



OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS

BUREAU DU COMMISSAIRE
AUX DROITS DE L'HOMME



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 17 October 2003

CommDH(2003)12
Original version

**RECOMMENDATION
OF THE COMMISSIONER FOR HUMAN RIGHTS
CONCERNING**

**CERTAIN ASPECTS OF LAW AND PRACTICE RELATING TO
STERILIZATION OF WOMEN IN THE SLOVAK REPUBLIC**

CONTENTS

- I. Introduction
- II. Background
- III. The authorities' response to the recent allegations
 - A. Internal expert control by the Ministry of Health
 - B. Criminal investigations against unidentified perpetrators of possible forced sterilizations
 - C. Criminal investigations against the fathers of the children of under-aged Roma mothers
 - D. Criminal investigations against the authors of the "Body and Soul" report
- IV. Individual court proceedings initiated by sterilized women
- V. The Commissioner's findings
 - A. General observations
 - B. Relations between the investigators and the Roma
 - C. Establishing the validity of consent
 - D. The requirement of informed consent for medical interventions
 - E. Situations where no consent was expressed
 - F. The rules on patients' access to their medical files and individual court proceedings
- VI. The Commissioner's conclusions
- VII. The Commissioner's recommendations to the Government of the Slovak Republic

I. Introduction

1. The Commissioner for Human Rights conducted an official visit to the Slovak Republic in 2001, and, as part of his overall objective to monitor developments in member States subsequent to the publishing of his reports, a team from the Commissioner's Office conducted a follow-up mission to the Slovak Republic on 21 – 24 September 2003. Although the issue of sterilizations was not addressed in the 2001 report, the Commissioner felt important that this question would also be examined in the context of the follow-up visit. A series of meetings were held in Bratislava with various interlocutors dealing with this matter, including with representatives of the Section of Human Rights and Minorities (a department of the Deputy Prime Minister's Office), the Ministry of Health, the Ministry of the Interior, the Ministry for Foreign Affairs, the Public Prosecutor's office, the Plenipotentiary for Roma Communities and the Parliamentary Ombudsman. Before meeting with the authorities, the Commissioner's team met with a number of non-governmental organisations in Bratislava and Kosice, including those involved in some of the court cases relating to sterilizations of Roma women.

2. The Commissioner would like to underline that the purpose of the visit of his team was not to conduct an investigation into the matter of sterilizations, but rather to obtain a comprehensive overview about the current situation, with a view of offering recommendations to the Government.

3. This recommendation only concerns the question of sterilisation. Other questions addressed during the follow-up visit will be dealt with in a separate report.

II. Background

4. There have been a series of allegations of forced or coerced sterilizations of Roma women and other violations in the field of reproductive health in the Slovak Republic, particularly in eastern parts of the country. In the report "Body and Soul – Forced sterilization and other assaults on Roma Reproductive Freedom in Slovakia"¹, and in other reports by non-governmental organizations, the Slovak authorities have been urged to conduct thorough investigations into these questions, to provide remedies to the victims, and to take all necessary measures to prevent any future violations in the field of reproductive health.²

5. The matter has also received increased attention in international fora, including the Parliamentary Assembly of the Council of Europe³, and the United Nations Human Rights Committee⁴. The Commissioner voiced concerns about these issues in a letter addressed to the Government in March 2003, in response to which the Government submitted information to the Commissioner on the investigations, and other documents, in July 2003.⁵

¹ *Body and Soul – Forced Sterilizations and other Assaults on Roma Reproductive Freedom in Slovakia*, Centre for Reproductive Rights and Poradňa pre občianske a ľudské práva, in consultation with Ina Zoon, 2003.

² See also a *Joint Statement on the Issue of Illegal Sterilization of Romani Women in Slovakia*, issued on 22 July 2003 by Amnesty International, Centre for Reproductive Rights, European Roma Rights Centre, Human Rights Watch, International Helsinki Federation for Human Rights, Konzorcium Urobme to, Ludia proti rasizmu, Poradna pre občianske a ľudské práva and Slovensky helsinsky vybor.

