WRITTEN COMMENTS

submitted by

VALIDITY

(Mental Disability Advocacy Centre)

G. M. and Others v. the Republic of Moldova

(Application no. 44394/15)

1. Introduction

1. These written comments are submitted by Validity Foundation (previously Mental Disability Advocacy Centre) pursuant to leave granted by the President of the Court under Rule 44(3), Rules of the Court. Validity is an international human rights NGO independent of all governments and working to advance the human rights of persons with actual or perceived intellectual or psychosocial (mental health) disabilities, like the applicants. This intervention seeks to assist the Court by drawing on Validity's theoretical and practical expertise concerning gender-based violence against women with disabilities.
2. Based on the communication published by the Court, the case concerns forced sterilisations[1] and abortions of women with disabilities living in an institution who had previously been raped by the head doctor of the establishment. The case is illustrative of the grave human rights abuses experienced by institutionalised women with intellectual or psychosocial disabilities. Institutions maintain their residents in a state of powerlessness, enabling a culture of impunity in which violence, including sexual abuse, thrives. The resident women are often stripped, formally or factually, of the right to make the most elementary choices in their life, including those concerning their reproductive health. These abuses remain invisible and often uninvestigated.
3. Forced sterilisations and abortions performed on women with intellectual or psychosocial disabilities are a grave and widespread form of human rights violation, unequivocally condemned by international human rights bodies as a form of torture and ill-treatment, violence against women, violation of the right to health, personal integrity, right to family, and a form of gender and disability-based discrimination. It is understood that it is structural in nature and stems from legal systems which allow institutionalisation and formal or factual deprivation of legal capacity.
4. In this submission, Validity argues that the Court should be mindful of the systemic dimension of the problem represented in this case and consider it in the broader context of positive obligations of the state to prevent, investigate, and redress these human rights violations. To this end, we will first present the Court with an overview of international human rights standards condemning forced interventions against reproductive health as a serious human rights violation. We will also describe the context in which these abuses occur and highlight that they require a systemic response. In the last part of the intervention, we will briefly outline the state's positive obligations in this regard.

2. Forced abortions and sterilisations as serious human rights violations

5. The first part of the submission presents the broad consensus of the international human rights institutions condemning forced sterilisations and abortions as serious human rights violations enabled or condoned by states. Forced sterilisations and abortions have historically been used to deny reproductive rights to vulnerable populations and to pursue eugenic and genocidal policies. Legal systems which continue to allow denial of informed consent to women with intellectual or psychosocial disabilities continue the legacy of these policies. The following paragraphs explain why the Court should take a firm stance against them, and how the international human rights standards may guide its response to this case.

a. The right to informed consent of persons with disabilities

6. The right to informed consent constitutes the cornerstone of the protection of personal autonomy and integrity. All medical interventions must be preceded by full and free informed consent of the

[1] As stems from the Court's communication, „(*a)fter the various interventions made contrary to the applicants' wishes, all three applicants could no longer procreate*." We understand this statement to mean that the various interventions the applicants were subject to de facto amounted to their sterilisation, or to treatment with consequences equivalent to sterilisation, i.e., permanent termination of their ability to procreate.

person concerned.[2] This rule has been unambiguously adopted by all major international human rights bodies, including the Court.[3] The right to informed consent is crucial when it comes to medical interventions which have such severe impacts on personal lives as abortions or sterilisations.[4] While the rule of informed consent allows exceptions in cases of emergency,[5] abortions and sterilisations do not normally fall in that category. Even if the pregnancy poses a serious health risk, the World Health Organisation ("WHO") stresses that women have the right to make "*voluntary, informed, well-considered decisions about contraception"* and that *"informed consent is necessary*."[6]

7. These principles are of crucial importance for women with intellectual and psychosocial disabilities. As emphasised by the Parliamentary Assembly of the Council of Europe in its resolution *Putting an end to coerced sterilisations and castrations* (no. 1945(2013), women with disabilities belong among the few populations in Europe still subject to the eugenic practice of involuntary sterilisations.[7] The report clearly articulates that "*neither forced nor coerced sterilisations or castrations can be legitimated in any way in the 21st century – they must stop.*"
8. Nevertheless, the historical prejudice against persons with intellectual and psychosocial disabilities as incapable of directing their lives and making decisions for themselves enables these practices to remain. Medical practitioners often treat them as "objects of treatment rather than rights-holders" and avoid seeking their informed consent when it comes to any kind of treatment.[8] In relation to this well-known problem, the United Nations Special Rapporteur on the Right to the Highest Attainable Standards of Health emphasised that *"(c)onsent to treatment is one of the most important human rights issues relating to mental disability*,"[9] and, accordingly, "*it is especially important that the procedural safeguards protecting the right to informed consent are both watertight and strictly applied*."[10]

