



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

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## Committee on the Elimination of Discrimination against Women

### Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 114/2017<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	G.H. (represented by counsel, the European Roma Rights Centre)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Hungary
<i>Date of communication:</i>	23 February 2017 (initial submission)
<i>References:</i>	Decision taken pursuant to rule 69 of the Committee's rules of procedure, transmitted to the State party on 5 April 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	6 July 2020
<i>Subject matter:</i>	Gender-based discrimination and lack of informed consent regarding sterilization
<i>Procedural issue:</i>	Lack of substantiation
<i>Articles of the Convention:</i>	2 (c)–(f), 5 (a), 10 (h), 12, 15 (1) and 16 (1) (e)
<i>Article of the Optional Protocol:</i>	4 (1) and (2) (c)

\* Adopted by the Committee at its seventy-sixth session (29 June–9 July 2020).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.



**Background**

1. The author is G.H., a Hungarian national born in 1974. She claims to be a victim of a violation, by Hungary, of her rights under articles 2 (c)–(f), 5 (a), 10 (h), 12, 15 (1) and 16 (1) (e) of the Convention. The Convention and the Optional Protocol thereto entered into force for the State party on 21 January 1981 and 22 March 2001. The author is represented by counsel, the European Roma Rights Centre.

**Facts as submitted by the author**

2.1 The author was married to a Hungarian national of Roma origin. The couple had seven children. She is not of Roma origin but claims that in Hungary she would be identified as such, in particular because of her married name.

2.2 On 5 February 2008, the author, then 22 weeks pregnant, was referred to a hospital by her gynaecologist.

2.3 On 8 February 2008, she was hospitalized in Miskolc, in the Semmelweis Ignác Health Centre, with bleeding and pain. She was taken to the delivery room. She underwent an ultrasound examination, and it was discovered that she was carrying twins and was suffering from placenta praevia.

2.4 On the same day, between 11 and 11.30 a.m., when her bleeding became less heavy, she was placed under observation. At around 11 p.m., her bleeding became heavier again and she was taken to the delivery room.

2.5 On 9 February 2008, at around 2.25 p.m., an urgent caesarean section was ordered. During the preparations for the operation, the author signed a consent form, which included information about a horizontal caesarean section. Instead of a horizontal caesarean section, however, the hospital performed a longitudinal caesarean section. It was discovered that the fetuses were dead. The author's fallopian tubes were tied during the operation; she was informed of this on 10 February 2008.

2.6 On 14 February 2008, the hospital issued a medical discharge, which included a reference to the author's sterilization. The document did not mention whether the author had consented to or been informed of the procedure.

2.7 The author explains that, after her sterilization, her relationship with her husband deteriorated and she moved out of the family home with the children.

2.8 She claims that, although she is not Roma, the hospital staff treated her as if she were, and had also done so during her previous deliveries. Up to 14 February 2008, she was kept in a ward exclusively reserved for Roma women.

2.9 On 31 March 2010, after her unsuccessful attempt to reach an out-of-court settlement with the hospital, the author initiated civil proceedings to obtain compensation for her involuntary sterilization. She filed a complaint with Borsod-Abaúj-Zemplén County Court, in which she claimed that her involuntary sterilization had 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 her private and family life.

2.10 On 12 November 2012, the court dismissed her forced sterilization claim but found that the absence of a signed consent form constituted a procedural violation. The court awarded compensation equivalent to €300. The hospital personnel and the author's husband apparently stated in court that the author had given oral consent to sterilization both before and during the medical emergency. The author claims that, in fact, the hospital personnel did not inform her of the intended sterilization, that she never consented to it, and that she became aware of it only when she was discharged.

2.11 The author adds that, in order to establish the effects of the sterilization, the court sought the opinion of a forensic expert. Because she and her counsel considered the expert to be unprofessional and biased, they asked the court to summon another expert, but in vain. According to the author, the court considered that, in any event, the expert's opinion was irrelevant since the sterilization had been performed at the author's request.

2.12 On 18 April 2013, on appeal, Debrecen Regional Court established that the absence of a written request and signed consent form constituted a violation of the author's right to self-determination, her freedom to choose the number and spacing of her children, and her right to respect for her private life. The appeal court ordered that the author be paid compensation in the amount of €6,600 and that she be provided with a written apology.

