

The 1st European Human Rights Moot Court Competition 2012/2013

ELSA in Cooperation with the Council of Europe

“Sterilization of pregnant HIV women in Orosia”

1. A young woman, referred to only as A.A. to protect her privacy, lives in Mangonia, the capital of the country of Orosia. The Republic of Orosia became a member of the Council of Europe and ratified the European Convention on Human Rights in 1995. Since then, it has also ratified all the Protocols to the Convention.

2. In order to address the spread of the human immunodeficiency virus (HIV) in Orosia and, more specifically, to avoid the transmission of HIV from mother to child during birth, the Orosian government has started a campaign encouraging the sterilization of HIV-positive women and offering the procedure for free through the National Health Service, the governmental agency that bears the financial costs of sanctioned medical treatments for citizens. The campaign was deemed by the Orosian Prime Minister as crucial in order to combat the increasing rate of people infected with HIV in the country and to raise awareness. The government based this decision on their responsibility to protect their citizens and especially vulnerable groups such as infants from HIV. A study conducted by “Victims of Sterilization”, an Orosian NGO with the purpose of advancing women's reproductive health, self-determination, and dignity as basic human rights, claims that, since the starting of the campaign, 12.9% of sterilized HIV-positive women underwent the procedure without prior consent. Moreover, the same study affirms that 29% had agreed to be sterilized only after being coerced to by the doctors or nurses.

3. A.A. has lived for all her life in one of the poorest neighbourhoods of the capital city. Because of the financial strains of her family, she had to leave school at a very early age to seek work in a textile factory. She is not able to write and can read only very simple texts with much difficulty. In 2002, a few months after getting married A.A. found out that she was pregnant. Shortly after, during a routine test performed on all pregnant women as part of the campaign, she was diagnosed with HIV. She sought antiretroviral therapy (HIV treatment) and pregnancy services at the public Mangonia General Hospital. Due to financial issues, therapy in public facilities was the only possibility for A.A. in order to avoid transmitting the virus to her unborn child. HIV treatment is included between the therapies covered by the National Health Service.

As agreed with the medical staff during one of the previous visits, A.A.'s husband brought her to the Mangonia General Hospital few days before the expected date of delivery. As practice with illiterate patients, Priscilla Bantward, a member of the nursing staff, materially filled in A.A.'s admission form reporting in writing her verbal answers. During the admission procedure, Ms. Bantward, informed her about the campaign and the HIV-related risks for her child's health. As reported by the admission form, A.A. agreed to have a meeting with Dr. Graham Sylvester, coordinator for the campaign in the Mangonia General Hospital.

During the second day of A.A.'s stay in the hospital, Dr. Sylvester visited her in her room to discuss the sterilization. During this discussion, her husband was not present for work reasons. According to the doctor, in that occasion the patient had been informed of all aspects of the operation and had given her consent to the sterilization. A.A. eventually delivered a healthy baby through Caesarian section. While A.A was still under general anesthesia, Dr. Sylvester performed a tubal ligation procedure on her. When she woke up, she and her husband were given a short notice about the sterilization.

4. As a consequence of the sterilization, A.A.'s husband divorced her and her family and local community estranged her. Such "expulsion" is common social practice and strong cultural and religious belief in certain Orosian communities since women submitted to sterilization would not be able to continue the tradition of motherhood. The tradition and most important role of a woman in the social context of the villagers, is to be fertile and to bear offspring to ensure the continued existence of the community. Due to these circumstances A.A. is now suffering from psychological problems, has been forced by the community to move to the neighbouring city of Tibula and is currently raising her child without any support. "Victims of Sterilization" is providing A.A. with legal counselling and representation.

5. A.A. is claiming that she was not consulted or informed about the sterilization procedure and never gave her consent to it. In relation to the meeting with Dr. Sylvester, she declared: "I just wanted to protect my baby's health and I trusted the doctors. When Dr. Sylvester came to my room, he talked to me using medical terms I could not understand. So I just told him to do what was best for the wellbeing of my child and mine. After I said that, he left the room and I did not see him again until the day I went into labour".

The Hospital relies on the fact that they had fully informed her and that it was a voluntary decision. Nevertheless, doctor Sylvester concedes on the fact that A.A. might not have understood the result of her decision due to her lack of education, but submits that she was explained the circumstances in understandable terms and was asked more than once if she wanted to proceed with tubal ligation, always giving a positive answer.

6. “Victims of Sterilization” brought A.A.’s case to the Orosian District Court of Mangonia as a domestic complaint. The Court ruled that the medical staff had obtained valid consent from the complainant for the surgery as Orosian law requires just verbal acceptance of the procedure in case the patient is illiterate. The lack of registration of the consent in the hospital records was considered “a mere administrative irregularity not bearing effects on the validity of consent according to relevant legal rules”. The decision was confirmed in all the following domestic instances.

“Victims of Sterilization” also brought a formal complaint before the Orosian government, notwithstanding the recent drafting of a detailed national pilot plan for the treatment of HIV-positive pregnant women in cooperation with specialized experts. It seeks to better promote voluntary counseling and testing as well as to raise awareness of the risks that HIV poses on the mother as well as the unborn child.

7. After the exhaustion of all available domestic remedies “Victims of Sterilization” filed a complaint on behalf of A. A. at the European Court of Human Rights (ECtHR). The advocates have asked the ECtHR to recognize the violation of A.A.’s rights as protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms.