

Press release issued by the Registrar

CHAMBER JUDGMENT K.H. AND OTHERS v. SLOVAKIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *K.H. and Others v. Slovakia* (application no. 32881/04).

The Court held:

- unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights, on account of the applicants not having been allowed to make photocopies of their medical records;
- by a majority that there had been a **violation of Article 6 § 1** (access to court) of the Convention, on account of the impossibility for the applicants or their lawyers to obtain photocopies of their medical records having limited their effective access to court;
- unanimously that there had been **no violation of Article 13** (right to an effective remedy) **in combination with Article 8**, on account of Article 13 not guaranteeing a remedy to challenge a law itself;
- unanimously that it was not necessary to examine separately the complaint under Article 13 in combination with Article 6 § 1, on account of the requirements of Article 13 being less strict and absorbed by those of Article 6 § 1.

Under Article 41 (just satisfaction) of the Convention, the Court awarded to each applicant 3,500 euros (EUR) in respect of non-pecuniary damage and jointly to all applicants EUR 8,000 for costs and expenses. ([The judgment is available only in English.](#))

1. Principal facts

The applicants are eight female Slovak nationals of Roma ethnic origin. They were treated in two hospitals in eastern Slovakia during their pregnancies and deliveries, following which none of them could conceive a child again despite their repeated attempts. The applicants suspected that the reason for their infertility might be that a sterilisation procedure was performed on them during their caesarean delivery by medical personnel in the hospitals concerned.

In order to obtain a medical analysis of the reasons for their infertility and possible treatment, the applicants authorised their lawyers to review and photocopy their medical records as potential evidence in future civil proceedings for damages, and to ensure that such documents and evidence were not destroyed or lost. The lawyers made two attempts, in August and September 2002 respectively, to obtain photocopies of the medical records, but were not allowed to do so by the hospitals' management.

The applicants sued the hospitals concerned, asking the courts to order them to release the medical records to the applicants' authorised legal representatives and to allow the latter to obtain photocopies of the documents included in the records.

In June 2003, the courts ordered the hospitals to permit the applicants and their authorised representatives to consult the medical records and to make handwritten excerpts thereof, but dismissed their request to photocopy the documents with a view to preventing their abuse. They also held that the applicants were not prevented to have any future claim, which they might bring for damages, determined in accordance with the requirements of the Convention. In particular, under the relevant law the medical institutions were obliged to submit the required information to, among others, the courts, for example in the context of civil proceedings concerning a patient's claim for damages.

Subsequently seven applicants were able to access their files and to make photocopies of them in accordance with the newly introduced Health Care Act of 2004. As regards the eighth applicant, the hospital only provided her with a simple record of a surgical procedure indicating that surgery had been performed on her and that she had been sterilised during the procedure.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 August 2004 and declared partly admissible on 9 October 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (United Kingdom), *President*,

Lech **Garlicki** (Poland),

Giovanni **Bonello**(Malta),

Ljiljana **Mijović** (Bosnia and Herzegovina),

Ján **Šikuta** (Slovakia),

Mihai **Poalelungi** (Moldova),

Nebojša **Vučinić** (Montenegro), *judges*,

and Lawrence **Early**, *Section Registrar*,

3. Summary of the judgment²

Complaints

Relying on Article 8 (right to respect for private and family life), Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy), the applicants complained of not being able to obtain photocopies of their medical records, which they needed in order to establish the reason for their infertility; they also complain of being thus denied access to court as they were unable to assess in a qualified manner the position in their cases for later civil litigation, the prospects of success of any such litigation and to produce these photocopies of medical records as evidence.

Decision of the Court

Article 8

The Court noted that the applicants had complained that they had been unable to exercise their right of effective access to information concerning their health and reproductive abilities at a certain moment in time. This question had been linked to their private and family lives, and thus protected under Article 8 of the Convention. The Court considered that persons who, like the applicants, wished to obtain photocopies of documents containing their personal data, should not have been obliged to make specific justification as to why they needed the copies. It should have been rather for the authority in possession of the data to show that there had been compelling reasons for not providing that facility.

Given that the applicants had obtained judicial orders permitting them to consult their medical records in their entirety, having denied them the possibility to make photocopies of those records had not been sufficiently justified by the authorities. To avoid the risk of abuse of medical data it would have been sufficient to put in place legislative safeguards with a view to strictly limiting the circumstances under which such data could be disclosed, as well as the scope of persons entitled to have access to the files. The Court observed that the new Health Care Act adopted in 2004 had been compatible with that requirement, however, it had come into play too late to affect the situation of the applicants in this case. Accordingly, there had been a violation of Article 8.

Article 6 § 1

The Court accepted the applicants' argument that they had been in a state of uncertainty as regards their state of health and reproductive ability following their treatment in the hospitals concerned. It also agreed that obtaining the photocopies had been essential for their assessment of the perspectives of seeking redress before the courts in respect of any shortcoming in their medical treatment. As the domestic law applicable at the time had limited excessively the possibility of the applicants or their lawyers to present their cases to the court in an effective manner, and the Government had not presented reasons sufficient to justify this restriction, the Court held that there had been a violation of Article 6 § 1.

Article 13

The Court found no violation of this Article noting that it did not guarantee a remedy to challenge a law as such before a domestic authority. It also considered unnecessary to examine

separately the applicants' complaint under Article 13 in combination with Article 6 § 1, as it held that the requirements of Article 13 were less strict and absorbed by those of Article 6 § 1.

Judge Šikuta expressed a partly dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² This summary by the Registry does not bind the Court.