2.13 Both parties appealed to the Kúria (Supreme Court). The hospital asked the Supreme Court to dismiss the author's claim or, alternatively, to reduce the amount of compensation awarded because the author had failed to provide evidence of the exact harm suffered. The author explained in her appeal to the Supreme Court that she had neither requested nor expressed consent to sterilization and that the statements of the hospital staff and her husband in that connection were biased. She also argued that she had received no information in order to be able to give fully informed consent. Regarding the hospital's claim that she had not established the harm suffered, she explained that the first instance court had not allowed her to substantiate her claim for damages by providing the opinion of an appropriate forensic expert on the effects of the sterilization.

2.14 On 4 December 2013, the Supreme Court upheld the appeal court's reasoning but reduced the amount of compensation to €3,300, noting that the author had not sufficiently established the harm caused by the sterilization to her private life.

2.15 The author applied to the European Court of Human Rights. On 9 June 2015, her application was declared inadmissible because she could not be considered a "victim" under article 34 of the European Convention on Human Rights, given that the domestic authorities had acknowledged a violation in the case and had ordered compensation. According to the author, that decision does not prevent the Committee from considering her communication.

2.16 Following her separation from her husband, the author is living with a new partner and wishes to have a child with him. She has suffered psychological after-effects from the sterilization, including symptoms of false pregnancy, and she intends to seek psychological assistance for those symptoms.

### **Complaint**

3.1 The author claims that the courts denied her an effective judicial remedy against forced sterilization because they gave decisive weight to her alleged oral "consent" to the sterilization. The courts found a violation of her rights owing to the failure to follow the correct procedures for obtaining consent to sterilization but found that she had nonetheless consented to sterilization. The author submits that such a conclusion is incompatible with the Convention because it is not possible to conclude that a woman has consented in any way to being sterilized if the rules in place under domestic law for ensuring informed consent have not been respected. She argues that, under the Convention, domestic courts are prohibited from giving any weight to the supposed consent of a woman who has been sterilized if that consent was not given in accordance with the procedural safeguards in place to ensure that the consent is fully informed.

3.2 The author claims a breach of article 5 (a) of the Convention because the domestic courts decided to give decisive weight to testimony that she consented to

sterilization, despite her testimony to the contrary and in the absence of any written consent. She argues that that finding was based on various social and cultural patterns, namely the State party's history of anti-Roma sentiment, which left her vulnerable to stereotyping; the practice of medical professionals "teaming up" to defeat claims of medical malpractice; and the fact that the courts gave credence to the testimony of her estranged husband in preference to her testimony, succumbing to the traditional inclination to believe men over women, particularly in marital disputes.

3.3 The author claims that she did not receive any specific information about sterilization or about alternative methods of contraception or family planning. She submits that the failure to adhere to national law resulted in a violation of her rights under article 10 (h) of the Convention. She notes that, under Act CLIV (1997) on Health, the information to be provided on sterilization should include information on the "chances of reversibility". She argues that this is contrary to the generally accepted international legal and medical position that sterilization is intended to be permanent.

3.4 The author argues that she did not receive any information on the nature of the surgery and that it was therefore performed arbitrarily. Even if the Committee were to accept the version of the facts as established by the domestic courts, she submits that "consent" cannot be given in the context of a medical emergency and that procedures performed in such circumstances do not meet an acceptable standard of health care.

3.5 She further claims that the domestic proceedings were not such as to ensure that, as a woman, she enjoyed substantive equality with men, because the courts found her testimony less reliable than that of other witnesses, who were mostly men and medical professionals. She further claims that she was stigmatized as a woman associated with Roma persons.

3.6 Lastly, the author considers that the State party violated her rights by arbitrarily limiting her ability to reproduce and to decide freely on the number and spacing of her children. She submits that she was denied adequate information, education and other means to decide freely on her reproductive ability and the number and spacing of her children. She claims that she never received any information about family planning services or alternative methods of contraception. Moreover, she never consented to sterilization. She submits that the national courts have not addressed that violation and that the finding that she was in some way responsible for what happened has retraumatized her.