---

[2] Regional Office for Europe, World Health Organization (WHO), Declaration on the Promotion of Patients' Rights in Europe, 1994, art. 3.1. Available at: https://www.who.int/genomics/public/eu_declaration1994.pdf.
[3] *Glass v. The United Kingdom*, no. 61827/00, 9 March 2004; Y.F. v. Turkey, no. 24209/94, 22 July 2003: "*any interference with the physical integrity of a person must be prescribed by law and require the consent of that person*." (§ 43). For a review of the UN standards, see Wayne Martin and Sándor Gurbai, "Surveying the Geneva impasse: Coercive care and human rights." International Journal of Law and Psychiatry 64 (2019) 117-128.
[4] By way of example, the following human rights bodies have emphasized the need to obtain full, informed, and free consent prior to sterilisation procedures. Human Rights Committee, General Comment no. 28, *Equality of rights between men and women,* 2000, CCPR/C/21/Rev. 1/Add.10, § 11, Concluding Observations: CCPR/CO/70/PER, § 21; CCPR/CZE/CO/2, § 10; CEDAW Committee, Concluding Observations: CEDAW C/CZE/CO/3, § 23-24; CEDAW/C/CZE/CO/5, § 34-35; CEDAW/C/HUN/CO/6 (2007), § 8-9; Committee against Torture, Concluding Observations: CAT/C/PER/CO/4, § 23; CAT/C/CR/32/2, § 5-6; UN CRPD Committee, Concluding Observations CRPD/C/MEX/CO/1, § 37; CRPD/C/ESP/CO/1, § 37-38; CRPD/C/CHN/CO/1, § 33-34. Available online at: https://uhri.ohchr.org/en/
[5] For explanation of the distinction between permissible involuntary emergency interventions and impermissible forced interventions from the perspective of the United Nations human rights regime, see Wayne Martin and Sándor Gurbai, "Surveying the Geneva impasse: Coercive care and human rights", cited above, fn. 3.
[6] WHO, Female Sterilisation: a Guide to Provision of Services, 1992. Available at: http://whqlibdoc.who.int/publications/1992/9241544341_(part1).pdf. FIGO, the International Federation of Gynecology and Obstetrics emphasises that *"(s)terilization for prevention of future pregnancy cannot be ethically justified on grounds of medical emergency,*" as cited from the website of the Parliamentary Assembly of the Council of Europe, available at: http://assembly.coe.int/nw/xml/News/FeaturesManager-View-EN.asp?ID=1003
[7] §§ 4-5. The report is available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19984&lang=en
[8] See the resources cited in the Factsheet no. 31 in the Right to Health of the OHCHR (Office of the High Commissioner for Human Rights) and WHO, 2008, p. 16-18. Available at: http://www.ohchr.org/Documents/Publications/Factsheet31.pdf.
[9] Paul Hunt, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, E/CN.4/2005/51, 2005, § 87.
[10] Ibid., § 90.

9. Disability can never be a reason to deny the right to informed consent to medical interventions. Article 12 of the United Nations Convention on the Rights of Persons with Disabilities ("UN CRPD"), ratified by all Council of Europe member states,[11] establishes the right to equal legal recognition, which implies the enjoyment of legal capacity on an equal basis with others.[12] The UN CRPD does not allow any forms of substitute decision-making, nor any exceptions from the principle of full equal legal capacity which are linked to a person's disability or perceived "mental capacity".[13] The UN CRPD collapses the historical division between "capable" and "incapable" people and recognises that by virtue of common humanity, all person's right to decide about their lives must be equally protected.[14] Ultimately, it is this discriminatory construct of "mental capacity" that allows abortions and sterilisations of women with disabilities without their informed consent.[15] The UN CRPD firmly establishes that no third-party consent, whether that of a guardian, a court, or a specialised commission, can justify abortions or sterilisations without the informed consent of a woman with a disability.[16] Instead, women must be supported in decision-making, and reasonably accommodated to enable their equal participation in various aspects of life.[17]
10. The change of paradigm on the legal capacity of persons with psychosocial and intellectual disabilities, brought about by the UN CRPD, is now widely accepted. In the World Report on Disability from 2011, the WHO reiterated that persons with disabilities have the right to retain their fertility and exercise their legal capacity in making healthcare decisions, including sexual and reproductive decisions: *"(t)he presence of a particular health condition is not sufficient to determine capacity. The assumption that people with certain conditions lack capacity is unacceptable, according to Article 12 of the CRPD*." [18] The report highlights that the principle is equally applicable to sterilisations: "*there are many cases of involuntary sterilisation being used to restrict the fertility of some people with a disability, particularly those with an intellectual disability, almost always women (…) Involuntary sterilisation of persons with disabilities is contrary to international human rights standards*."[19]
11. In a statement "*Eliminating forced, coercive and otherwise involuntary sterilisation*: *an interagency statement",* adopted in 2014, multiple United Nations ("UN") agencies reaffirmed the UN CRPD-

