman was admitted to the Prešov hospital in an advanced stage of labour, about to give birth to her second child. During both of her pregnancies, she failed to regularly attend medical check-ups prescribed by her doctor and after the birth of her first child via Caesarean section she left the hospital without the doctors' permission, which resulted in an infection and gynaecological complications. During her second labour, the doctors found her reproductive organs in a poor state and had to perform a Caesarean section once again. They also realised that any future pregnancy would constitute a serious health risk, and assessed that there was a high probability that either she or the child would die. They informed the woman about their fatal predictions, which terrified her. She told the medical personnel "Do what you want to do"[1] and, when handed a form requesting sterilisation, signed it while clearly in a state of shock. She was consequently put under anaesthetics and both the Caesarean section and the sterilisation were performed.

When awaken, the patient was shocked to find out she would not be able to become pregnant again. As she explained at the European Court of Human Rights a few years later, she signed the form solely out of fear of fatal consequences of doing otherwise and without having fully understood the term "sterilisation" and the consequences of the procedure. In fact, the information had been presented to her in Slovakian, which was not her mother tongue. Moreover, she claimed that when she had been asked to sign the form her recognition and cognitive abilities had been influenced by pain and labour. In the case report there is no mention of another person's presence at the hospital during her labour and so we can infer that she had to make this decision alone.

During the years following the procedure she had suffered from serious psychological and medical after-effects, such as symptoms of false pregnancy, having been ostracised from her community, and having been left by her husband. Finally, the woman claimed she has been subject of racial discrimination, as at the hospital she was put in a room exclusively with women of Roma origin and

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[1] Case e-report (available on-line at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107364#{"itemid":["001-107364"]}), p. 3.

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the entry in the "Medical history" part of her medical record, under the sub-section entitled "Social and working conditions, especially during the pregnancy", simply stated: "Patient is of Roma origin"[2].

National proceedings

Between 2004 and 2007, the conflict was dealt with at various courts in Slovakia. Firstly, the woman lodged a claim with the Prešov District Court, claiming that the sterilisation procedure had been carried out in a way that violated both the Slovakian legislation and international human rights standards, because she had not been duly informed about the procedure, its consequences, and alternative solutions. The hospital's staff responded that several members of the medical personnel had informed the woman of the procedure and that it had been carried out as a medical necessity, although it had not been life-saving surgery. The reason for this necessity was a risk of rupture of the uterus, which at her next pregnancy could be fatal for the woman. Moreover, even if she had refused to sign the request form, the procedure could have been performed under the Slovakian Sterilisation Regulation from 1972, which was applicable at the time of the procedure and permitted it in the case of a danger to a person's life. The District Court therefore dismissed the action, stating that the procedure had been performed with the patient's consent.

When the applicant appealed, the case was examined at the Prešov Regional Court. The woman underlined that she had not been fully informed about the procedure's consequences and alternative solutions, and that the procedure was irreversible, as her personal beliefs did not permit her to undergo *in vitro* fertilisation. The Regional Court dismissed the appeal, because the sterilisation had complied with the Sterilisation Regulation from 1972. A similar situation happened when the case had been examined by the Constitutional Court.

The European Court of Human Rights' report of the case discusses the relevant legislative material, namely section 2 of the Sterilisation Regulation from 1972, which

> *permitted sterilisation in a medical institution either at the request of the person concerned or with that person's consent where, inter alia, the procedure was necessary according to the rules of medical science for the treatment of a person's reproductive organs which were affected by disease (section 2(a)), or where the pregnancy or birth would seriously threaten the life or health of a woman whose reproductive organs were healthy (section 2(b)). (…)*

Point XIV of the Annex to the 1972 Sterilisation Regulation indicated the following as obstetric or gynaecological reasons justifying a woman's sterilisation:

- *during and after a second or subsequent Caesarean section, where this method of*

[2] *Ibidem*, p. 3.

