

CEDAW, A/61/38 (2006)

Annex VIII

Views of the Committee in respect of communications under article 7, paragraph 3, of the Optional Protocol to the Convention

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B. Views of the Committee in respect of communication No. 4/2004

Submitted by: Ms. Andrea Szijarto (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)

On 14 August 2006, the Committee on the Elimination of Discrimination against Women adopted the text set out below as the Committee's views under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 4/2004.*

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. Andrea Szijarto 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:

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

* The following members of the Committee participated in the examination of the present communication: Magalys Arocha Dominguez, Meriem Belmihoub-Zerdani, Huguette Bokpe Gnacadja, Dorcas Coker-Appiah, Mary Shanthi Dairiam, Cees Flinterman, Naela Mohamed Gabr, Françoise Gaspard, Rosario Manalo, Pramila Patten, Fumiko Saiga, Hanna Beate Schöpp-Schilling, Heisoo Shin, Glenda P. Simms, Dubravka Šimonović, Anamah Tan, Maria Regina Tavares da Silva and Zou Xiaojiao. Pursuant to rule 60 (1) (c) of the Committee's rules of procedure, Krisztina Morvai did not participate in the examination of this communication, as she is a national of the State party concerned.

1.1 The author of the communication dated 12 February 2004, is Andrea Szijjarto, 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 medical records also revealed the poor health condition of the author when she arrived at the hospital. She felt dizzy upon arrival, was bleeding more heavily than average and was in a state of shock.

^a The author cites Maria Neményi from "Roma Mothers in Health Care", <http://mck.oszk.hu/01100/01156>.

2.4 The author states that the sterilization has had a profound impact on her life for which she and her partner have been treated medically for depression. She would never have agreed to the sterilization as she has strict Catholic religious beliefs that prohibit contraception of any kind, including sterilization. Furthermore, she and her partner live in accordance with traditional Roma customs — where having children is said to be a central element of the value system of Roma families.^a

2.5 On 15 October 2001, a lawyer with the Legal Defence Bureau for National and Ethnic Minorities, filed a civil claim on behalf of the author against Fehérgyarmat Hospital, inter alia, requesting that the Fehérgyarmat Town Court find the hospital in violation of the author's civil rights. She also claimed that the hospital had acted negligently by sterilizing the author without obtaining her full and informed consent. Pecuniary and non-pecuniary damages were sought.

2.6 On 22 November 2002, the Fehérgyarmat Town Court rejected the author's claim, despite a finding of some negligence on the part of the doctors, who had failed to comply with certain legal provisions, namely, the failure to inform the author's partner of the operation and its possible consequences as well as to obtain the birth certificates of the author's live children. The Court reasoned that the medical conditions for sterilization prevailed in the author's case and that she had been informed about her sterilization and given all relevant information in a way in which she could understand it. The Court also found that the author had given her consent accordingly. The Court further viewed as a "partial extenuating circumstance towards the defendant's negligence the fact that, with the author's consent, the doctors performed the sterilization with special dispatch simultaneously with the Caesarean section".

2.7 On 5 December 2002, the lawyer filed an appeal on behalf of the author before the Szabolcs-Szatmár-Bereg County Court against the decision of the Fehérgyarmat Town Court.

2.8 On 12 May 2003, the author's appeal was rejected. The appellate court found that although article 187, paragraph 4 (a), of Hungary's Act on Health Care allowed for the exceptional performance of the sterilization, the operation was not of a life-saving character, and therefore, the sterilization procedure should have been subject to the informed consent of the author. The appellate court further found that the doctors acted negligently in failing to provide her with detailed information (about the method of the operation, of the risks of its performance and of the alternative procedures and methods, including other options of birth control) and that the written consent of the author could not in and of itself exclude the hospital's liability. The appellate court, however, turned down the appeal on the ground that the author had failed to prove a lasting handicap and its causal relationship with the conduct of the hospital. The appellate court reasoned that the performed sterilization was not a lasting and irreversible operation inasmuch as the tying of fallopian tubes can be terminated by plastic surgery on the tubes and the likelihood of her becoming pregnant by artificial insemination could not be excluded. Based on her failure to prove that she had lost her reproductive capacity permanently and its causal relationship to the conduct of the doctors, the appellate court dismissed the appeal.

