



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

SECOND SECTION

DECISION

Application no. 54041/14
G.H.
against Hungary

The European Court of Human Rights (Second Section), sitting on 9 June 2015 as a Chamber composed of:

Işıl Karakaş, *President*,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges*,

and [REDACTED], *Deputy Section Registrar*,

Having regard to the above application lodged on 24 July 2014,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms G.H., is a Hungarian national. The President granted the applicant's request for her identity not to be disclosed to the public (Rule 47 § 4). She was represented before the Court by Mr R. Kushen, acting on behalf of the European Roma Rights Centre.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 8 February 2008, the applicant, at the time 34, a mother of seven and 22-weeks pregnant with twins, was admitted to Miskolc Hospital for an emergency delivery. The doctors found that a Caesarean section was necessary because of heavy bleeding.

4. The applicant mentioned to her doctors that she thought it was reasonable to tie her Fallopian tubes in order to sterilise her. The doctors repeatedly asked her if that was indeed her desire and explained that this intervention could not be subsequently undone. The applicant answered in the affirmative, confirming that she wanted no more children. These statements were made to three doctors and a midwife.

5. Subsequently the operation was carried out, without the applicant's consent to the sterilisation being written down.

6. Later on, the applicant sued the hospital for damages, alleging that the absence of procedurally proper consent amounted to a breach of her rights to self-determination, to conceiving children, to privacy and to equal treatment.

7. On 12 November 2012 the Miskolc High Court partly upheld the claim, holding that the absence of written consent was a procedural irregularity giving rise to compensation in the amount of 100,000 Hungarian forints (HUF) plus interest. In addition to the medical staff involved, the court also heard the applicant's husband, a Roma man, who stated that he and the applicant had agreed on the applicant's future sterilisation and that once back from the hospital the applicant had told him that she had requested sterilisation from the doctors.

8. On appeal, on 18 April 2013 the Debrecen Court of Appeal reversed the High Court's judgment, upheld the applicant's claims and awarded her HUF 2,000,000 plus accrued interest. It also ordered the hospital to apologise. The Court of Appeal held that, while the applicant's claim of racial discrimination – on account of her Roma husband – was wholly unsubstantiated, the remainder of her claims were well-founded. It was of the view that the absence of written consent was a material violation of the applicant's rights, even if the fact that she had indeed requested the sterilisation could be not successfully challenged in the face of the multiple witness testimonies.

9. In review proceedings, on 4 December 2013 the *Kúria* reversed this judgment and reduced the amount of compensation to HUF 1,000,000 (approximately 3,300 euros). The *Kúria* was satisfied that the lower courts' assessment of the testimonies supporting that the applicant had orally consented to the sterilisation was not unreasonable or arbitrary. It held that although the applicant's consent was formally deficient, it could not be said that the sterilisation had been carried out against her will. Considering all circumstances, the *Kúria* reduced the award, while emphasising that the applicant had not furnished any evidence showing that she was a victim of racial discrimination either in terms of the sterilisation itself or in terms of the material conditions of her hospital stay.

10. On 7 April 2014 the hospital paid the compensation to the applicant and sent her a letter apologising for the breach of her rights to self-determination, privacy and the liberty to conceive children.

COMPLAINTS

11. The applicant complained under Article 3 that she was subjected to forced sterilisation because she did not give informed consent to the intervention and, under Article 8, that the intervention was not justified since it was unlawful. The redress provided by the domestic authorities was in her view insufficient.

THE LAW

12. The applicant complained in essence about forced sterilisation, which in her view infringed Article 3 of the Convention.

13. Article 3 provides as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

14. The Court observes that the domestic courts, and in particular the *Kúria*, carefully examined the applicant’s arguments and found that the sterilisation had not been carried out against her will. Relying on the testimonies of several witnesses, the courts found that the applicant, well aware of the consequences, orally consented to the sterilisation.

15. Thus, contrary to the case of *V.C. v. Slovakia* (no. 18968/07, § 112, ECHR 2011 (extracts)), where the circumstances in which the applicant agreed to her sterilisation clearly did not permit her to take a decision of her own free will, in the present case the applicant, having herself enquired about the possibility of the medical intervention and reiterated her consent in the knowledge of the consequences (see paragraph 4 above), was in the position to take an informed decision.

16. Nonetheless, it was found that the deficient procedure, that is, the absence of written consent, breached the applicant’s privacy and reproductive rights, and she was awarded a substantial amount of compensation.

17. For the Court, these procedures were devoid of any appearance of arbitrariness; the applicant’s claims were duly examined, and the findings of fact, in particular that the applicant had given her full and informed consent, were based on ample evidence.

18. The domestic courts having adequately enquired into the applicant’s allegations, the Court considers that there is no appearance of any treatment contrary to Article 3 of the Convention. This complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

19. The applicant also complained about a breach of her right to respect for private life under Article 8 of the Convention, in so far as the impugned medical intervention amounted to an unlawful, hence unjustified, interference with her reproductive rights.

20. Article 8 provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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.”

21. Article 34 of the Convention provides as relevant:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto.”

22. The Court recalls that a medical intervention without the free and informed consent of the patient will amount to an interference with the patient’s right to private life as protected by Article 8 of the Convention (see, *inter alia*, *V.C.*, cited above, §§ 143-155; *X v. Finland*, no. 34806/04, §§ 212-214, ECHR 2012 (extracts); *Codarcea v. Romania*, no. 31675/04, §§ 104-105, 2 June 2009; *Juhnke v. Turkey*, no. 52515/99, §§ 74-82, 13 May 2008; *Y.F. v. Turkey*, no. 24209/94, §§ 31-36, ECHR 2003-IX; *Pretty v. the United Kingdom*, no. 2346/02, § 63, ECHR 2002-III; and *Trocellier v. France* (dec.), no. 75725/01, 5 October 2006). As mentioned above, the applicant gave her prior consent to the medical intervention. However, according to the domestic courts, such consent was formally deficient under domestic law, as it was not given in writing.

23. To the extent that the applicant claims that the medical intervention, which was carried out with her consent but without a written procedure required by the domestic law, amounts to an infringement of her right to respect for private life under Article 8, the Court finds that the applicant can no longer claim to be a victim of a violation for the following reasons.

24. The Court notes that material compensation, in an amount of EUR 3,300, was awarded to the applicant for the grievance in question, that the courts recognised a breach of her rights, and that the hospital apologised for the procedural irregularity committed.

25. In these circumstances, the Court considers that an express acknowledgement of the violation of the applicant’s rights occurred and she received adequate redress.

26. It follows that she can no longer claim to be a victim of a violation of her rights under Article 8, for the purposes of Article 34 of the Convention. This complaint is therefore incompatible *ratione personae* with

the provisions of the Convention, within the meaning of Article 35 § 3 (a), and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 July 2015.


Deputy Registrar

Işıl Karakaş
President