#### **State party's observations on admissibility and the merits**

4.1 The State party presented its observations on the admissibility and the merits of the communication by a note verbale dated 14 June 2017. It recalls the facts of the case and notes that the author's sterilization took place without her written consent. Later, the author sued the hospital, claiming that the absence of her consent amounted to a breach of her rights to self-determination, to conceive children, to privacy and to equal treatment. The courts determined that the hospital, through its intervention, had infringed her rights to self-determination, to privacy and to conceive children. The court ordered the hospital to make a written apology and to pay compensation in the amount of Ft 1,000,000.

4.2 The State party notes that the author's application to the European Court of Human Rights was declared inadmissible partly on the grounds that it was ill-founded (regarding her claim of forced sterilization) but also partly because she had lost her victim status, given that the domestic authorities had acknowledged the violation of her right to privacy and had granted compensation. According to the State party, the Court thus examined the "same matter". A decision that an application is inadmissible on the grounds that it is ill-founded presupposes an examination of the merits of the

case, even according to the Court's own interpretation. After examining the merits, the Court came to the conclusion that the author, "having herself enquired about the possibility of the medical intervention and reiterated her consent in the knowledge of the consequences ... , was in the position to take an informed decision";<sup>1</sup> therefore, forced sterilization, which could have resulted in a violation of article 3 of the Convention, did not take place.

4.3 The State party adds that, with regard to the absence of written consent, the Court noted that the lack of procedural safeguards was to be examined under article 8 of the Convention. The Court examined the circumstances of the case and concluded that the procedural failure indeed amounted to "an infringement of [the applicant's] right to respect for private life".<sup>2</sup> Even though that part of the complaint was also rejected because a remedy had already been provided by the domestic courts, and the author had thus lost her victim status, that does not lead to the conclusion that it was not examined on the merits by the Court for the purposes of article 4 (2) of the Optional Protocol.

4.4 The State party notes that the author's claims under article 2 (c)–(f) of the Convention – unequal treatment or, in her view, gender-based discrimination – were not brought before the domestic courts. Regarding the alleged discrimination against her, the author referred only to her Roma origin and only as it related to her hospitalization.

4.5 The State party observes that the author's failure to bring her claim of gender-based discrimination before the courts cannot be justified on the basis that the remedies would have been ineffective.

4.6 The State party notes that generally recognized principles of international law are recognized in Hungary and that the provisions of international treaties are part of domestic law. In addition, the State party takes the recommendations of the Committee extremely seriously and conducts continuous monitoring to ensure that health-care regulations are compliant with the spirit of those recommendations as far as possible.

4.7 Under Act CLIV (1997) on Health, two forms of sterilization are recognized for the purposes of family planning and for medical reasons. Under the Act, sterilization that inhibits the capacity to reproduce may be performed for health-related reasons upon the written request of the affected person.

4.8 When an application for sterilization is submitted, the designated physician informs the applicant orally and in writing about other possible methods of contraception, the nature of the surgical intervention and its potential consequences, and the possibility of restoring the ability to conceive.

4.9 The State party notes that sterilization has been subject to national sector-free screening (audit). Since 2010, no complaints have been received by the authority responsible for investigating individual complaints filed by patients.

4.10 The State party observes that the author could have filed a complaint with the Equal Treatment Authority as well as with the courts. She could have claimed that it was not only the hospital that committed a breach by carrying out the intervention without providing appropriate information and without obtaining her consent, but also that the courts acted in a discriminatory manner and failed to provide her with redress for the infringement of the principle of equal treatment.

4.11 The State party explains that, since 2005, the Equal Treatment Authority has been responsible for investigating complaints of infringement of the principle of equal treatment and seeking the enforcement of that principle. The Authority examines

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<sup>1</sup> European Court of Human Rights (Second Section), *G.H. v. Hungary* (application No. 54041/14), decision of 2 July 2015, para. 15.

<sup>2</sup> *Ibid.*, para. 23.

discrimination claims. The Equal Treatment Act (2003) prohibits discrimination on the basis of protected characteristics, such as gender, ethnic origin, race, skin colour, age, mother tongue, disability, health status, motherhood/pregnancy or fatherhood, family status, sexual orientation, gender identity, social origin, financial status, religious or ideological convictions, political or other opinions, employment status, such as working part-time or on a fixed-term contract, membership of an organization representing particular interests, or any other status.

4.12 The Equal Treatment Authority may initiate proceedings within one year of being informed of a breach of the law and within three years of the occurrence of the breach.

4.13 The State party notes, regarding the issue of non-exhaustion of domestic remedies, that it is possible to commence criminal proceedings in cases of forced sterilization even if the sterilization was the result of a surgical accident. However, no such criminal proceedings were initiated.

4.14 The State party further notes that the communication is incompatible with the Convention's provisions. The author had filed a complaint with the courts concerning the breach of the obligation of equal treatment only on the grounds of ethnicity, that is, her alleged Roma origin. Her claim of discrimination based on her Roma origin is incompatible *ratione materiae* with the Convention's provisions.

4.15 In addition, under rule 68 (1) of the Committee's rules of procedure, communications may be submitted by individuals or groups of individuals who claim to be victims of violations of the rights set forth in the Convention. The State party considers that the author lost her victim status when the courts decided that her rights had been breached by the hospital and ordered a written apology and compensation. The courts concluded that the sterilization constituted a breach of the author's rights to self-determination, to conceive children and to privacy. Accordingly, the author can no longer be seen as a victim, and that part of the communication should be declared inadmissible.

4.16 The State party further contends that the author's communication represents an abuse of the right of submission. The judicial proceedings in Hungary ended in 2014, when the author received a written apology and compensation. She applied to the Committee in 2017, three years after the closure of the domestic judicial proceedings, and after her claim was rejected by the European Court of Human Rights in 2015.

4.17 On the merits, the State party recalls that the courts acknowledged the author's victim status, establishing that the sterilization was carried out without written consent. Thus, the author's statement that the courts failed to offer appropriate and due compensation "is inconceivable".

4.18 The State party deems the communication unfounded because the lack of an effective legal remedy in respect of the medical intervention performed did not, in itself, constitute a breach of the obligation of equal treatment; moreover, it is not substantiated that either the medical intervention in the hospital or the court decision constituted gender-based discrimination against the author. Neither the circumstances of the intervention nor the court proceedings raise any issues from the perspective of respecting the equality of the author or of women in general. There is no evidence that the courts issued a biased verdict or that the decision was based on prejudice against women. The courts judged that the author's rights under Act CLIV (1997) on Health had been violated by the apparent lack of written consent and urged that testimony be heard confirming that the author was unable to prove that health-care staff would have acted in a biased way against women, including Roma women.

4.19 Regarding the author's claim under article 5 (a) of the Convention, the State party notes that, given that she did not complain to the Equal Treatment Authority and did not attempt, by commencing legal proceedings, to enforce her discrimination

claim against the court that was alleged to have acted unlawfully by violating her personal rights, she failed to exhaust the available domestic remedies. Under article 76 of the Civil Code in force at the time, she could have taken the opportunity to enforce her claim because, in accordance with that article, the breach of the principle of equal treatment, in particular, constitutes a violation of personal rights.

4.20 The State party further notes that this part of the communication is also not covered by the Convention. The Convention contains no provisions under which discrimination based on ethnicity is prohibited.

4.21 On the merits, the State party notes the author's claim that, on the basis of her Roma origin, the Hungarian courts failed to attribute due probative value to her testimony. The State party notes that the courts heard the author's testimony and the testimony of others. It was for the courts to decide whether each piece of testimony was credible, depending on the particular circumstances of the case. The fact that the courts found in the author's favour contradicts her claim that they were biased and that she suffered discrimination.

4.22 The State party notes that the author has stated that she is not of Roma origin and does not consider herself Roma. During the court proceedings, her testimony was the only evidence that, when she gave birth to some of her children, she was treated as Roma because of her husband. In addition, she claimed that her deteriorating relationship with her husband could be attributed to the medical intervention that she had undergone. The husband confirmed at the first instance trial that he and the author had agreed that, after the birth of their seventh child, one of them should be sterilized; ultimately, the author was designated for the procedure. The husband disputed the claim that it was the intervention that had led to the deterioration of their relationship. According to him, the relationship deteriorated because the author was seeking material gain, of which he wanted no part.

4.23 Regarding the author's claims under articles 10 (h) and 12 of the Convention, the State party observes that the author lost her victim status in respect of her right to information, at least insofar as that status was linked to the lack of information prior to the intervention. The courts clearly stated that her rights to self-determination, to conceive children and to privacy were violated in the hospital, and she received a written apology and compensation.

4.24 The State party notes that, under Act CLIV (1997) on Health, all patients are entitled to appropriate, permanently available health-care services, as required to treat their health conditions and to fulfil the obligation of equal treatment. Patients are also entitled to full information in accordance with their needs.

4.25 Antenatal care in Hungary is outstanding by global standards. One of its fundamental principles is that pregnant women receive all the information needed to help them to safely carry the fetus to term. If the author did not receive the appropriate amount of information and education, it must be her own fault. She failed to participate in the relevant programme of her own will. Nevertheless, she must have had the knowledge and information that must be provided under the Convention, because the Hungarian education system covers the topics of family life and sexuality from early childhood. The author must therefore have been aware of such information from her early years. In addition, the author was in her ninth pregnancy at the time of the intervention. Thus, irrespective of her Roma origin, it is unrealistic to believe, in view of the compulsory antenatal care that she would have received during her previous pregnancies, that she did not have the necessary information regarding family planning.

4.26 Regarding the alleged breach of article 15 (1) of the Convention, the State party refers to its arguments on the author's claims under article 5 (a), set out in paragraphs 4.19–4.25 above.

4.27 Regarding the claims under article 16 (1) (e) of the Convention, the State party notes that the author has lost her victim status in that connection, given that the courts found that her rights had been violated and awarded her a written apology and compensation.

**Author's comments on the State party's observations on admissibility and the merits**

5.1 The author presented her comments by a letter dated 21 August 2017. She notes that the State party relies on a version of the facts established by the domestic authorities but disputed by her. There is no evidence against her claims other than the testimony of her husband and the hospital personnel, who wish to avoid liability.

5.2 Regarding her claims under article 2 (c)–(e) of the Convention, the author notes the State party's claim that sterilization does not necessarily entail gender-based discrimination. The author claims that she was sterilized during a pregnancy-related medical intervention. Thus, it is linked to gender, because only women can be sterilized in such circumstances.

5.3 The author notes that the most logical course of legal action for a woman subjected to forced sterilization during a pregnancy-related medical emergency is to bring a civil claim against the hospital. Civil courts in Hungary are competent to hear cases of violation of personal rights, including the right to self-determination, the right to private life, the right to reproductive health and the right to be free from discrimination, as provided in the Civil Code and the Equal Treatment Act (2003). In her case, the proceedings ended with the decision of the Supreme Court and no further appeal was possible.

5.4 The State party has suggested that the author could have pursued two further remedies: a complaint to the Equal Treatment Authority and a criminal complaint. However, according to her, complainants need complete only one domestic remedy for the purposes of exhaustion. In addition, the remedies suggested would not bring her effective relief. Filing a complaint with the Equal Treatment Authority would only have delayed her civil complaint. The Equal Treatment Authority cannot order payment of compensation; it can only impose a fine.

5.5 The author emphasizes that a criminal complaint could be filed only in relation to the responsibility of the hospital and its personnel.

5.6 The State party has claimed that racial discrimination is not covered by the Convention. The author recalls that the Convention is aimed at eliminating all forms of discrimination against women. The preamble refers to the eradication of, inter alia, all forms of racism and racial discrimination.<sup>3</sup> In addition, the Committee, in its general recommendation No. 25 (2004) on temporary special measures ([HRI/GEN/1/Rev.8](#), p. 337), recognizes that certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race or other factors. In general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention ([CEDAW/C/GC/28](#)), the Committee recognizes the concept of intersectionality: the fact that discrimination against women based on sex and gender is linked with other factors that affect them, such as race and ethnicity. For example, in *Da Silva Pimentel v. Brazil* ([CEDAW/C/49/D/17/2008](#)), the Committee concluded that the author was discriminated against not only on the basis of her sex, but also on the basis of her status as a woman of African descent.

