



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**
Thirty-sixth session
7-25 August 2006

Views

Communication No. 4/2004

<i>Submitted by:</i>	Ms. A. S. (represented by the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Hungary
<i>Date of communication:</i>	12 February 2004 (initial submission)

On 14 August 2006, the Committee on the Elimination of Discrimination against

Annex

Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (thirty-sixth session)

Communication No.: 4/2004*

Submitted by: Ms. A. S. (represented by the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities)

Alleged victim: The author

State party: Hungary

Date of communication: 12 February 2004 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 14 August 2006

Having concluded its consideration of communication No. 4/2004, submitted to the Committee on the Elimination of Discrimination against Women by The European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities on behalf of Ms. A. S. under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

* The following members of the Committee participated in the examination of the present communication: Ms. Magalys Arocha Dominguez, Ms. Meriem Belmihoub-Zerdani, Ms. Huguette Bokpe Gnacadja, Ms. Dorcas Coker-Appiah, Ms. Mary Shanthi Dairiam, Mr. Cees Flinterman, Ms. Naela Mohamed Gabr, Ms. Françoise Gaspard, Ms. Rosario Manalo, Ms. Pramila Patten, Ms. Fumiko Saiga, Ms. Hanna Beate Schöpp-Schilling, Ms. Heisoo Shin, Ms. Glenda P. Simms, Ms. Dubravka Šimonovi , Ms. Anamah Tan, Ms. Maria Regina Tafrli.5(f-16i diMlvaon (fr1dit))TJ)5578.58 -140008DT*

Views under article 7, paragraph 3, of the Optional Protocol

1.1 The author of the communication dated 12 February 2004, is Ms. A. S., a Hungarian Roma woman, born on 5 September 1973. She claims to have been subjected to coerced sterilization by medical staff at a Hungarian hospital. The author is represented by the European Roma Rights Center, an organization in special consultative status with the Economic and Social Council, and the Legal Defence Bureau for National and Ethnic Minorities, an organization in Hungary. The Convention and its Optional Protocol entered into force for the State party on 3 September 1981 and 22 March 2001, respectively.

The facts as presented by the author

2.1 The author is the mother of three children. On 30 May 2000, she was examined by a doctor and found to be pregnant, the delivery date estimated to be 20 December 2000, during that time, she followed antenatal treatment and attended all the scheduled appointments with the district nurse and gynaecologist. On 20 December 2000, the author reported to the maternity ward of Fehérgyarmat Hospital. She was examined and found to be 36 to 37 weeks pregnant and was asked to return when she went into labour.

2.2 On 2 January 2001, the author went into labour pain and her amniotic fluid broke. This was accompanied by heavy bleeding. She was taken to Fehérgyarmat Hospital, one hour's drive by ambulance. While examining the author, the attending physician found that the foetus (the term "embryo" is used) had died in her womb and informed her that a caesarean section needed to be performed immediately in order to remove the dead foetus. While on the operating table, the author was asked to sign a form consenting to the caesarean section. She signed this as well as a barely legible note that had been hand-written by the doctor and added to the bottom of the form, which read:

"Having knowledge of the death of the embryo inside my womb I firmly request my sterilization [a Latin term unknown to the author was used]. I do not intend to give birth again; neither do I wish to become pregnant."

The attending physician and the midwife signed the same form. The author also signed statements of consent for a blood transfusion and for anaesthesia.

2.3 Hospital records show that within 17 minutes of the ambulance arriving at the hospital, the caesarean section was performed, the dead foetus and placenta were removed and the author's fallopian tubes were tied. Before leaving the hospital the author asked the doctor for information on her state of health and when she could try to have another baby. It was only then that she learned the meaning of the word "sterilization". The

control) and that the written consent of the author could not in and of itself

4.3 The State party is of the view that article 10 (h) of the Convention has not been violated since, aside from the dead embryo, the author has three other living children, which means that she must have been familiar with the nature of pregnancy and childbirth without further education.

4.4 The State party submits that article 12, paragraph 1, of the Convention has not been violated because the author received free of charge the benefits and services that all Hungarian women receive during pregnancy and after childbirth. The author was given all information prior to the surgery in a way that was appropriate in the given circumstances. According to the court decision, the author had been in a condition in which she was able to understand the information.