³ See *Statement by Christine McCafferty on reproductive health rights and alleged sterilisation of Roma women in the Slovak Republic*, 13 May 2003, document by the Council of Europe Parliamentary Assembly Social, Health and Family Affairs Committee.

⁴ See *concluding observations of the Human Rights Committee: Slovakia*, 22 August 2003, CCPR/CO/78/SVK.

⁵ Hereinafter referred to as "the Government's response".

CommDH(2003)12

6. The ‘Body and Soul’ report concluded that there were widespread violations of Romani women’s human rights, specifically reproductive rights, in eastern Slovakia, including forced or coerced sterilizations.⁶ According to the report, in many of the cases the doctors and nurses furnished misleading information to Roma women in order to cause them to provide last-minute authorizations for sterilizations that were performed while they were undergoing a caesarean section. In other cases, there was not even an attempt to obtain an authorisation beforehand. Some patients were informed about their sterilization only once it had been performed and were then asked to sign an authorisation. Others were never informed, but are suspected of having been sterilized. In a few of the cases reported, young women under the age of 18 were sterilized without the authorization required by law from their legal guardians.

7. The report also voiced concern over the frequency and the manner in which caesarean sections were performed on Roma women in the eastern parts of the Slovak Republic.⁷ It was suggested that some of the doctors might have deliberately used caesarean sections to prepare for future sterilization, noting that several consecutive caesarean deliveries were a medical indication for sterilization under the Slovak law. In addition, the report pointed out to other infringements of patients’ rights, such as misinformation in reproductive health matters, racially discriminatory access to health-care resources and treatment, physical and verbal abuse by medical practitioners and denial of access to medical records.

8. In 2000, the European Roma Rights Centre published an article on sterilization practices of Roma women in Slovakia mainly under the previous regime, but it was also noted that “according to some reports, doctors have continued to sterilize Romani women in suspect circumstances also in post-Communism”⁸. The European Roma Rights Centre conducted a field mission in autumn 2002 to further investigate the issue and concluded: “[T]here is a serious issue of racially-based contraceptive sterilizations of Romani women, taking place without acceptable -- and in many cases even rudimentary -- standards of informed consent”. A report published by the Open Society Institute in 2001 alerted to several allegations of recent forced sterilizations of Roma women in eastern Slovakia as well as racial discrimination in the field of health care, and urged the government to fully investigate all serious charges of misconduct by the country’s health care professionals and workers.⁹

9. Sterilizations of Roma women during the communist regime had already been pointed out and criticized. It had been reported that during that time, Roma women were particularly targeted by the government programme that offered monetary incentives to all citizens who underwent sterilization. Although the programme was available to all persons, government documents reportedly indicate that the government took specific measures to influence Roma women to undergo sterilization. In addition, many Roma women reported that they were sterilized without their informed consent during a caesarean section or an abortion. Human Rights Watch addressed these issue in a 1992 report on the situation of Roma in

⁶ *Body and Soul, op cit.* in footnote 1, p. 13. The authors interviewed 230 Roma women, of whom 140 had allegedly been coercively or forcibly sterilized or had strong indications that they were forcibly sterilized (30 of them during the communist regime).

⁷ The report underlined that the medical risks involved with caesarean sections, particularly those performed with vertical incisions in the upper abdominal area were significantly higher than those involved with a vaginal delivery. It was noted that “interestingly, many Romani women we met during the fact-finding who had caesarean deliveries at certain eastern Slovak hospitals had a classical, vertical caesarean incision. This practice exists despite the fact that obstetricians in Bratislava and in university teaching hospitals in Slovakia claim that classical caesarean incisions have not been performed as a regular practice in Slovakia for decades.”, p. 50.

⁸ See Joanna Wells, ‘Silent attack: a campaign of sterilization of Romani women’, European Roma Rights Centre, 2000.