[11] Overall, the UN CRPD has been ratified by 182 states. See the status of ratifications at https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html
[12] UN CRPD General Comment No. 1, *Equal recognition before the law,* CRPD/C/GC/1, 2014, § 8.
[13] Ibid., § 8-9.
[14] As well put by Frédéric Mégret: "*For a long time, some persons with disabilities were hardly considered human and were, as a result, denied basic rights ... Persons with disabilities have been victims of genocide, eugenism, and have suffered from massive discrimination resulting from a denial of their basic rights*." Frédéric Mégret, "The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?" (2008) 30 Human Rights Quarterly 494, 500 (citations omitted).
[15] Ibid., § 35: "*women with disabilities are subjected to high rates of forced sterilisation and are often denied control of their reproductive health and decision-making (…) it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognized on an equal basis with others*."
[16] UN Interagency statement, "*Eliminating forced, coercive and otherwise involuntary sterilization*: *an interagency statement",* OHCHR, UN Women, HIV/AIDS Programme, UNDP, UNPF, UNICEF, WHO, 2014, p. 6. Available at: https://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/. As well put by Linda Roslyn Steele, "*the denial of the individual's legal capacity and the reasons that courts authorise third party consent to sterilisation are grounded on discriminatory ideas about mental incapacity and disability more broadly. Court authorisation does not render sterilisation any less a violation and, in fact, court authorised sterilisation is particularly egregious because the judiciary's role in permitting this procedure renders this sterilisation a form of state-sanctioned violence*." Steele, Linda Roslyn, "Court authorised sterilisation and human rights: inequality, discrimination and violence against women and girls with disability" (2016) 39 University of New South Wales Law Journal 3, 1002-1037.
[17] Article 12 § 3 and Article 5 § 3 of the UN CRPD, respectively.
[18] p. 78. The report is available online at: https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability
[19] Ibid.

compliant approach. Highlighting the right to informed consent of persons with disabilities in areas of reproductive health, the agencies also stated that violation of this right is a form of violence and torture or ill-treatment.[20] The European Parliament also follows the UN CRPD standards and affirms that persons with disabilities have the right to informed consent to all medical procedures, including sterilisation and abortion.[21]

b. Human rights violated by forced abortions and sterilisations

12. Forced sterilisation or abortion has long-lasting physical and psychological effects, depriving women of their bodily autonomy and the possibility to have a family. It causes grave mental distress,[22] physical pain as well as mental suffering, trauma, depression, and grief. It may be experienced as a humiliating attack against one's dignity.[23] There is a broad consensus among various international human rights bodies that abortions or sterilisations without the informed consent of the concerned person with a disability constitute a serious violation of multiple human rights. It is gender-based[24] and disability-based discrimination,[25] a form of violence[26] and torture, or other cruel, inhuman, or degrading treatment.[27]
13. The United Nations ("UN") Special Rapporteurs on Torture have clarified that forced sterilisation performed on a woman due to her disability, including perceived "incapacity", satisfies all constituent elements of torture.[28] Various human rights bodies consistently frame it as a form of violence, torture, or other forms of ill-treatment.[29] Other UN bodies qualify them as violations of