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<sup>3</sup> The author refers to the following paragraph of the preamble: "Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women".



5.7 The author further emphasizes that, contrary to the information in the State party's observations, she is not of Roma origin. She was targeted because she was associated with Roma persons: her husband and children were Roma.

5.8 Regarding the State party's observation that she had lost her victim status because she had received compensation, the author claims that the domestic legal system deprived her of an effective remedy against forced sterilization and that the courts never established that she was a victim of involuntary sterilization. Instead, they gave decisive weight to her alleged oral consent to sterilization. The compensation awarded is incompatible with the requirements of the Convention. Moreover, it is incompatible with the Convention to conclude that a woman has consented in any way to being sterilized if the rules in place under domestic law for ensuring fully informed consent have not been followed. Although the domestic courts established that the author's rights had been violated, the violation was characterized as a purely administrative failure and not as an arbitrary intervention amounting to forced sterilization. Thus, the author maintains her victim status.

5.9 Regarding her application to the European Court of Human Rights, the author claims that the Court only pre-screened the case and did not communicate it to the State party. The case was never examined on the merits but was declared inadmissible.

5.10 The author notes the State party's argument that waiting two years after the issuance of the Court's decision to submit a complaint to the Committee constitutes an abuse of the right of submission. She notes that there is no basis for such a conclusion in the Committee's case law or the Convention. Other authors have waited longer to submit a complaint to the Committee, and this did not preclude the admissibility of their cases. When Committee members have questioned a delay in submission, they have focused not so much on the delay itself but rather on the absence of an explanation for the delay.<sup>4</sup>

5.11 The author notes that, instead of requiring the hospital to demonstrate unequivocal and voluntary agreement to the sterilization, the courts required her to prove that she had not given consent in any form. With the hospital personnel and her husband allied against her, there was no way for her to meet that requirement. The courts exacerbated her situation by questioning her reliability; the fact that she was a woman faced with mostly male detractors left her helpless.

5.12 The author observes that her decision to bring her case before the civil courts instead of the Equal Treatment Authority should not have deprived her of proceedings compliant with the Convention. All State organs empowered to adjudicate complaints about the mistreatment of women in reproductive health-care settings must offer a remedy compliant with article 2 of the Convention. In her case, the courts violated article 2 by allowing the party that was responsible for securing written consent, which failed to fulfil its obligation to do so, to claim successfully that oral consent had been obtained, which the author denies.

5.13 The author notes that a civil court suit was the most appropriate domestic remedy in a case of forced sterilization.

5.14 The State party also used the testimony of the author's ex-husband to imply that she was seeking to profit from her sterilization. She insists that she was sterilized in violation of the requirements of national law. However, the courts concluded that she was the victim of a mere administrative oversight, not a forced sterilization.

5.15 Although the courts concluded that her rights had been violated, they concluded that she consented to the sterilization, despite the fact that her fully informed consent

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<sup>4</sup> The author refers to the individual opinion of Patricia Schulz in *M.S. v. Philippines* (CEDAW/C/58/D/30/2011).

was not obtained. The courts treated the right to information, the question of fully informed consent and the sterilization as three separate matters. On that basis, they established that, because of the particular circumstances of the case, especially the urgent need to perform a caesarean section, the author was unable to receive adequate, individualized information, as required by law. However, the courts, including the Supreme Court, still concluded that the sterilization was not performed against the author's will. Under the Convention, the right to adequate and full information and the need for fully informed consent prior to sterilization are indivisible. In the absence of full and adequate information prior to sterilization, it is incompatible with the Convention for the courts to find that a woman complaining of involuntary sterilization could have given consent. This trivializes the decision to undergo sterilization. According to the author, fully informed consent means not merely obtaining a signature but also engaging in consultation.<sup>5</sup> In the absence of consultation, it is incompatible with the Convention to conclude that there was consent of any kind.

5.16 The author claims that she was not provided with information or advice concerning sterilization or its effects, risks and consequences. Neither she nor her partner were provided with information on alternative methods of contraception or family planning. The courts accepted that the sterilization was performed without her fully informed consent but failed to understand its consequences under the Convention.