⁹ *On the Margins – Slovakia – Roma and Public Services in Slovakia*, Ina Zoon, 2001, Open Society Institute, pp. 67-70, 52-66.

Czechoslovakia.¹⁰ A number of Roma women filed criminal complaints with Czech and Slovak prosecutors, but they were all dismissed.

10. The civil society representatives that the Commissioner's team met with in Bratislava and in Kosice largely corroborated the above information. While it was stated that sterilization practices did not appear to be organised by the State, it was underlined that the Government had never clearly issued orders that the practices conducted during the previous regime had to be stopped. Although the provision on monetary incentives for sterilization was abolished from the legislation in 1992, it is claimed that the mentality remained largely the same and that certain doctors continue to treat Roma women with disdain.

11. It was also noted that not only ethnicity, but also a patient's social status and wealth had an impact on how she was treated in the health care system. Not only Roma women were subject to sterilization without proper consent.

12. The organisations also reported of the persistence of strong prejudices and negative stereotypes against the Roma in the society. It was, for instance, frequently stated in public that the Roma want to have many children only because they receive social benefits for each child. In addition, public fear was stirred up by reports that point out the growing numbers of the Roma who, it is speculated, would outnumber the ethnically Slovak population in a few decades.

13. It was noted that in the Slovak Republic, the majority of sterilizations are, as a rule, performed in public hospitals by medical doctors who are public employees. They are asked to do hard work in working conditions which are often difficult and not conducive to the thorough and careful provision of explanations and counsel to patients. As regards possible motivations by individual doctors to perform sterilisations without a valid, prior, informed consent, it was noted that they may range from real, sensitive concern for their patient's health to paternalistic or even racist attitudes of the individual practitioner.

III. The authorities' response to the recent allegations

14. At the beginning of this year, the authorities initiated two separate investigations into the sterilization practices. The Ministry of Health formed an internal expert group, which submitted its results to the Parliamentary Committee for Human Rights, Nationalities, and Status of Women in June 2003. The Prosecutor's Office initiated criminal investigations in January 2003, which are still underway.

A. Internal expert control by the Ministry of Health

15. The group of experts, consisting of a representative of the Ministry of Health and professionals from the field of gynaecology and obstetrics, investigated the maternity wards and gynaecology departments of 12 hospitals in eastern Slovakia. About 3,500 medical records of sterilized women and about 18,000 medical records of women who underwent caesarean delivery were gathered from the past 10 years, for the purpose of assessing the justness of the allegations listed in the "Body and Soul" report. As the identity of the patients concerned could not be disclosed by virtue of the law, no interviews of patients were conducted.

¹⁰ 'Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies', Human Rights Watch, August 1992.

CommDH(2003)12

16. The expert group concentrated on five questions:

- The alleged genocide of the Roma in maternity wards and gynaecology departments
- Segregation of the Roma in maternity wards and gynaecology departments
- Evaluation of the level of providing medical-preventive care
- Observing the Directive on providing sterilization
- Recommendation of reformative steps.

17. The expert group concluded that there was no sign of genocide, and no discrimination or segregation of Roma women in particular departments of the hospitals. It noted that among Roma, as in any other ethnic group, there were individuals “without basic hygienic habits”. These people were placed in separate rooms. The investigation further concluded that the results of medical-preventive care were less satisfactory in eastern Slovakia in comparison with other parts of the country. Pre-natal mortality and level of pre-natal care was worse in this region than the average in the country. According to the findings of the Expert Group this was caused by the bad economic status of the inhabitants living in this area and their insufficient knowledge of health-care matters.

18. The expert group also concluded that the practitioners’ explanations regarding the medical indication of sterilization in certain cases were plausible and could not be dismissed. It noted that “the fact that not all administrative requirements were fulfilled in every case did not mean that sterilizations were carried out unprofessionally”. It was stated that they were duly documented and clear reasons were given in medical records and surgeons’ diagnoses.