The complaint

3.1 The author claims that Hungary has violated articles 10 (h), 12 and 16, paragraph 1 (e), of the Convention.

3.2 She emphasizes that sterilization is never a life-saving intervention that needs to be performed on an emergency basis without the patient's full and informed consent. It is an operation that is generally intended to be irreversible and surgery to reverse sterilization is complex and has a low success rate.^b The author states that international and regional human rights organizations have repeatedly stressed that the practice of forced sterilization constitutes a serious violation of numerous human rights and she refers to general comment 28 of the Human Rights Committee on equality of rights between men and women by way of example. She also states that coercion presents itself in various forms — from physical force to pressure from and/or negligence on the part of medical personnel.

3.3 As to the alleged violation of article 10 (h) of the Convention, the author argues that she received no specific information about the sterilization, the effects of the operation on her ability to reproduce, or advice on family planning and contraceptive measures — either immediately before the operation or in the months/years before the operation was carried out. She claims that she was not given information about the nature of the operation, the risks and consequences, in a way that was comprehensible to her before she was asked to sign the consent form. The author quotes paragraph 22 of general recommendation No. 21 of the Committee on marriage and family relations in support of her argument.

3.4 In support of the alleged violation of article 12 of the Convention, the author refers to paragraphs 20 and 22 of general recommendation No. 24 of the Committee on women and health and submits that she was unable to make an informed choice before signing the consent form for the sterilization procedure. She argues that her inability to give informed consent on account of the incomplete information provided is a violation of the right to appropriate health care services. She also argues that there is a clear causal link between the failure of the doctors to fully inform her about the sterilization and the injuries that it caused, both physical and emotional.

3.5 The author claims that article 16, paragraph 1 (e), of the Convention has been violated by virtue of the State party limiting her ability to reproduce and she refers to paragraph 22 of general recommendation No. 21 of the Committee and paragraphs 22 and 24 of general recommendation No. 19 of the Committee on violence against women in this instance. She adds that the facts of the case show that she was denied access to information, education and the means to exercise her right to decide freely and responsibly on the number and spacing of her children.

3.6 The author requests the Committee to find a violation of articles

^b The World Health Organization states that male and female sterilization should be regarded as permanent methods. See page 16 of "Medical Eligibility Criteria for Contraceptive Use", third edition 2004, available at <http://www.who.int/reproductive-health/publications/mec/mec.pdf>.

10 (h), 12 and 16, paragraph 1 (e), and to request the State party to provide just compensation.

3.7 As to the admissibility of the communication, the author maintains that all domestic remedies have been exhausted because the decision of the appellate court specifically stated that no appeal against it was permitted. The author also maintains that the matter has not been and is not currently being examined under any other procedure of international investigation or settlement.

3.8 Furthermore, the author notes that, although the incident giving rise to the communication occurred on 2 January 2001, Hungary has been legally bound by the Convention's provisions since 3 September 1981. The author claims that, most importantly, the effects of the violations at issue are of an ongoing, continuing character. In particular, as a result of having been sterilized without giving full and informed consent, she can no longer give birth. In light of these considerations, the author submits that the communication is admissible in accordance with article 4, paragraph 2 (e), of the Optional Protocol.^c

The State party's submission on admissibility and merits

4.1 By submission of 7 March 2005, the State party argues that the author failed to exhaust domestic remedies because she did not make use of judicial review (so-called "revision of judgement"), a special remedy under Hungarian law.

4.2 The State party contends that the communication is inadmissible *ratione temporis* pursuant to article 4, paragraph 2 (e). It is the opinion of the State party that the author has not sustained a permanent disability because the sterilization is not irreversible surgery and has not caused permanent infertility. The State party therefore argues that there has been no permanent violation of the rights of the author.

