

Statement of Facts

1. The applicant is a Hungarian national; although not Roma herself, she was previously living with her husband who is Roma.
2. The applicant has seven children, all of them born through natural births (that is, not by Caesarean section). The applicant terminated one pregnancy and had one miscarriage.
3. On 5 February 2008, the applicant, at the time being 22 weeks pregnant, visited her gynaecologist because she felt pain. The gynaecologist referred her to the public hospital for further check-ups.
4. On 7 February 2008, the applicant went to the hospital where she was examined and then allowed to return home. On 8 February 2008, at dawn, the applicant experienced heavy bleeding and pain, and was transferred by ambulance to the public hospital in Miskolc, the Semmelweis Ignac Health Center (hereinafter 'hospital').
5. In the hospital, she was placed in the delivery room. She underwent an examination, including by ultrasound, during which it was discovered that she was pregnant with twins and was suffering from placenta praevia, a condition in which the placenta is lodged partially or wholly in the lower uterus, covering the opening in the mother's cervix. This condition can cause severe bleeding.
6. On the same day, between 11.00 hours and 11.30 hours, once her bleeding had become less heavy, she was transferred to another department for observation. She was ordered to stay in bed.
7. The same evening at around 23.00 hours, the applicant's bleeding increased again and she was transferred back to the delivery room. She underwent another ultrasound examination and was given an intravenous catheter. The applicant stayed there until the next day (9 February 2008).
8. On 9 February 2008 at 14.25 hours, an urgent Caesarean section was ordered for the applicant due to her increased bleeding and the suspected placenta praevia.
9. During the preparations for the operation, the applicant signed a consent form consenting to the Caesarean section (Annex 1). The consent form included information about a 'lower uterine segment' (i.e. a horizontal) Caesarean section that the hospital informed the applicant they intended to perform on her.
10. The operation was performed on the applicant on 9 February 2008 between 14.43 and 15.35 hours. Instead of undergoing the horizontal Caesarean section to which she agreed, the hospital personnel performed a 'longitudinal' Caesarean section, which has more risks and is more prone to complications. It was discovered that the foetuses were dead, and they were removed. During the operation, the applicant's fallopian tubes were tied.
11. The applicant was first informed about the tubal ligation by her husband the day after the operation (10 February 2008).
12. The applicant stayed in the hospital until 14 February 2008, when she was released.
13. During her stay in the hospital, she was placed in a ward of the hospital occupied only by Roma patients.
14. On the day of the applicant's release, the hospital issued a medical discharge document (Annex 2), which included a reference to the fact that the applicant had been sterilized. The document does not refer to her giving consent. It was only upon seeing this document after her release that the applicant first understood that she had been sterilized.
15. After the sterilisation, the relationship between the applicant and her husband deteriorated, partly due to the sterilisation, and she moved out with her seven children from their shared home.
16. Although the applicant is not Roma, she was treated as Roma on several occasions whilst in the hospital, during the miscarriage and sterilisation described above and during earlier pregnancies. The hospital staff made comments about her 'perceived' ethnic origin and, as explained above, placed her in a segregated ward of the hospital.

17. On 31 March 2010, after her attempt (Annex 3) to achieve an out-of-court settlement with the hospital had failed, the applicant initiated civil proceedings against the hospital, seeking to recover damages for the unauthorized tubal ligation (Annex 4).
18. The applicant asked the Borsod-Abaúj-Zemplén County Court (the first-instance court) to establish that the involuntary sterilisation violated her right to self-determination, her right to informed consent, her freedom to choose the number and spacing of her children, and her right to respect for private and family life.
19. On 12 November 2012, the first-instance court dismissed the applicant's claim of involuntary sterilisation, but found that the absence of a written request by the applicant and a signed consent form constituted a procedural violation by the hospital and therefore awarded the applicant 100,000 HUF (approximately 300 UER) as compensation (Annex 5). The first-instance court relied on oral evidence from hospital personnel and from the applicant's former husband (who, she argued, was biased against her) in concluding that she had orally requested and consented to the sterilisation. In order to establish the effects of the sterilisation on the applicant, the first-instance court called for an opinion from a forensic expert. The applicant requested the court to order another expert (suggested by the applicant) based on her and her representative's view that the expert instructed by the court was unprofessional and, in particular, biased against her; however, the court refused, finding that, in any event, the forensic expert's opinion was irrelevant to the court's finding on the merits because the sterilisation had been performed at the request of the applicant. On appeal (Annex 6), the Debrecen Regional Court (the appeal court) partly revised the first-instance court's judgment and established that the absence of a written request and a consent form constituted a violation of the applicant's right to self-determination, her freedom to choose the number and spacing of her children, and her right to respect for private life. In its judgment delivered on 18 April 2013, the appeal court ordered the defendant to pay 2,000,000 HUF (approximately 6,600 EUR) to the applicant and send her a written apology letter (Annex 7).
20. Both the applicant and defendant applied to the Kúria (the supreme court) for judicial review.
21. The defendant asked the Kúria to dismiss the applicant's claim or, alternatively, to decrease the non-pecuniary damage, arguing that the applicant did not provide evidence about the harm she suffered due to the sterilisation.
22. In her request for judicial review (Annex 8), the applicant argued that she did not request or consent to the sterilisation and that the oral evidence from the hospital staff, as well as the applicant's former husband, were clearly biased. In addition, the applicant argued that she did not receive any of the information needed to enable her to give fully informed consent. In her response to the defendant's request for judicial review, the applicant argued that the first-instance court did not allow her to substantiate claim for damages by providing an appropriate forensic expert opinion on the effects of the sterilisation, and so this could not be used against the applicant to justify reducing the award of non-pecuniary damages.
23. In its judgement delivered on 4 December 2013, the Kúria upheld the appeal court's reasoning, but significantly decreased the pecuniary damage award to 1,000,000 HUF (approximately 3,250 EUR), arguing that the applicant did not substantiate with adequate evidence the harm the sterilisation caused to her private life (Annex 9).