19. The representatives of the Ministry of Health informed the Commissioner’s Office that two cases were found in which the consent of the patients had not been expressed, but that even in these cases there had not been any faults on the part of the doctors. These two cases involved minors, who had been sterilized while they were undergoing their third caesarean section. It was explained that obtaining their consent had not been possible because the two young women were already under anaesthesia when the doctor made the decision about sterilization, motivated by the risks, which any future pregnancy would involve for these patients.

20. The expert group of the Ministry of Health made the following recommendations:

- To harmonise health-care legislation of the Slovak Republic with EU legislation and the Council of Europe Convention on Human Rights and Biomedicine;
- To introduce standardised informed consent forms in the official languages and minority languages;
- To work out a comprehensive program of systematic education on human rights issues in cooperation with the Slovak Medical University and faculties of law;
- To prepare a system of intensive education of medical staff aimed at respecting cultural diversity;
- To prepare a system of work of medical assistants in Roma settlements.

21. The Ministry of Health officials explained to the Commissioner’s team that Slovak regulations on sterilisation did not use the notion of *informed* consent, only that of mere consent. However, a draft law on sterilization had been prepared, and it would include the requirement for an informed consent. A timeframe for its adoption could not yet be given.

B. Criminal investigations against unidentified perpetrators of possible forced sterilizations

22. In January 2003, the Government Office of Human Rights and Minorities filed a criminal complaint with the General Prosecutor's office, asking for an investigation into cases of possible "involuntary forced sterilizations of Roma women"¹¹, which would amount to criminal counts of bodily harm. The crime was later re-qualified by the investigators as genocide. The investigation began on 31 January 2003 in Kosice.

23. The Deputy General Prosecutor explained to the Commissioner's team that his Office had advised against qualifying the potential crime as genocide. However, the investigators had to start the process with the most severe crime in mind, and could then re-qualify it as the investigations proceeded, as long as the perpetrator(s) was or were not identified.

24. In March 2003, the Ministry of Interior set up a new investigation team comprised of four members, three of whom were women, including the head of the team. The team encountered difficulties in identifying the victims. Announcements in the Roma language were made in the radio, TV, Roma newspapers and through the police. Upon this announcement ten women came forward to the investigators, but four of them subsequently withdrew their claim because they had, according to the authorities, misunderstood the announcement.

25. With regard to the six remaining cases, the Ministry of the Interior noted that the interventions had been justified by a need to save the patients' life. The investigators had requested a formal expertise by medical experts on whether the said cases were medically indicated or not. It should be noted that while law enforcement officials have no access to medical files under Slovak law, court-appointed experts – who are themselves medical doctors and bound by the professional secrecy obligations - do have such access.

26. At the time of the visit, the team was informed that the investigations would be concluded in the very near future, once the investigators would have received the medical expertise and provided they felt no need for additional information. The file would then be forwarded to the General Prosecutor's Office for an assessment on whether there was a case for prosecution.

C. Criminal investigations against the fathers of the children of under-aged Roma mothers

27. In situations involving women who were below the legal minimum age for valid consent to sexual intercourse at the time of their sterilization, the police informed them that the fathers of their children would be prosecuted for having sexually abused them. The Deputy Prosecutor explained to the Commissioner's team that the police generally condoned under-age sex among the Roma, "taking into account cultural specificities". However, if such cases came officially to the knowledge of the police, they had a duty to investigate them, and the prosecutor was obliged to prosecute the perpetrators. The damaged party did not have the possibility to stop the proceedings. The Courts, however, could take a decision not to punish the perpetrators, if they concluded that the circumstances of the case did not require punishment.

D. Criminal investigations against the authors of the "Body and Soul" report

28. In the criminal complaint, which the Section of Human Rights and Minorities sent to the Public Prosecutor, the Section requested the Prosecutor also to ascertain whether there had been

¹¹ The Government's response to the Commissioner.