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

^c The author refers to the jurisprudence of the Council of Europe, in particular Application Nos. 7031/75 and 9587/81, and of the Human Rights Committee in communications Nos. 1/1976, 24/1977, 196/1985, 310/1988, 457/1991 and 491/1992.

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 arguments regarding the admissibility and merits of her claims.

5.2 Concerning article 4, paragraph 1, of the Optional Protocol, the author claims that the State party failed to show that the judicial review (so-called "revision") by the Supreme Court constitutes an effective remedy that is available to the author. She argues that the Constitutional Court of Hungary has held that the Constitution guarantees a one-tier appeal system only. Under this system an appeal of a judgement of an appellate court is an extraordinary remedy. The author argues that this extraordinary relief was not accessible to her as it could neither be legally substantiated that her case concerned a point of law of general importance that had to be reviewed for the development of the uniform interpretation of the law nor that the final judgement differed from a previous binding decision of the Supreme Court. Between 1 January 2002 and 9 November 2004, the relevant judicial review criteria were, essentially, that the judgement to be reviewed infringed the law and that this affected the merits of the case and (a) the decision differed from the binding decisions of the Supreme Court on the uniform interpretation of the law or (b) review by the Supreme Court would be necessary to develop a point of law of conceptual importance. The author also argues that the second alternative conditions of (a) and (b) were declared unconstitutional by the Constitutional Court of Hungary on 9 November 2004 because they could not be applied predictably as they were not straightforward. As such, she was really without effective access to judicial review.

5.3 With regard to article 4, paragraph 2 (e), of the Optional Protocol, the author states that her reproductive capacity has been taken away by State actors — the doctors at the public hospital. She reiterates that sterilization, in law and in medical practice, is regarded as irreversible surgery and that it has had a profound impact on her.

5.4 The author claims that her fundamental rights to health and human dignity and freedom as elaborated in several international outcome documents, notably the Programme of Action of the International Conference on Population and Development (Cairo, 1994) and the Beijing Declaration and Platform for Action (Beijing, 1995) and the outcome documents of their respective five-year reviews have been violated.

5.5 The author also argues that in the instant case, the Hungarian health service did not at any time provide any form of information on family planning, the sterilization surgery, or the effects on her reproductive capacity. The State party appears to believe that the author should have been self-taught on the use of contraception and

family planning. The appellate court agreed that the Hungarian health service failed to fulfil its obligation to provide appropriate information. According to the author, failure to provide her with specific information on contraception and family planning before coercing her into signing the consent to sterilization constitutes a breach of article 10 (h) of the Convention.

5.6 The author maintains that the question of payment for health care is irrelevant. She also maintains that she did not consent to the sterilization in that she did not receive clear and suitably worded information and was not in a condition to understand the form that she was asked to sign.

5.7 The author points out that the appellate court stressed in its decision that because the sterilization was not a life-saving measure, informed consent was required and that it had not been established that the conditions had been met for performing the surgery pursuant to article 15, paragraph 3, of the Health Care Act.

5.8 The author argues that informed consent is based on a patient's ability to make an informed choice and its validity does not depend on the form in which it is given. Written consent merely can serve as evidence.

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 given some discretion in certain cases. In this way, preference is given to the patient's right to life and counselling may be simplified. While sterilization is not a life-saving intervention in general, in the present case it had a life-saving function because another pregnancy or abdominal operation would have placed the author in mortal danger. The sterilization was performed to avoid such a situation.

The author's subsequent submission

7.1 By her submission of 5 October 2005, the author maintains that, while surgery to reverse sterilization is sometimes possible, sterilization is carried out with the intention of ending a woman's reproductive capacity permanently. Surgery to reverse sterilization is complex and has a low success rate. The author underpins her claim by referring to publications by individuals, Governments and international organizations. She cites case law in several jurisdictions that view sterilization as an irreversible operation. The doctor who performed the surgery testified that information about sterilization should include the fact that it is an irreversible intervention.