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delivery was necessary for reasons which were likely to persist during a further pregnancy and where the woman concerned did not wish to deliver again via Caesarean section;

- *in the event of repeated complications during pregnancy, in the course of delivery and in the subsequent six-week period, where a further pregnancy would seriously threaten the woman's life or health;*
- *where a woman had several children (four children for women under the age of 35 and three children for women over that age).*[3]

Other relevant national law, the Health Care Act from 1994, reads as follows:

§13 Consent to the provision of health care:

- *Examination and treatment are carried out upon the patient's consent.*
- *In particular, in the case of serious examination or health procedures or modifications that affect the patient's future life, the doctor will require the patient's consent in written or other demonstrable form. (…)*

§15 Providing information to the patient:

- *A physician is required instruct the patient or his relatives in an appropriate and verifiable way about the nature of their disease and the necessary medical procedures, so that they can actively cooperate in the provision of health care. (…)* [4]

The national courts (Prešov District Court, Prešov Regional Court, and the Constitutional Court) therefore concluded that the performance of the sterilisation procedure on the applicant V.C. had been compliant with the Sterilisation Regulation from 1972 and the Health Care Act from 1994, and did not find it necessary to further examine whether the patient's rights had been violated in light of relevant international law. Because of the compliance of the procedure with national law, the case was closed. Does that mean, however, that the patient's rights had not been violated? What if the problem lay in the fact that the national law did not conform to the international standards of human rights?

[3] *Ibidem*, p. 11.
[4] *Zbierka zákonov* č. 277/1994: *Zákon o zdravotnej starostlivosti* [Health Care Act], pp. 1352-3 [My translation – O.L.].

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European proceedings

Dissatisfied with the proceedings on the national level and certain that her human rights had been violated, the woman, aided by two lawyers from the Centre for Civil and Human Rights in Košice, lodged a complaint with the European Court of Human Rights in 2007. As mentioned in the introduction, I shall only focus on the alleged violations of Articles 3, 8, and 14 of the European Convention on Human Rights, which are crucial to understanding the controversy.

PROCEEDING	COURT	DATES
National	Prešov District Court	09/2004 – 02/2006
	Prešov Regional Court	05/2006 –10/2006
	Slovakia's Constitutional Court	01/2007 – 02/2008
International	European Court of Human Rights	04/2007 – 02/2012

A summary of the dates of the national and European legal proceedings

Degrading treatment and harm of private and family life?

Article 3 (*Prohibition of torture*) states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"[5], whilst Article 8 (*Right to respect for private and family life*) states that:

> "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"[6].

In the context of these Articles, the woman claimed that she had not given her full and informed consent to the sterilisation procedure, and her signature had been obtained at a time when her decisions had been influenced by pain and labour. Moreover, in her case the procedure had not been life-saving for the moment, but only quite urgent and potentially life-saving, and had been

[5] *European Convention on Human Rights*, p. 6.
[6] *Ibidem*, p. 11.

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carried out without consideration of alternative ways of protecting her from the risks of any future pregnancy – ways which would have not made her permanently infertile.

Whilst determining whether Articles 3 and 8 of the Convention had been breached, the Court sought the opinion of the International Federation of Gynaecology and Obstetrics as well as consulted a number of international reports and legal documents. The International Federation of Gynaecology and Obstetrics stated that the consent in question should have been given by a patient "intellectually capable of reproductive self-determination"[7] and "the process of informed choice had to precede informed consent to surgical sterilisation"[8], so the woman should have been informed about alternative solutions and the doctors should have tried to preserve her fertility.

As for international juridical context, Article 5 of the Convention on Human Rights and Biomedicine, which figures amongst the Council of Europe's documents, reads as follows:

Chapter II: Consent

Article 5 – General rule

> *An intervention on the health field may only be carried out after the person concerned has given free and informed consent to it.*
>
> *This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. (…)*[9]

The Explanatory Report to the Convention on Human Rights and Biomedicine adds, moreover, that

> *this information [concerning a medical procedure] must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The patient must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause.*[10]

Similar recommendations concerning the nature of the consent appear in other important international documents: the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration on Bioethics and Human Rights, and the World Health

[7] Case e-report, p. 24.
[8] *Ibidem*, p. 24.
[9] *Convention on Human Rights and Biomedicine*, available on Council of Europe's website at http://conventions.coe.int/Treaty/en/Treaties/Html/164.htm.
[10] Explanatory Report to the *Convention on Human Rights and Biomedicine*, available at http://conventions.coe.int/Treaty/EN/Reports/Html/164.htm.

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Organisation's Declaration on the Promotion of Patients' Rights in Europe (all adopted by the United Nations).

In sum, all of the documents presented above and the opinion of the International Federation of Gynaecology and Obstetrics univocally state that the consent given by a patient must be preceded by her obtaining detailed information regarding the nature and consequences of a given procedure, alternative solutions to it and risks involved. All information must be provided in a manner accessible to the patient and she must have sufficient time as well as comfort to ponder on the decision.