Statement of alleged violation(s) of the Convention and / or Protocols and relevant arguments

Article 3

The applicant claims that the forced sterilisation to which she was subjected amounted to a violation of Article 3 of the Convention. The hospital was condemned to apologise to a violation of Article 3 of the

Convention. The hospital was condemned to apologise for the fact that by performing the sterilisation they had violated the applicant's right to self-determination, her freedom to decide on the number and spacing of her children, and her right to respect for private life. Both the appeal court and the Kúria established that the hospital acted unlawfully because there was no written request to be sterilised, no informed consent form, and no adequate information available to the applicant about the risks and consequences of the sterilisation and of alternative contraceptive measures, as required by law. As the Court has established, when a woman is sterilised, and has not given her informed consent, Article 3 is engaged, even if 'there is no indication that the medical staff acted with the intention of ill-treating the applicant'. *V.C. v Slovakia* (2011), §§ 117-119.

Yet, the domestic courts only awarded the applicant 1,000,000 HUF. The issue which the applicant raises under Article 3 is whether this amount of compensation for the violation she suffered was sufficient under the Convention. *Ciorap (no 2) v Moldova* (2010), § 24. The applicant complains that the amount of compensation was not sufficient; 'this is considerably below the minimum generally awarded by the Court in cases in which it has found a violation of Article 3'. *Ciorap (no 2) v Moldova* (2010), § 24. In *V.C. v Slovakia* (2011), the Court awarded the applicant 31,000 EUR in respect of non-pecuniary damage. More recently, in *N.B. v Slovakia* (2012) the Court awarded the applicant 25,000 EUR for being a victim of involuntary sterilisation and for the violation of her rights under Article 3 and 8 of the Convention. The applicant was, by way of comparison, awarded approximately 3,250 EUR.

Article 8

The applicant also claims that she was a victim of a violation of Article 8. It is well established in the Court's case law that sterilisation amounts to an interference with the right to respect for private and family life, given, inter alia, its effect on the reproductive health status of the victim. See, e.g., *V.C. v Slovakia* (2011), § 143. The domestic courts established that the interference was not in accordance with the law, because the applicant did not give a fully informed consent to the sterilisation. It is not therefore necessary for the Court to examine whether the interference pursued a legitimate aim or whether it was necessary in a democratic society. In any event, the applicant maintains that no legitimate aim was pursued by her sterilisation. The applicant notes that it could not have been medically necessary to undergo sterilisation.

Relying on the Court's case law as set out above in respect of Articles 3 and 8, the applicant again claims that the sum she was awarded is so significantly lower than the amount the Court ordinarily awards in cases of sterilisation as to amount to a violation of the Convention.

Information about remedies used and the date of the final decision

Article 3

The applicant complained to the domestic courts at all stages that she was a victim of forced sterilisation, which, as expressed in domestic law, amounted to a violation of her right to 'self-determination'. As the Court's case law has established that forced sterilisation engages Article 3 of the Convention (see Statement of Violations), this amounts in substance to an argument that her Article 3 rights were violated. The first-instance court rejected this claim (Borsod-Abaj-Zemplen County Court, judgment delivered on 12 November 2012), and the appeal court found a violation of her right to self-determination (Regional Court of Debrecen, 18 April 2013) and awarded 2,000,000 HUF as non-pecuniary damages. In its judgment delivered on 4 December 2013, the Kúria upheld the appeal court's reasoning, but significantly decreased the pecuniary damage award to 1,000,000 HUF (approximately 3,250 EUR). The applicant appealed her case to the highest court in Hungary and no further remedies were available to her.

Therefore the applicant exhausted all available domestic remedies concerning her complaint under Article 3 and the final decision at domestic level was delivered on 4 December 2013 and received on 24 January 2014.

Article 8

The applicant complained to the domestic courts at all stages that she was a victim of forced sterilisation which is a violation of her right to informed consent, her freedom to determine the number and spacing of her children, and her right to respect for private and family life. As the Court's case law has established that forced sterilisation engages Article 8 of the Convention (see Statement of Violations), this amounts in substance to an argument that her Article 8 rights were violated. The first-instance court rejected this claim (Borsod-Abauj-Zemplen County Court, judgment delivered on 12 November 2012), and the appeal court found a violation of her right to self-determination, freedom to determine the number and spacing of her children and her right to private life (Regional Court of Debrecen, 18 April 2013) and awarded 2,000,000 HUF as non-pecuniary damages. In its judgement delivered on 4 December 2013, the Kúria upheld the appeal court's reasoning, but significantly decreased the pecuniary damage award to 1,000,000 HUF (approximately 3,250 EUR). The applicant appealed her case to the highest court in Hungary and no further remedies were available to her. Therefore the applicant exhausted all available domestic remedies concerning her complaint under Article 8 and the final decision at the domestic level was delivered on 4 December 2013 and received on 24 January 2014.