7.2 The success of surgery to reverse sterilization 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, the skills of the surgeon and the availability of trained staff and facilities. There are risks associated with the surgery to reverse sterilization. There is an increased 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 exclusively on witness statements of medical staff employed by the respondent hospital and an expert medical report that had not been commissioned by the Court. Moreover, she was not examined for this purpose.

7.6 Despite extensive research, the author is unaware of whether successful surgery to reverse sterilization has been performed in Hungary as from the time of her sterilization. One can make a claim with confidence only when a reversal surgery has been carried out successfully. However, the author cannot be forced to undergo another operation to alleviate the damage. This major abdominal surgery

under full anaesthesia carries risks and would not be covered by the State's social security fund.

7.7 The author argues that claims for non-pecuniary damages may be brought without determining whether or not the sterilization is irreversible. The rights of the author to physical integrity, health, honour and human dignity have been violated under the Hungarian Civil Code by the unlawful conduct of the hospital irrespective of any medical possibility of restoring her reproductive capacity. Her loss of fertility caused psychological trauma and had a detrimental effect on her private life. The unlawful sterilization has had a continuous effect on her life and has not been remedied for almost five years.

7.8 The author further argues that it was questionable to carry out the sterilization — a preventive intervention — together with a reportedly life-saving operation — the caesarean section, thereby prolonging the operating time and increasing the risk to her health. The author also argues that it took 17 minutes for her to be admitted to the hospital, prepared for surgery, given information about the procedures and the risks and consequences of sterilization, sign the statements of consent, and undergo both the caesarean section and the sterilization. The author argues further that this indicates that all steps could not have been carried out properly and that the hospital could only save time on counselling and allowing time for decision-making.

Supplementary observations of the State party

8.1 By its submission of 2 November 2005, the State party continues to assert that it would have been duly justified for the author to initiate a judicial review ("revision of judgement") because even though no damages had been awarded, an actionable infringement had been established. The judicial review is an extraordinary remedy of the Supreme Court that is based on a request to remedy a defect in respect of a legal issue. Such requests are restricted to cases where a third instance review is justified because, for example, it would contribute to the evolution of the law or to the standardization of the application of the law or it would raise a substantial legal issue.

8.2 When the Supreme Court finds that there is cause for review and if it has the necessary data and facts, it hands down a new decision that partly or fully invalidates the decision of the Court of the second instance. Otherwise, when the Supreme Court lacks the necessary data and facts, it remands the case back to the Court of the first or second instance for new proceedings and a decision.

8.3 The State party adds that Council III of the Civil College of the Supreme Court focuses specifically on legal action in medical malpractice cases and on actions for damages. The State party stresses that the Supreme Court has entertained more than 1,300 reviews since 1993. The State party argues that, therefore it would have provided the author with a suitable forum.

8.4 The State party maintains its position in respect of tubal ligature and states that the nature of the operation does not constitute an ongoing infringement because it does not cause permanent infertility, and refers to the position of the Judicial Committee of the Medical Research Council (see para. 6.2 above) on this issue. Furthermore,

future pregnancy is also possible through the in-vitro fertilisation programme, which is financed by the social security system.

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 instant case the author was not provided with information or advice concerning sterilization, and its effects, risks, or consequences. Nor did she receive information or advice about alternative methods of contraception 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 consent form, which contained

the Latin, rather than the Hungarian word for sterilization, while signed, did not indicate that informed consent had been given to the sterilization procedure. Medical personnel failed to communicate to the author in a way that she was capable of understanding and did not take into account her state of shock after losing her child and her very weak physical condition after having lost substantial amounts of blood.

9.8 The Center for Reproductive Rights notes that several international medical bodies, including the World Health Organization, have created specific guidelines and considerations to ensure informed consent in cases of sterilization demonstrates just how crucial it is that informed consent is obtained prior to delivering the life-altering procedure of sterilization that seriously impacts upon an individual's human rights.

