

SLOVAKIA

Follow-up - State Reporting Action by State Party

CEDAW, CEDAW/C/MMR/CO/3/Add.1 (2010)

Information provided in follow-up to the concluding observations of the Committee

Response by Slovakia to the recommendation contained in the concluding observations of the Committee following the examination of the second, third and fourth periodic reports on 14 July 2008

1. Paragraph 45 of the Report of the Committee on its forth-first session (A/63/38) states:

Recalling its views in respect of communication No. 4/2004 (*Szijjarto v. Hungary*), the Committee recommends that the State party monitor public and private health centres, including hospitals and clinics, that perform sterilization procedures so as to ensure that patients are able to provide fully informed consent before any sterilization procedure is carried out, with appropriate sanctions being available and implemented in the event of a breach. It calls upon the State party to take further measures to ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's general recommendations Nos. 19 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. The Committee recommends that the State party take all necessary measures to ensure that the complaints filed by Roma women on grounds of coerced sterilization are duly acknowledged and that victims of such practices are granted effective remedies.

2. As far as the sterilization issue is concerned, new legislative measures have been adopted, namely Act No. 576/2004 Coll. on health care, health-care-related services and amendments to certain acts (hereinafter referred to as the "Health Care Act"), effective from 1 January 2005. This Act amended the Penal Code, Act No. 140/1961 Coll. as amended, and introduced "unlawful sterilization" as a new element of crime. Having included this conduct among the elements of crime, Slovakia fulfilled its international legal commitments arising from international instruments on the protection of human rights and fundamental freedoms and from the recommendations of relevant international bodies and organizations. The Health Care Act provides, inter alia, for non-discriminatory access to medical care and sets out preconditions for obtaining the informed consent of patients, performing sterilizations and accessing medical files. Under the Act, sterilizations may be performed only upon receipt of an application and of informed consent, in writing, by a duly appointed person with full legal capacity or by the legal guardian of a person incapable of giving informed consent; or on the basis of a court decision issued on the application filed by the legal guardian.

3. Since the establishment of the Health Care Supervision Authority, under Act No. 581/2004

Coll. on health insurance companies, health-care supervision and amendments to certain acts, as a legal entity authorized to supervise the provision of health care and public health insurance in the public administration sector, the Ministry of Health has received no petitions concerning any misconduct in the performance of sterilization procedures.

4. As regards general recommendations 19 and 24 of the Committee on the Elimination of Discrimination against Women, which pertain to the reproductive health and rights of women and their observance by all relevant medical workers, the Ministry of Health is actively involved in the implementation of the National Strategy for Gender Equality for 2009-2013, through its participation in the preparation of a national action plan for gender equality for 2010-2013, and through its efforts to again submit to the Slovak Government its plans for a national programme on women's care, safe motherhood and reproductive health in 2010.

5. In conclusion, we quote the complete wording of section 6 of the Health Care Act, on informed consent:

Advice and informed consent

(1) Unless this Act stipulates otherwise (§6a), an attending health worker is obliged to provide information on the purpose, nature, consequences and risks concerning the provision of medical treatment, on the possibilities to choose from the proposed procedures and on the risks related to the refusal of medical treatment (hereinafter referred to as "provide advice") to:

(a) a person who is to receive medical treatment and/or another person specified by the former;

(b) a legal guardian, caregiver, custodian or a natural person other than parents to whose personal care a minor child has been entrusted; a person to whose substitute personal care a child has been entrusted; a person who is a foster parent of a child; a person who wishes to become a foster parent and the child has temporarily been entrusted to his/her care; a future adoptive parent; a person to whom a child has been entrusted under separate regulations; or a statutory representative of the facility in which a court order for institutional care or a court decision on protective care is executed (hereinafter referred to as a "legal guardian"), if the person who is to receive medical treatment is a minor child, a person deprived of legal capacity or person with restricted legal capacity (hereinafter referred to as a "person incapable of providing informed consent"); and, by appropriate means, a person incapable of providing informed consent.

(2) The attending health worker is obliged to provide advice in a comprehensible and considerate manner, without pressure, thereby allowing the person being advised the possibility of, and sufficient time for, making a free decision on informed consent, and in a manner adequate to the intellectual and volitional capacities and health conditions of the person whom he/she should advise.

(3) Any person who has the right to advice, pursuant to paragraph 1, is also entitled to refuse such advice. A written record shall be kept of the refusal of such advice.

(4) Informed consent means demonstrable consent to medical treatment, preceded by the

provision of advice given pursuant to this Act. Informed consent also means demonstrable consent to medical treatment where the recipient of the treatment has refused such advice, unless the Act stipulates otherwise (§6b, §27(1), §36(2), §38(1) and §40(2)).

(5) Informed consent in writing is required:

(a) in cases referred to in §6b, §27(1), §36(2), §38(1) and §40(2);

(b) prior to performing invasive medical procedures under general or local anaesthesia;

(c) in case of a change in the diagnostics or treatment procedure to which the original informed consent does not apply.

(6) Unless this Act stipulates otherwise (§6a), informed consent shall be given by:

(a) the person who is to receive medical treatment; or

(b) his or her legal guardian, in case the person who is to receive medical treatment is incapable of giving informed consent; such person shall participate in making the decision within the limits of his or her capacities.

(7) If the legal guardian refuses to give informed consent, a provider may petition a court where such action is in the interest of the person incapable of giving informed consent who is to receive medical treatment. In such a case, the consent of the court to medical treatment replaces the informed consent of the legal guardian. Until the court delivers its decision, the only medical procedures allowed are those that are essential to save the life of the person.

(8) Any person who has the right to give informed consent also has the right to freely withdraw his or her informed consent at any time.