CommDH(2003)12

criminal acts by the authors of the report.¹² The Head of the Section of Human Rights and Minorities explained to the Commissioner's team that - given the seriousness of both the alleged crimes and, consequently, of the accusations formulated in the report - her Section had felt obliged to foresee also the possibility of criminal acts by the author. But that was apparently no longer an issue.

29. The written information provided by the Government to the Commissioner informed "the General Prosecutor's office instructed the team of investigators not to draw any conclusions against the authors". Likewise, the Deputy Prosecutor General informed the Commissioner's team that no claim had been officially filed against the authors of the report. Also, he was not aware of libel suits brought by individual hospitals or doctors, but noted that many doctors felt insulted.

30. In his letter addressed to the Government in March 2003, the Commissioner underlined the importance of ensuring the full respect of freedom of expression and the rights of human rights defenders¹³, and consequently, is of the firm opinion that no criminal proceedings should be brought against the authors.

IV. Individual court proceedings initiated by sterilized women

31. Some of the sterilized women have initiated civil cases in local courts seeking compensation for bodily harm. It is, however, extremely difficult for them to substantiate their claims because of difficulties in accessing their medical files. There appears to be considerable confusion about the interpretation of the Slovak legislation relating to access to medical files. The Slovak legislation allows the patient or his or her legitimate statutory representative to look into and obtain excerpts of their medical files, but hospitals have repeatedly denied the access, in particular for lawyers representing the patients. Moreover, patients have not been authorized to make photocopies of their own files, which is particularly problematic in cases where the patient cannot read or write.

32. It seems that the practice relating to access to medical files became even more problematic following the publication of the "Body and Soul" report. Before and shortly after the publication, lawyers representing the women were able to have access to files, but afterwards, access was denied to them, notwithstanding the fact that they had received powers of attorneys from the patients. One of the organisations representing the women before the courts sued three hospitals for denying the access to files. In one case, a decision favourable to the lawyers was rendered, but the hospital nevertheless continued to deny access to the files. The two other cases are pending.

33. The Deputy Prosecutor General noted that it was a question of interpretation of the law whether a patient can take copies of his or her medical files. Denial of access relied on internal regulations of hospitals, which itself interpreted the law. There had indeed been some confusion within the Ministry of Health - some time ago, there was information on the Ministry's website stating that information was accessible by the patients, but this information had been recently changed. The Deputy Prosecutor considered that respect for patients' rights was often jeopardised because of the lack of access to files - the law was very strict, barring law enforcement authorities

¹² According to the Office's press release, the complaint against the authors stated that if the information in the report was found to be true, authors would be prosecuted for failure to inform law enforcement of criminal activities, and if the information was found to be false, authors would be prosecuted under section 199 of the Criminal Code for "spreading false rumours and creating panic in society."

¹³ See the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*.

from access even in cases where it would be in the interest of the patient that documents be disclosed to them.

34. The Commissioner's team learned that another problem faced by the women who might to initiate civil proceeding against the doctors/hospitals was that several gynaecologists refused to make a preliminary medical evaluation of their health status.

V. The Commissioner's findings

A. General observations

35. The issue of sterilizations does not appear to concern exclusively one ethnic group of the Slovak population, nor does the question of their improper performance. It is likely that vulnerable individuals from various ethnic origins have, at some stage, been exposed to the risk of sterilization without proper consent. However, for a number of factors, which are developed throughout this report, the Commissioner is convinced that the Roma population of eastern Slovakia has been at particular risk.

36. The initiative of the authorities to investigate into the sterilization practices in the country is welcomed. The Slovak Government engaged in an open and constructive dialogue with the Commissioner concerning this difficult issue. It is also encouraging to note that the Government is considering ways of improving the country's health care system in general, including reproductive health care, and access to it for vulnerable persons, including Roma women in particular.