The Court assessed that the patient V.C. had been deprived of these possibilities. The judgement justified that, in order for a medical procedure to be considered inhuman or degrading treatment, it must fail to be defined as a medical necessity. However, imposing treatment without the consent of a patient interferes with the patient's right to physical integrity. Even though sterilisation may be performed when a medical necessity has been established, in this case the imposition of the procedure was carried out without an informed consent of the patient and therefore as incompatible with the requirement to respect human freedom and dignity. Even if the procedure had been a medical necessity, it had not been urgent. The situation in question was not an emergency situation or a life-saving procedure, and therefore the informed consent of the patient was required. The patient had not been fully aware of the nature of the procedure, its consequences, and alternative solutions. She had not been given time to think it through or discuss it with her family. Consequently, Articles 3 and 8 of the Convention had been violated.

Implementations: part one

We should ask now: why did the national proceedings in Slovakia fail to recognise the violation of international human rights standards outlined in the Convention? Perhaps certain national laws did not comply with the European law, permitting situations such as the one faced by the patient?

Indeed, the Court recognised that in Slovakia the rights of individuals and responsibilities in the matter of health had been limited. In other words, there had been gaps in the Slovakian law. Firstly, the Sterilisation Regulation from 1972 did not account for the free and conscious nature of the patient's consent, which, consequently, violated the fundamental right to human freedom. It allowed doctors to perform sterilisations for many medical reasons, not all of which would nowadays be considered "life-saving", or even "medically necessary". Moreover, the Regulation did not mention the patient's right to be fully informed about the procedure and its consequences, or to consider alternative solutions. Similarly, in the Health Care Act from 1994 there was no mention of informed

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consent. In sum, certain human rights had been limited and the Government of Slovakia had failed to "put in place adequate legislation and exercise appropriate supervision of sterilisation practices"[11].

In the light of the Sterilisation Regulation from 1972 and the Health Care Act from 1994, relevant at the time of the sterilisation of V.C., there had been no medical malpractice. However, the discriminatory Sterilisation Regulation from 1972 had been repealed a few years before the case of V.C. appeared at the Court in 2007, that is, when a new Health Care Act had been introduced. Since 2004, it has been regulating the nature of the consent that must be given by the patient prior to any serious medical procedure:

> *Pursuant to sub-section 1 [of the 2004 Health Care Act], medical practitioners are obliged, unless the law provides otherwise, to inform the persons listed below about the aim, nature, consequences and risks of treatment, the possibility of choice as to the proposed procedures and the risks connected with refusal to accept treatment. Section 6(2) obliges medical practitioners to provide information comprehensibly, considerately and without pressure, allowing the patient the possibility and sufficient time to freely give or withhold his or her informed consent, and in a manner appropriate to the maturity of intellect and will and the state of health of the person concerned.*[12]

The 2004 Health Care Act contains also a separate section devoted specifically to sterilisation, repealing the Sterilisation Regulation from 1972:

*"**§40 Sterilisation**:*

2) *(…) Sterilisation may be performed only on the basis of a written request and written informed consent following the provision of information to a person with full legal capacity or to the statutory representative of a person not capable of giving informed consent, or on the basis of a court decision issued on an application by the statutory representative.*

3) *The information preceding a person's informed consent must be provided as specified by section 6(2) and must encompass:*

    - *alternative methods of contraception and planned parenthood;*
    - *the possibility of a change in the life circumstances which led to the request for sterilisation;*

[11] Case e-report, p. 34.
[12] Case e-report, p. 12.

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- *the medical consequences of sterilisation as a method aimed at the irreversible prevention of fertility (…).*

5) *Sterilisation may not be carried out earlier than thirty days after informed consent has been given.*[13]

As evidenced, especially sections 3) and 5) make it impossible for another case like the one in question to arise. Unfortunately, at the time of V.C.'s sterilisation there was no legal obligation for doctors to wait a number of days from the patient's consent to the performing of the procedure. Now, there is an obligation to wait at least 30 days, which is more than enough time for the patient to think the decision through, discuss it with relatives, and to fully understand the procedure.

