

April 2009

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## ***K.H. and Others v. Slovakia - 32881/04***

Judgment 28.4.2009 [Section IV]

### **Article 8**

#### **Article 8-1**

##### **Respect for family life**

##### **Respect for private life**

Former patients prevented from photocopying their medical records: *violation*

### **Article 6**

#### **Civil proceedings**

##### **Article 6-1**

##### **Access to court**

Applicants' inability to effectively present their case due to authorities' refusal to grant them access to decisive evidence: *violation*

*Facts:* The applicants, eight women of Roma origin, were treated at gynaecological and obstetrics departments in two hospitals in eastern Slovakia during their pregnancies and deliveries. Despite continuing attempts to conceive, none of the applicants had become pregnant since their last stay in the hospitals, when they had delivered by caesarean section. The applicants suspected that the reason for their infertility might have been that they had been sterilised without their knowledge or consent during their caesarean deliveries. In 2004 the applicants issued powers of attorney to NGO lawyers, who then sought to review and make photocopies of the applicants' medical records. Having encountered difficulties in gaining access to the records, the applicants instituted proceedings in the local courts. As a result, most of the applicants were allowed to view their files. However, their requests to make photocopies were eventually denied with reference to domestic legislation in force at the time, which provided that medical records were owned by the hospital and that restrictions on access were justified in order to prevent abuse of the data contained therein. Following the introduction of new legislation in 2005, all the applicants – except for the second, whose medical records had meanwhile been lost – were eventually afforded full access to the requested medical documentation and allowed to take photocopies.

*Law:* Article 8 – The States' positive obligations under Article 8 necessarily included an obligation to make available to the data subject copies of his or her data files. It was for the States to determine the arrangements for copying personal data files, or, where appropriate, to show compelling reasons for refusing to make copies. In the applicants' case the domestic courts had mainly justified the prohibition on making copies of medical records by the need to

protect the relevant information from abuse. However, the Court failed to see how the applicants, who had in any event been given access to their entire medical files, could have abused information concerning themselves. Moreover, the risk of such abuse could have been prevented by means other than denying copies of the files to the applicants, such as by limiting the range of persons entitled to access to the files. The State had thus failed to show the existence of sufficiently compelling reasons to deny the applicants effective access to information concerning their health.

*Conclusion:* violation (unanimously).

Article 6 § 1 – The applicants further complained that the authorities' refusal to allow them to photocopy their medical records had deprived them of effective access to court since they had been unable to obtain crucial evidence for any future civil claim for damages they might have wished to make. Even though the right to a court was not unlimited, the Court considered that such a guarantee necessarily extended to situations like that of the applicants in which persons who, in principle, had a civil claim considered that the statutory restrictions on their access to evidence had effectively prevented them from seeking redress before a court or had rendered the seeking of such judicial protection difficult without appropriate justification. Even though not entirely barred from bringing a civil action, the applicants were subjected by the strict application of a provision of domestic law to a disproportionate limitation on their ability to present their cases in an effective manner. For reasons similar to those mentioned in respect of Article 8, the restriction of the applicants' rights to copy their medical files could not be considered compatible with an effective exercise of their right of access to court.

*Conclusion:* violation (six votes to one).

Article 41 – EUR 3,500 to each of the applicants in respect of non-pecuniary damage.

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