(9) Informed consent is not required in the case of:

(a) emergencies, where informed consent cannot be obtained in time but can be inferred;

(b) protective care ordered by the court under a separate regulation;

(c) inpatient care of persons spreading transmissible diseases and posing a serious threat to their surroundings; or

(d) outpatient or inpatient care of persons who pose a threat to themselves or their surroundings due to a mental illness or symptoms of a mental disorder, or persons whose health is in grave danger of deteriorating.

(10) The manner in which the advice is provided, the content of the advice, the refusal of the advice, the informed consent, the refusal to provide and the withdrawal of the informed consent are part of the medical records (§21). If the informed consent was given by the legal guardian

[paragraph 5(b)], the entry made in the medical records shall also include a statement by the person incapable of giving informed consent to medical treatment.

6. On the basis of a criminal complaint filed by a Deputy Prime Minister in January 2003, specialized police teams conducted investigations into allegations, presented by a civic initiative, that the sterilizations of Roma women in eastern Slovakia constituted a violation of their right to health protection, and that even attempts at eliminating that ethnic group in that particular region had occurred.

7. In the light of the results of the investigation, a competent police investigator stopped the criminal proceedings on 24 October 2003 by a resolution issued pursuant to section 172(1)(a) of the Code of Criminal Procedure (Act No. 141/1961 Coll., as in force until 31 December 2005), since it was proven beyond any doubt that the act, in respect of which the criminal proceedings had been initiated, did not occur.

8. The decision was contested by Ingrid Gi_ová Renáta Horváthová and Magdaléna Kandr_áov_á in a complaint filed by their authorized representative, Vanda Durbákov_á the complaint was dismissed as ill-founded in a decision issued on 28 September 2005 by the Košice Regional Prosecutor's Office pursuant to section 148(1)(c) of the Code of Criminal Procedure (Act No. 141/1961 Coll., as in force until 31 December 2005).

9. On 28 November 2005, Ingrid Gi_ová Renáta Horváthová and Magdaléna Kandr_áov_á through their authorized representative, Vanda Durbákov_á filed a complaint with the Constitutional Court, in which they alleged a violation of their fundamental rights under articles 12(2), 16(2), 19(2) and 41(1) of the Constitution and violation of their rights under articles 3, 8, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

10. On 13 December 2006, the Constitutional Court decided, in its finding No. III. ÚS 194/06-46, that the Košice Regional Prosecutor's Office, in its decision to dismiss the complaint filed by Ingrid Gi_ová Renáta Horváthová and Magdaléna Kandr_áov_á had violated their rights under articles 16(2) and 19(2) of the Constitution, as well as their rights under articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court revoked the decision of the Košice Regional Prosecutor's Office and ordered reinstatement of the proceedings of the case at hand.

11. In connection with finding No. III ÚS 194/06-46 of 13 December 2006 of the Constitutional Court, on 9 February 2007, a prosecutor with the Košice Regional Prosecutor's Office revoked, by resolution No. 1 Kv 18/03, the resolution by which the police investigator had stopped the criminal proceedings and instructed that the case would need to be reopened and decided anew.

12. The investigation team consequently resumed its work.

13. Taking into account the results of the investigation carried out within the scope of the finding of the Constitutional Court, the police investigator stopped the criminal proceedings by a resolution issued pursuant to section 215(1)(b) of the Code of Criminal Procedure (Act No.

301/2005 Coll., as in force from 1 January 2006), relating to the crime of genocide under section 418(1)(b) of the Penal Code (Act No. 300/2005 Coll., as in force from 1 January 2006), citing that the act concerned was not a crime and that therefore there were no grounds to refer the case for further proceedings.

14. On behalf of Ingrid Gi_ová Ren_áa Horv_áthová and Magdal_éna Kandr_ová their authorized representative, Vanda Durb_áková filed a complaint against the aforementioned resolution on 4 January 2008.

15. On 19 February 2008, a supervising prosecutor with the Košice Regional Prosecutor's Office issued a decision pursuant to section 193(1)(c) of the Code of Criminal Procedure (Act No. 301/2005 Coll., as in force from 1 January 2006), dismissing the complaint as ill-founded. The resolution made by the police investigator to stop the criminal proceedings in the case at hand had become final.

16. In the light of the aforementioned facts, the police did not dismiss the complaints submitted by the Roma women alleging violations of their rights to health protection, but investigated them within the scope of their competence.

17. As regards the recommendation to adopt appropriate sanctions to be applied in cases of violations of statutory requirements for authorized sterilizations, an amendment was adopted, through Act No. 576/2004 Coll. on health care, health-care-related services and amendments to certain acts (effective 1 January 2005), to Act No. 140/1961 Coll., the Penal Code (as in force until 31 December 2005), to introduce a new element of crime of unlawful sterilization pursuant to section 246(b) of the Penal Code. Subsequently, Act No. 300/2005 Coll., the Penal Code, was adopted on 20 May 2005 to replace the previously applicable Act No. 140/1961 Coll.

18. The new Penal Code came into force on 1 January 2006. As part of the Penal Code revision, the element of crime of unlawful sterilization under section 246(b) of the Penal Code (Act No. 140/1961 Coll., as in force until 31 December 2005) was replaced with the elements of crime of unauthorized removal of organs, tissues and cells, and unlawful sterilization under section 159(2) of the Penal Code (Act No. 300/2005 Coll., as in force from 1 January 2006).

19. Statistical indicators monitored by the police indicate that the police have not yet investigated any crime of unlawful sterilization under section 246(b) of the Penal Code (Act No. 140/1961 Coll., as in force until 31 December 2005) or any crime of unauthorized removal of organs, tissues and cells, and unlawful sterilization under section 159(2) of the Penal Code (Act No. 300/2005 Coll., in force from 1 January 2006).