This case shows that there is a great need to constantly check and control the compliance of national legal documents with international law, because legal gaps on the national level can result in unjust, yet technically legal court assessments. This was the case with the Roma patient V.C., as the assessment of the court of first instance, namely the Prešov District Court, was compliant with the law that existed before the new Health Care Act, and it was the documents that did not secure sufficient rights to freedom and informed consent. The assessments of the Prešov Regional Court (2006) and the Slovakian Constitutional Court (2007) happened after the Health Care Act had been introduced (2004), but according to the principle of non-retroactivity this new law could not have been applied to the assessment. The only way would therefore be recognise the original law as not compliant with the international standards of human rights, which was done by the European Court of Human Rights.

Racial discrimination?

The alleged breach of Article 14 (*Prohibition of discrimination*) of the Convention constitutes a separate issue, perhaps even more important than the one already discussed. The Article reads as follows:

> *The enjoyment of the rights and freedoms set forth in this 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.*[14]

The patient V.C. claimed that the context in which the sterilisation procedure had been performed could be linked to a generally negative attitude and widespread intolerance towards the Roma

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[13] Health Care Act from 2004, available at http://www.zakonypreludi.sk/zz/2004-576 [Translated by ECHR].
[14] *European Convention of Human Rights*, p. 12.

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minority in Slovakia and the frequent practises of illegal sterilisations of Roma women during communism. She stated that during her treatment at the hospital she had been discriminated against on the grounds of her race, as "her ethnic origin had played a decisive role in the decision by the medical personnel of the Prešov hospital to sterilise her"[15]. Moreover, the entry in the "Medical history" part of her medical record, under the sub-section entitled "Social and working conditions, especially during the pregnancy", simply stated: "Patient is of Roma origin"[16].

The Government of Slovakia responded that no Slovakian institutions discriminate against Roma patients and the sterilisation had been performed solely for medical reasons. The reason for mentioning her origin in the medical record was that the social and health care of Roma patients "had been frequently neglected and they therefore required special attention"[17].

The Court obtained a recommendation of the Council of Europe Commissioner for Human Rights from 2003, which figures amongst Council of Europe's documents. This recommendation concerns certain aspects of law and practice relating to sterilisation of women in Slovakia and reads as follows:

> *The Commissioner is concerned about what appears to be a widespread negative attitude towards the relatively high birth rate among the Roma as compared with other parts of the population. These concerns are often explained with worries of an increased proportion of the population living on social benefits. Such statements, particularly when pronounced by persons of authority, have the potential of further encouraging negative perceptions of the Roma among the non-Roma population. It cannot be excluded that these types of statements may have encouraged improper sterilization practices of Roma women.*[18]

However, because of a lack of comparative reports between the number of Roma woman who had been sterilised and of Slovakian women who had been sterilised, the Court assessed that "The objective evidence is not sufficiently strong in itself to convince the Court that it was part of an organised policy or that the hospital staff's conduct was intentionally racially motivated"[19]. It recommended special measures to ensure that the Roma minority in Slovakia is not disadvantaged.

Implementations: part two

As we have seen above, although the Court did not conclude that there had been a violation of the woman's right not to be discriminated on racial grounds, it noted that the situation of the Roma

[15] Case e-report, p. 38.
[16] *Ibidem*, p. 3.
[17] *Ibidem*, p. 39.
[18] *Ibidem*, p. 16.
[19] *Ibidem*, p. 39.

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minority in Slovakia is worrying. Can we be sure the medical treatment of the patient V.C. had nothing to do, directly or indirectly, with her Roma origin?

In fact, during the case a number of reports on the Roma minority in Slovakia were quoted. There were reports that supported the woman's claim that the widespread intolerance of Roma people had often affected the medical care they had been given. Firstly, as for the historical background – the treatment of Roma people during the communism era – the 1992 report "Czechoslovakia's Endangered Gypsies" by Human Rights Watch states that there were a large number of Roma women who had undergone sterilisation without their full or informed consent, many of whom now regret having had this operation. Many of them, moreover, had been sterilised immediately after a Caesarean section and agreed to it without realising what they had been doing. The report mentions also the Prešov hospital, where many of these procedures had taken place upon having obtained a signature from a patient. Furthermore, the report states that the Slovak prosecutors, to whose attention the problem had been brought, dismissed most of the cases and ignored the concern of Human Rights Watch. Therefore we can see a lack of legal response from the Slovakian national officials regarding the cases of sterilisation of Roma woman during communism.