5.17 Given that she received no information on the risks and consequences of surgical sterilization, she was unable to decide freely on the number and spacing of her children. The fact that she already has children does not preclude her right to fully informed consent or her right to access family planning services in general, and in particular when her reproductive ability is at stake.

5.18 The author recalls that the principle of according women equality with men before the law is enshrined in article 15 of the Convention. In her case, however, the courts accorded her testimony a lesser value than that of men. Because of a pregnancy-related medical emergency, and thus because of her gender, the author was in a vulnerable position in relation to her adversaries in the civil trial, which in itself amounts to a failure to ensure equality before the law.

5.19 Regarding her claims under article 16 of the Convention, the author recalls that the authorities compensated her for the hospital's technical failure to follow surgical sterilization procedures. The courts did not acknowledge that the sterilization was involuntary, in violation of article 16 of the Convention.

5.20 The author notes that the State party also raised an objection concerning her failure to provide objective evidence of the actual consequences of the sterilization. She notes that she is no longer able to conceive children naturally. The hospital staff thus limited her ability to reproduce and to decide freely on the number and spacing of her children, which affected her everyday life and her family relations. She has a new partner but cannot have a child with him. She suffers psychological after-effects from the sterilization, including symptoms of false pregnancy.

### **State party's additional observations**

6.1 The State party submitted additional observations by a note verbale dated 18 December 2017. It notes that it has based its observations, without any value judgment, on the verdicts of the courts. The particular circumstances of the case are that only oral testimony was used (from the author, her husband and the hospital staff),

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<sup>5</sup> In that connection, the author refers to a third-party intervention prepared by the Center for Reproductive Rights in relation to *A.S. v. Hungary* (CEDAW/C/36/D/4/2004).

and the author has failed to adduce other evidence. The testimony was properly weighed by independent and impartial tribunals.

6.2 The State party notes that this was not the author's first pregnancy. She had given birth seven times, at the same hospital, and the district nurse had visited her at her home. The nurse was responsible for the protection of the interests of vulnerable groups. During her previous pregnancies, the author had not complained of being discriminated against as a Roma person. If discrimination were widespread, as claimed by the author, it is highly unlikely that none occurred during her previous seven pregnancies. The author was hospitalized because of an unexpected indisposition and thus any intentional discrimination can be ruled out. Hospital staff did everything possible to protect the life of the mother and the fetus; this was not contested by the author.

6.3 The State party also notes that, during the legal proceedings, it was not disputed that a procedural error occurred and that no written consent form for sterilization was filled in. However, no evidence was identified to support the claim that this was a result of deliberate acts of the hospital staff. The hospital acknowledged its procedural error, made a written apology and paid financial compensation.

6.4 Owing to the nature of medical examinations, no detailed records are kept of all the questions asked by patients and the replies given. Therefore, the author's allegation that she was not provided with proper information prior to the intervention, only information in an oral form, is based solely on her testimony. The author failed to submit further evidence, such as witness statements, regarding the exchange of information, or lack thereof, during her examinations and hospital treatment. In all her claims, the author relies solely on her own attestation.

6.5 The author's original complaint to the domestic authorities was based in particular on section 15 of Act CLIV (1997) on Health, in which it is established that the right of self-determination of patients must be respected and that there is an obligation to provide information regarding medical treatment. Under section 187 (1) of the Act, sterilization that inhibits the ability to procreate or conceive may be carried out only at the written request of the person concerned. Decree 15/1998 (VI.17.) NM contains detailed provisions on sterilization. Thus, the law at the time of the intervention provided appropriate legal protection against forced sterilization. On the basis of the aforementioned instruments, the domestic authorities found that the author's rights had been violated, and she received a written apology and compensation. The first instance court found that there was no evidence that the author had made a written request for sterilization; it must therefore be established as a fact that no such request was signed by her. The court also noted that, if there were no grounds for the intervention to be performed without the author's awareness and consent, the medical staff performing the intervention would clearly have been committing a criminal offence. The author did not initiate criminal proceedings, even though she was represented by counsel throughout the civil proceedings. Moreover, she failed to file a complaint with the Equal Treatment Authority on the grounds of discrimination based on her origin.