37. The Commissioner is concerned about what appears to be a widespread negative attitude towards the relatively high birth rate among the Roma as compared with other parts of the population. These concerns are often explained with worries of an increased proportion of the population living on social benefits.¹⁴ Such statements, particularly when pronounced by persons of authority, have the potential of further encouraging negative perceptions of the Roma among the non-Roma population. It cannot be excluded that these types of statements may have encouraged improper sterilization practices of Roma women.

B. Relations between the investigators and the Roma

38. The Commissioner believes that the difficulties in identifying the victims of possible improper sterilizations are to a large extent due to the particular circumstances prevailing in the region which is most touched by the allegations of improper sterilizations, i.e. eastern Slovakia. From the discussions his team had with a number of NGOs, it became clear that the relations between the police and the Roma in the region are extremely difficult. Reports of police violence against the Roma, and of an indifferent attitude of the police towards crimes committed against the Roma in the region, are common. The frequency of such incidents has led to a situation where the Roma have generally very little confidence in the police, and, rather than seeing the police as a protector of their rights, the police often arise in the Roma feelings

¹⁴ The Ministry of Health, in a position paper of October 2000, reportedly suggested that "the declining Slovak birth rates combined with high Roma birth rates could have negative impact on the quality of the population of the Slovak Republic". Reportedly, the Ministry further stated that 'if we do not succeed in integrating the Roma population and modify their reproduction, the percentage of non-qualified and handicapped persons in the population will increase'. (Position paper on the Working Draft of the Document National Strategy of Sustainable Development in the Slovak Republic, 16 October 2002, as quoted in "On the Margins" by Open Society Institute, op.cit.)

CommDH(2003)12

of fear and suspicion. It seems evident that the general relations between the police and the Roma have made potential victims reluctant to come forward to the investigators.

39. Some alleged victims found threatening the manner in which the police came to the settlements looking for potential victims. For instance, the fact that the police informed the women about the consequences of giving false information – up to three years imprisonment – set a negative atmosphere at the very beginning of the investigation. It was explained to the Commissioner’s team by the country’s top police officials and the Deputy Prosecutor that it is indeed the responsibility of the police always to provide this standard information to witnesses and (alleged) victims of crimes. However, the fact remains that many of the potential victims reportedly perceived these statements as threats rather than a regular procedure, and that they had subjective reasons to do so.

40. In addition, the information given by the police to under aged potential victims that the fathers of their children would be prosecuted for sexual assault undoubtedly produced a chilling effect on a number of potential victims. Given the fact that so far the police had not generally interfered in these matters, it was quite understandable that the women perceived these statements as threatening and as a discouragement to proceeding with their cases.

C. Establishing the validity of the consent

41. According to the Slovak Civil Code, a consent is invalid if it is obtained under duress or if consent is induced on the basis of an erroneous fact. However, it appears that the investigations have been mainly concerned with looking at whether consent was signed or not signed, whereas a mere signature does not provide sufficient evidence on whether the circumstances under which it was made fulfilled the criteria for valid consent. Interviewing both the patients and the health care personnel would have therefore been of utmost importance for an adequate assessment of the circumstances. This, however, was not possible due to the law on access to the personal medical data of patients, which forbids identification of the patients by the police investigators and made it impossible for the internal investigators of the Ministry of Health to contact the patients whose identity they were able to know, but not allowed to use.

42. The Commissioner finds it highly questionable that the consent given in a number of cases can be considered as valid, due to the circumstances under which the consent was apparently given, such as under severe labour pain or already under the impact of anaesthesia.

D. The requirement of informed consent for medical interventions

43. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the application of biology and medicine (“the European Convention on Human Rights and Biomedicine”)¹⁵ states that :

“an intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks”¹⁶.

The Slovak Republic ratified this Convention on 15 January 1998, and it entered into force for the Slovak Republic on 1 December 1999.

¹⁵ European Treaty Series No. 164.

¹⁶ Chapter II Consent, Article 5.