As for more recent material regarding the discrimination of the Roma minority in Slovakia, three reports from 2003-2013 (one of which was published after the V.C. v. Slovakia case) demonstrate similar concerns. The most important one is "Body and Soul. Forced Sterilisation and Other Assaults on Roma Population Freedom in Slovakia" from 2003, which states that Slovakian medical personnel had often provided misguided information to Roma women and asked them to sign a sterilisation form at the last-minute. What is more;

> *[the medical personnel] disregarded the need for obtaining informed consent to sterilization and who failed to provide accurate and comprehensive reproductive health information to Romani patients, resulting in the violation of their human rights. (…) After two or three cesarean births, doctors told Romani women that they needed to be sterilized because another pregnancy will result in either the death of their baby or themselves. Health-care personnel used misleading medical premises, such as 'repeat cesareans are fatal,' to justify sterilizations. Neither accurate information on the actual risks of future pregnancies nor other options, such as alternative contraceptive methods, were discussed. As a result, threatening and medically inaccurate statements allowed doctors to scare women into succumbing to medical unnecessary sterilizations in the midst of childbirth*[20]

[20] *Body and Soul. Forced Sterilisation and Other Assaults on Roma Population Freedom in Slovakia*, p. 14.

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This report places the case of the patient V.C. in the context of similar cases, thereby showing that the problem is general and on-going.

The report of the European Commission "The Situation of Roma in an Enlarged European Union" from 2004 demonstrates concern for providing medical information to Roma patients in such a way that it is comprehensible to them, for example by using language which is understandable to them. Perhaps the information and forms should be provided in a number of languages which are used by minorities in Slovakia, the Romani language amongst others[21].

Additionally, a recent report from 2013, "Country Report Slovakia 2013 on Measures to Combat Discrimination" examines the ratification and implementation of the Anti-Discrimination Act by Slovakia in 2004 and 2008. This Act introduces even more strict rules concerning any kind of discrimination. Even though Slovakia ratified this document,

> *the existing case-law shows that courts are rather reluctant to impose sanctions which would be effective, proportionate and dissuasive for perpetrators (which is especially true for financial compensation of non-pecuniary damage).*[22]

Therefore we can see that even nowadays, despite the existence of relevant law in Slovakia, the country fails to effectively enforce it, and thus the problem still remains. Even though the European Court of Human Rights did not conclude that in the case of V.C. v. Slovakia there had been a violation of her right to equal treatment and Article 14 of the Convention had not been breached, the decision was not unanimous. One of the judges found that there had been a violation of Article 14, and her opinion is worth noting here. She states that the issue of intolerance towards the Roma minority is at the core of this case, adding that it is totally unacceptable to justify that the words "Patient of Roma origin" appeared in the woman's medical history with the fact that Roma people required "special attention", because this "special attention" had been in fact the woman's sterilisation. She furthermore adds:

> *The fact that there are other cases of this kind pending before the Court reinforces my personal conviction that the sterilisations performed on Roma women were not of an accidental nature, but relics of a long-standing attitude towards the Roma minority in Slovakia. To my mind, the applicant was "marked out" and observed as a patient who had to be sterilised just because of her origin, since it was obvious that there were no medically relevant reasons for sterilising her. In my view, that represents the strongest form of discrimination and should have led to a finding*

[21] I elaborate of this issue in part 5. of my essay: Policy analysis.

[22] Executive Summary of the *Country Report Slovakia 2013 on measures to combat discrimination*, written by Janka Debrecéniová, Zuzana Dlugošová, European network of legal experts in the non-discrimination field, p. 5.

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of a violation of Article 14 in connection with the violations found of Articles 3 and 8 of the Convention.[23]

The judge held that there were no medical reasons to sterilise V.C. immediately after the C-section procedure, and therefore the personnel's decision to do so was linked to the long-standing negative attitude towards the Roma people.

Arguably, more social research to find evidence of a necessary link between the intolerance towards the Roma minority and their medical treatment still needs to be done. Only in this way will their rights be protected and will they feel on equal grounds with other European communities. The decision of the Court not to conclude that there had been a violation of Article 14 (*Prohibition of discrimination*) was based on lack of sufficient or objective evidence of such a link between their race and their medical treatment. However, due to many reports on the racial discrimination of Roma people in Slovakia and other European countries, one can strongly suspect this is the case.

Policy analysis

Taking into account the Slovakian and international proceedings of the case of V.C. v. Slovakia as well as the relevant legislative documents and reports, a few issues come into light. I will now analyse them and try to provide a few policy recommendations both for national and international regulations.