6.6 The author's original complaint at the domestic level was not based on gender stereotyping. Gender-based discrimination was not included in her complaint to the court dated 31 March 2010, and she did not refer to the Equal Treatment Act (2003). She did not elaborate on that issue or make any claim related to intersectionality; rather, she focused on her Roma origin.

6.7 The State party reiterates that the author could have submitted a claim of breach of the obligation of equal treatment to the courts or other authorities, such as the Equal Treatment Authority. If a court hears a case, the Equal Treatment Authority suspends its examination of the case. Although the Equal Treatment Authority cannot oblige a

party to pay compensation, the injured party may claim damages in employment or civil proceedings.

6.8 The State party notes that the European Court of Human Rights dismissed the author's application partly because her claims were manifestly ill-founded and partly because she could no longer be seen as a victim eligible to complain, given that the domestic authorities had recognized the violation of her right to privacy and awarded her compensation. The amount of the compensation was found to be appropriate, otherwise the Court would not have concluded that the author had lost her victim status.

6.9 The State party further notes that the non-governmental organization (NGO) assisting the author specializes in complaints to the European Court of Human Rights and the United Nations treaty bodies. The present case was submitted late either because of the author's negligence or because the NGO was waiting to see if any other cases would be referred to it; in the absence of such cases, it decided to bring the present case before the Committee, thus raising the matter at the international level once again.

6.10 The State party does not dispute that discrimination against women is sometimes interlinked with other forms of discrimination. In the present case, the author's discrimination claim is based substantially on her perceived Roma origin; that is why she failed to bring any claims of discrimination on the basis of sex or gender before the domestic authorities or the European Court of Human Rights. The racial component is central to her claim, which therefore falls within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination.

### **Issues and proceedings before the Committee**

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

7.2 The Committee notes, first, that the State party has objected to the admissibility of the communication under article 4 (1) of the Optional Protocol. The State party has pointed out in particular that the author's gender-based claim was never raised at the domestic level. In addition, the author could have filed a complaint with the Equal Treatment Authority and a criminal complaint regarding forced sterilization. The Committee notes that the author has argued that the most logical remedy to pursue in her case was a complaint before a civil court able to rule on the infringement of her rights, which was what she did. She pursued her claim as far as the Supreme Court; no further appeal was possible. Regarding the assertion that she could have filed a complaint with the Equal Treatment Authority and a criminal complaint, the author notes that authors of communications should be expected to pursue only one set of proceedings for the purposes of exhaustion. In addition, those two remedies could not have brought effective relief in her case. A claim before the Equal Treatment Authority could not have resulted in the payment of compensation but only in the imposition of a fine, while a criminal complaint could only have resulted in the attribution of criminal liability to the hospital personnel.

7.3 In the present case, the Committee is satisfied that the State party's courts were able to examine the author's complaints of infringement of her right to self-determination, her right to reproductive health and her right to be free from discrimination. The proceedings initiated before the civil courts ended with a decision of the State party's highest jurisdiction: a judgment of the Supreme Court. Accordingly, the Committee considers that it is not precluded by virtue of article 4 (1) of the Optional Protocol from examining the communication.

7.4 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.5 The Committee further notes that, in her communication, the author expresses fundamental disagreement with the manner in which her case was examined by the national courts and the manner in which the evidence was assessed. She also disagrees with the conclusions of the courts and the manner in which the law was applied in her case.

7.6 The Committee recalls that it does not replace the national authorities in the assessment of facts in a particular case.<sup>6</sup> The Committee reiterates that it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that such evaluation was biased or based on harmful gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. In that regard, the Committee considers that nothing on file suggests that the examination of the author's case by the courts of the State party suffered from any such defect. In the light of the foregoing, and in the absence of any other pertinent information or explanation on file, the Committee considers that the communication is insufficiently substantiated for the purposes of admissibility and that it is therefore inadmissible under article 4 (2) (c) of the Optional Protocol.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

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<sup>6</sup> See, inter alia, *K.K. v. Russian Federation* (CEDAW/C/72/D/98/2016), para. 8.6.