44. I would also like to recall that, when considering the implementation by Slovakia of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee noted that “the reference made [by the Slovak Government] to the fact that not all administrative acts were fulfilled in every case appears to amount to an implicit admission of breaches of the requirement of informed consent (art. 7, 26).”¹⁷

45. Whilst the requirement of informed consent can be derived from other provisions of Slovak legislation, it is not clearly laid out in the regulations on sterilisations, which refer only to the necessity for consent. It would appear that the consent obtained was on occasion of no more than this formal nature and that the absence of more precise indications in the context of sterilisations contributed to this development.

E. Situations where no consent was expressed

46. As the investigations by the Ministry of Health revealed, there have been cases where sterilization was undertaken without any prior consent of the woman. The Ministry did not, however, signal any shortcomings in these cases, since they had been reportedly undertaken to protect the health of the patient in an emergency situation. Apparently, the forthcoming medical expertise commissioned by the police investigators will pronounce itself on this issue.

47. Without permitting himself to pre-empt the medical explanations of those in charge of the said expertise, the Commissioner finds it of particular concern that, prior to a caesarean section, the women were not asked whether they wished to opt for sterilization, and informed about the potential risks related to future pregnancies, although the doctors must have been aware of the circumstances before the women were under anaesthesia. It is also very difficult to understand why the doctors apparently did not even consider that future pregnancies could be prevented by other, less intrusive means of contraception.

F. The rules on patients’ access to their medical files and individual court proceedings

48. The legal regulations on patients’ access to their own medical files in the Slovak Republic seem imprecise and too restrictive for the patients and their representatives. Moreover, some hospitals apply their own internal rules, which appear to be more restrictive than the law. This is obviously the case with the hospital, which has failed to follow the court ruling on disclosure of the files to the patient.

49. Difficulties in obtaining copies of medical files by patients and the unwillingness of doctors to conduct preliminary medical evaluations have complicated the presentation of cases before the courts.

VI. The Commissioner’s conclusions

50. In view of the difficulties encountered during the investigations, and limitations surrounding them, initiated by the Government, it is unlikely that they will shed full light on the sterilizations practices.

¹⁷ Concluding observations of the Human Rights Committee: Slovakia, 22 August 2003, CCPR/CO/78/SVK.

CommDH(2003)12

51. However, on the basis of the information contained in the reports referred to above, and that obtained during the visit, it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent.

52. The information available to the Commissioner does not suggest that an active or organized Government policy of improper sterilizations has existed (at least since the end of the communist regime). However, the Slovak Government has, in the view of the Commissioner, an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision of sterilisation practices although allegations of improper sterilizations have been made throughout the 1990's and early 2000.

VII. The Commissioner's recommendations to the Government of the Slovak Republic

53. In view of the above, the Commissioner, in accordance with Article 8 para 1 of Resolution (99) 50 of the Committee of Ministers of the Council of Europe, makes the following recommendations:

1. The Commissioner recommends the rapid adoption of new legislation introducing and sufficiently specifying the requirement of free and informed consent for medical acts, including sterilizations, in line with the requirements of international law.
2. The Commissioner recommends the rapid adoption of specific regulations on the patient's right to access his or her medical files, including rules on the delegation of that right.
3. The Commissioner recommends that adequate resources be allocated for measures aimed at improving the health care system, including gynaecological and obstetrical medical services and counselling, and that equal access to health care be ensured for everybody.
4. In the light of the specific circumstances set out in this report, the Commissioner recommends that the Government of the Slovak Republic accept clearly its objective responsibility for failing to ensure that no sterilisations were performed without free and informed consent, as required by international human rights instruments. The Government of the Slovak Republic ought, consequently, undertake to offer a speedy, fair, efficient and just redress.
5. To establish the modalities and criteria for the remedies to be offered to the victims, consideration should be given to the creation of an independent commission. The redress should include compensation and an apology.
6. It should be up to each woman to decide whether she wishes to introduce, continue or, to the contrary, give up the individual claim she may have before the courts, in the light of any alternative resolution mechanism proposed by the Government.