Legislative gaps on the national level and what to do with them

Firstly and most obviously, the Slovakian Sterilisation Regulation from 1972 and the Health Care Act from 1994 did not account for the freedom and moral autonomy of women's choice when it comes to serious medical procedures (even though the country had been a part of the Council of Europe from 1993) and, consequently, this law was not in compliance with international human rights standards: the Convention on Human Rights and Biomedicine, which Slovakia ratified in December 1999, and the European Convention on Human Rights. Fortunately, the national law was amended in 2004 with the new Health Care Act, and therefore this problem has already been solved.

Furthermore, it can be noted that the Case of V.C. v. Slovakia revolved around the question whether the patient's sterilisation could be defined as "lifesaving" and/or "medically necessary". These two terms should be clarified in the national law, so that it is easy for the doctors, patients, and lawyers to determine whether a certain medical procedure is "lifesaving" and/or "medically necessary", and how much freedom of choice doctors have when it comes to performing such procedures on patients without their (informed) consent. Whilst it is clear that a "lifesaving" procedure is easy to be accounted for and justified, it is more difficult to determine what action is "medically necessary" and

[23] Case e-report, p. 43.

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whether such an action can be performed without the patient's clear consent. It can be argued that, according to the European Convention on Human Rights, no medical procedure apart from those labelled as "lifesaving" should be performed without a patient's informed consent, and thus even procedures which are necessary from a doctor's viewpoint should require such a consent.

Finally, it seems that European minority rights have often not been applied to the Roma people in Slovakia, even after the country ratified the Anti-Discrimination Act in 2004 and 2008. Even though all relevant law has been accepted by Slovakia and there have been many reports about the situation of the Roma minority in European countries, in practice the Roma community seems to be often disregarded and treated in a more discriminatory way than other communities. Therefore, further steps and precautions need to be taken in order to make sure the treatment of the Roma people in public institutions of Slovakia, such as hospital or schools, is not in any way discriminatory.

What still needs to be improved on the international level

The first thing that needs to be improved in European law is the medical form signing and consent policy. The information about a given medical procedure should be made understandable to every single patient. This should be secured not only by allowing the patient sufficient time and good conditions to comprehend the procedure and its alternatives, but also in providing such information in the language which is the patient's mother tongue or, if the patients are not literate, by being able to summon a cultural mediator who speaks the language. However obvious this suggestion may seem, we do not know whether the problem of understanding the sterilisation procedure had not arisen precisely because the patient V.C.'s mother tongues were Romani and a local dialect, not (literary/official) Slovakian. Therefore, any country with minorities that speak a different language or dialect than the national language should make sure medical information and procedure forms are available in all languages/dialects used by such communities. The failure to do so should be regarded as a breach of Article 14 of the Convention: *Prohibition of discrimination*. If the patient is illiterate, a cultural mediator should be summoned.

Secondly, since the Court did not recognise the potentially racially-discriminative nature of the decision of the hospital's medical because of lack of objective and sufficient evidence, such evidence should be produced and made available to the public. This could be done by introducing an international law which would require all public institutions to regularly produce statistics and comparative reports regarding the race of patients on whom serious medical procedures were performed. This would make it easy to control whether certain procedures, such as sterilisation, are performed more often on certain minorities than citizens of other origin, and in consequence potentially detect discriminatory behaviour of the medical personnel of any EU region or country. However, such a law would collide with the, also fundamental, right to privacy, and there would be a

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need to achieve a delicate balance between this right and the ability to produce statistics which would help to eliminate racially discriminatory behaviours.

Finally, the case of V.C. s. Slovakia has touched upon an ethical issue that has recently been quite controversial: *in vitro* fertilisation. The patient claimed that her sterilisation had made her permanently infertile, but national courts and the European Court of Human Rights agreed that if she wished, she could be fertilised in the future through an *in vitro* procedure, for which the Slovakian government would have to pay. The patient claimed, however, that such a procedure would be against her private and moral beliefs, and therefore, for her, the sterilisation had been *de facto* irreversible. Such a moral belief should not be discriminated against on any grounds, and thus in her case the medical damage the sterilisation caused should be regarded as irreversible, since repeatedly suggesting the *in vitro* option by any of the courts as an ultimate solution seems enforcing certain moral beliefs on the patient, which is also discriminatory.

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