4.5 The State party stresses that the Public Health Act allows a physician to perform sterilization surgery without following any special procedure when it seems to be appropriate in certain circumstances. These circumstances were present, namely that this was not the author's first caesarean section and her womb was in very bad condition. Further, the State party considers that the surgery had been safe because the risk of undergoing another abdominal operation was greater and appeared inevitable in the given circumstances.

The author's comments on the State party's observations on admissibility and merits

5.1 By her submission of 6 May 2005, the author reiterates several of her

The State party's further submission on admissibility and merits

6.1 By its submission of 22 June 2006, the State party maintains its position that judicial review by the High Court of Justice is an extraordinary remedy to which the author should have resorted.

6.2 The State party maintains that the method used to sterilize the author was not irreversible. Therefore there is no continuous violation of her rights. The State party cites the Judicial Committee of the Medical Research Council for the authority that ligature can be reversed in 20 to 40 per cent of the cases by a re-fertilization operation.

6.3 The State party sustains its position that the author was given correct and appropriate information both in the pre-natal period and at the time of the surgery. She was also provided with appropriate medical services, including information, during her three previous pregnancies.

6.4 The State party stresses that there is no difference between public and private health services in terms of quality.

6.5 The State party reiterates that the Public Health Act allows physicians to perform sterilization surgery without counselling when it seems appropriate in given circumstances. Under the Act, a physician is

likelihood of ectopic pregnancy following reversal surgery, which is a dangerous condition that requires immediate medical attention.

7.3 The author also claims that the Hungarian medical profession regards sterilization as a permanent method of birth control. She states that the medical expert who was involved in the domestic litigation at the request of her attorney stated that a new abdominal operation might be able to make the fallopian tubes permeable, but its success is questionable and the surgeon who performed the sterilization on the author stated that counselling should include the fact that it is an irreversible intervention.

7.4 The author further states that in order to give a valid opinion on whether the sterilization performed on her could be reversed successfully it would be necessary to know, inter alia, how much damage had been done to her fallopian tubes or other reproductive organs. The author claims that the State party's assertion that the author's operation was not irreversible was made in the abstract and is thereby contrary to the standard medical views, which the author has described.

7.5 Given that the doctors suggested, and the Hungarian Courts confirmed, that a future pregnancy might endanger the author's life as well as that of the child, the author argues that it is unlikely that her sterilization was done in a way that would promote the possibility of a reversal. She further asserts that the Hungarian Courts based their opinion about the reversibility of the author's sterilization on

Supplementary submission of the author

9.1 By her submission of 16 November 2005, the author submits that the State party disregards the effect of the non-consensual sterilization on her physical integrity and mental health and dignity. In Hungarian medical law, respect for human dignity is a core right from which other rights flow. The Committee recognized in its general recommendation No. 19 that compulsory sterilization adversely affects women's physical and mental health.

9.2 The author argues that informed consent to sterilization is required by international standards and under national law and derives from respect for a woman's human rights as laid down in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, in Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

9.3 The author contends that physicians are under an ethical obligation to ensure a woman's right to self-determination by the counselling that precedes any informed decision-making. The Convention on Human Rights and Biomedicine of the Council of Europe, to which Hungary is a party, recognizes the importance of ensuring the dignity of the human being. The instrument's Explanatory Report states that the rule whereby no one may be forced to undergo an intervention without his or her consent makes clear patients' autonomy in their relationship with health-care professionals.

9.4 The author recalls her extremely vulnerable situation when she sought medical attention on 2 January 2001 as a woman who would lose her child and as a member of a marginalized group of society — the Roma.

9.5 In support of her claims, the author submits a brief prepared by the Center for Reproductive Rights, Inc., in which the latter organization supports the arguments made by the author. The Center for Reproductive Rights contends that the argument of the State party to the effect that the author did not suffer a permanent violation of rights goes against internationally accepted medical standards, which assert that sterilization is a permanent, irreversible procedure.

9.6 The Center for Reproductive Rights underlines that informed consent and the right to information are critical components of any sterilization procedure and that human rights are violated when sterilization is performed without the full and informed consent of the patient. In the

and family planning in violation of the State party's obligation under article 10 (h) of the Convention.

9.7 The Center for Reproductive Rights states that in the present case, the barely readable, hand-written cons

under the Optional Protocol to the Convention. Pursuant to rule 72, paragraph 4, of its rules of procedure, it shall do so before considering the merits of the communication.