9.9 Given the 17-minute time span between the author's arrival at the hospital and the completion of two operations, The Center for Reproductive Rights contends that it is not feasible that health care personnel provided the author with thorough information in accordance with international human rights and medical standards. Without that information, the author could not have made a well-considered and voluntary decision. The fact that the author asked the doctor when it would be safe to have another child clearly indicates that it was not explained to the author that she would be prevented from having any more children after the procedure.

9.10 The Center for Reproductive Rights states that international medical standards clearly note that patients must always give their informed consent to sterilization procedures, even in cases that pose a health risk.

9.11 The Center for Reproductive Rights is of the view that by sterilizing the author without her fully informed consent, the State party, through the doctors at the public hospital, violated the author's right to decide on the number and spacing of children by limiting her access to the information that would have allowed her to make the decision as to whether to be sterilized. As a result of the sterilization that was performed without consent, the author no longer has, and will never have the freedom to make decisions as to the number and spacing of children.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible 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 or is being examined under another procedure of international investigation or settlement.

10.3 With regard to the requirement laid down in article 4, paragraph 1, of the Optional Protocol that the Committee ascertain that all available domestic remedies have been exhausted, the Committee notes that the State party drew attention to the special or extraordinary remedy of judicial review (so-called “revision of judgement”) of which the author did not make use. According to the State party, this remedy is restricted to cases where a third instance review is justified to remedy a defect in respect of a legal issue. The Committee has to determine whether this remedy was available to the author and, if so should have been pursued by her. In this context, the Committee notes that, according to the author, the criteria for the remedy of judicial review that applied at the time that the appellate court handed down its decision in the author’s case have, since that time, been declared unconstitutional by the Constitutional Court of Hungary because they were unpredictable. The State party has not contested this information. The author also maintains that her case did not fulfil the criteria for this remedy. She further maintains that the decision of the Court of Second Instance had specifically stated that no appeal against it was permitted. The State party has acknowledged the extraordinary nature of the remedy. Under these circumstances, the Committee considers that it cannot be expected of the author that she would have availed herself of the remedy. The Committee therefore finds that article 4, paragraph 1, of the Optional Protocol does not preclude the Committee’s consideration of the communication of the author.

10.4 In accordance with article 4, paragraph 2 (e), of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned unless those facts continued after that date. In considering this provision, the Committee notes that the incident which has given rise to the communication occurred on 2 January 2001. This date preceded the entry into force of the Optional Protocol for Hungary 22 March 2001. However, the author has called upon the Committee to determine whether a number of her rights under the Convention have been and continue to be violated as a result of the sterilization surgery. It has been put forward convincingly that sterilization should be viewed as permanent, in particular: sterilization is intended to be irreversible; the success rate of surgery to reverse 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 According to article 10 (h) of the Convention:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(...)

(h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

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 Article 12 of the Convention reads:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and

women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

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 time span 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. According to article 12 of the Convention, States parties shall "ensure to women appropriate services in connexion with pregnancy, confinement, and the post-natal period". The Committee explained in its general recommendation No. 24 on women and health that "[A]cceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity ...". The Committee further stated that "States parties should not permit forms of coercion, such as non-consensual sterilization ... that violate women's rights to informed consent and dignity". The Committee considers in the present case that the State party has not ensured that the author gave her fully informed consent to be sterilized and that consequently the rights of the author under article 12 were violated.

11.4 Article 16, paragraph 1 (e), of the Convention states:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(...)

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

As to whether the State party violated the rights of the author under article 16, paragraph 1 (e), of the Convention, the Committee recalls its general recommendation No. 19 on violence against women in which it states that “[C]ompulsory sterilization ... adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.” The sterilization surgery was performed on the author without her full and informed consent and must be considered to have permanently deprived her of her natural reproductive capacity. Accordingly, the Committee finds the author’s rights under article 16, paragraph 1 (e), to have been violated.

11.5 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Discrimination against Women is of the view that the facts before it reveal a violation of articles 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. Andrea Szijarto 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.