10.2 The Committee has ascertained that the matter has not already been

sterilization is low and depends on many factors, such as how the sterilization was carried out, how much damage was done to the fallopian tubes or other reproductive organs and the skills of the surgeon; there are risks associated with reversal surgery; and an increased likelihood of ectopic pregnancy following such surgery. The Committee thus considers the facts that are the subject of the communication to be of a continuous nature and that admissibility *ratione temporis* is thereby justified.

10.5 The Committee has no reason to find the communication inadmissible on any other grounds and thus finds the communication admissible.

Consideration of the merits

11.1 The Committee has considered the present communication in light of all the information made available to it by the author and by the State party, as provided in article 7, paragraph 1, of the Optional Protocol.

11.2

With respect to the claim that the State party violated article 10 (h) of the Convention by failing to provide information and advice on family planning, the Committee recalls its general recommendation No. 21 on equality in marriage and family relations, which recognizes in the context of “coercive practices which have serious consequences for women, such as forced ... sterilization” that informed decision-making about safe and reliable contraceptive measures depends upon a woman having “information about contraceptive measures and their use, and guaranteed access to sex education and family planning services”. The Committee notes the State party’s arguments that the author was given correct and appropriate information at the time of the operation, during prenatal care and during her three previous pregnancies as well as its argument that, according to the decision of the lower court, the author had been in a condition in which she was able to understand the information provided. On the other hand, the Committee notes the author’s reference to the judgement of the appellate court, which found that the author had not been provided with detailed information about the sterilization, including the risks

involved and the consequences of the surgery, alternative procedures or contraceptive methods. The Committee considers that the author has a right protected by article 10 (h) of the Convention to specific information on sterilization and alternative procedures for family planning in order to guard against such an intervention being carried out without her having made a fully informed choice. Furthermore, the Committee notes the description given of the author's state of health on arrival at the hospital and observes that any counselling that she received must have been given under stressful and most inappropriate conditions. Considering all these factors, the Committee finds a failure of the State party, through the hospital personnel, to provide appropriate information and advice on family planning, which constitutes a violation of the author's right under article 10 (h) of the Convention.

11.3

With regard to the question of whether the State party violated the author's rights under article 12 of the Convention by performing the sterilization surgery without obtaining her informed consent, the Committee takes note of the author's description of the 17 minute timespan from her admission to the hospital up to the completion of two medical procedures. Medical records revealed that the author was in a very poor state of health upon arrival at the hospital; she was feeling dizzy, was bleeding more heavily than average and was in a state of shock. During those 17 minutes, she was prepared for surgery, signed the statements of consent for the caesarean section, the sterilization, a blood transfusion and anaesthesia and underwent two medical procedures, namely, the caesarean section to remove the remains of the dead foetus and the sterilization. The Committee further takes note of the author's claim that she did not understand the Latin term for sterilization that was used on the barely legible consent note that had been handwritten by the doctor attending to her, which she signed. The Committee also takes note of the averment of the State party to the effect that, during those 17 minutes, the author was given all appropriate information in a way in which she was able to understand it. The Committee finds that it is not plausible that during that period of time

hospital personnel provided the author with thorough enough counselling and information about sterilization, as well as alternatives, risks and benefits, to ensure that the author could make a well-considered and voluntary decision to be sterilized. The Committee also takes note of the unchallenged fact that the author enquired of the doctor when it would be safe to conceive again, clearly indicating that she was unaware of the consequences of sterilization. Accordfti in.12

10 (h), 12 and 16, paragraph 1 (e) of the Convention and makes the following recommendations to the State party:

I. Concerning the author of the communication: provide appropriate compensation to Ms. A. S. commensurate with the gravity of the violations of her rights.

II. General:

- Take further measures to ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's general recommendations Nos. 19, 21 and 24 in relation to women's reproductive health and rights are known and adhered to by all relevant personnel in public and private health centres, including hospitals and clinics.
- Review domestic legislation on the principle of informed consent in cases of sterilization and ensure its conformity with international human rights and medical standards, including the Convention of the Council of Europe on Human Rights and Biomedicine ("the Oviedo Convention") and World Health Organization guidelines. In that connection, consider amending the provision in the Public Health Act whereby a physician is allowed "to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances".
- Monitor public and private health centres, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.

11.6 In accordance with article 7, paragraph 4, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them translated into the Hungarian language and widely distributed in order to reach all relevant sectors of society.