[20] UN Interagency statement, "*Eliminating forced, coercive and otherwise involuntary sterilization*: *an interagency statement",* op. cit., fn. 16, p. 5-7.
[21] Report of the European Parliament,9 June 2016, Implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee (2015/2258(INI), § 97. Available online at: https://uhri.ohchr.org/en/
[22] R. Sifris*, Conceptualising Involuntary Sterilisation as 'Severe Pain or Suffering' for the Purposes of Torture Discourse,* 28 Netherlands Quarterly of Human Rights 4 (2010) 523–547.
[23] Ibid, p, 536-546 (citing P. Roos, *Psychological Impact of Sterilization on the Individual*, affirming that women with intellectual disabilities sterilised without their consent "exhibit signs of 'depression, sexual insecurity, symbolic castration, and regret over loss of child-bearing ability").
[24] UN CEDAW, General recommendation No. 19, *Violence against women*, 1992, § 22; General recommendation No. 24, *Women and health*, 1999, § 22; Concluding observations: CEDAW/C/CZE/CO/5, § 34-35, 37, 42; CEDAW/C/AUL/CO/7, § 35, 43. Available online at: https://uhri.ohchr.org/en/
[25] Forced sterilisations are an intersectional form of discrimination based both on gender and disability. UN CRPD Committee, General comment No. 3, *Women and girls with disabilities*, CRPD/C/GC/3, 2 September 2016, §§ 10, 16, 32, 44, 45; General Comment No. 1, *Equal recognition before the law*, CRPD/C/GC/1, 2014, § 42; Concluding observations: CRPD/C/PRY/CO/1, § 17, and many others. Available online at: https://uhri.ohchr.org/en/
[26] Committee on the Rights of the Child ("UN CRC"), General comment No. 20, *The implementation of the rights of the child during adolescence*, § 31; General comment No. 13, *The right of the child to freedom from all forms of violence*, § 23.
[27] See the following reports of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly: A/63/175, 2008, § 40-41; A/63/175, 2008, § 40-41 and 70-76, A/67/227, 2012, § 28; A/HRC/22/53, 2013, §§ 48, 64; A/HRC/32/32, 2016, § 94. See also R. Sifris, "Conceptualising Involuntary Sterilisation as 'Severe Pain or Suffering' for the Purposes of Torture Discourse", op. cit., fn. 22.
[28] See the report of the United Nations Special Rapporteur on Torture A/HRC/22/53, 2013 cited above, fn. 27, § 64: "*Forced interventions [including involuntary sterilization], often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged "best interest" of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.*"
[29] See, for instance, Committee against Torture ("UN CAT"), Concluding observations: CAT/C/PER/CO/5-6, § 15; CAT/C/CZE/CO/4-5, § 12; CAT/C/SVK/CO/2, § 14; UN Interagency statement, "*Eliminating forced, coercive and otherwise involuntary sterilization*: *an interagency statement",* op. cit., fn. 16, p. 5-6.

the right to health,[30] the right to family life,[31] and the right to the integrity of a person.[32] The European Parliament, in its report on Women with Disabilities in 2013, also frames forced sterilisations and abortions as violence against women and inhuman and degrading treatment.[33]

14. The Court manifested similar awareness of the grave impact of sterilisation without informed consent in *V.C. v. Slovakia* (no. 18968/07, 8 November 2011). Relying on the above-cited WHO recommendations and UN CEDAW standards, it assessed sterilisation without the informed consent of a Roma woman both as a form of torture or ill-treatment and a violation of the right to privacy and family.[34] Noting the severe mental distress, anguish, and feelings of inferiority triggered by the procedure, the Court highlighted that "*(a)lthough there is no indication that the medical staff acted with the intention of ill-treating the applicant, they nevertheless displayed gross disregard for her right to autonomy and choice as a patient (...) (which) attained the threshold of severity required to bring it within the scope of Article 3*."
15. However, the most crucial aspect of the case was highlighted in the dissenting opinion to the judgment by Judge Mijovic. The Judge observed that while the forced sterilisation of the applicant certainly amounted to a violation of Articles 3 and 8 of the Convention, discrimination was at the heart of the issue. The facts of the case clearly indicated that the decision to sterilise the applicant, and the complete disregard for her right to informed consent, were motivated by prejudices and stereotypes associated with her ethnic origin. The doctors assumed that Roma women do not have the capacity to make informed decisions about their bodies nor about their family planning. This assumption underlies the well-documented, widespread practice of sterilisation of Roma women in Slovakia.[35]
16. This observation is important because it places the issue at another level. Forced sterilisations or abortions are often not individual wrongdoings nor a few bad incidents. Rather, it is structural discrimination triggered by prejudices against certain populations, condoned or at least tolerated by the state. As such, it requires a structural, not individual, response. As noted by Priti Patel in an article on the issue: "*in many of these cases, the forced or coerced sterilisation is not an individualised decision made by one or two medical personnel but part of a broader systemic problem (...) Once a court finds that the sterilisation is due to discriminatory practices, it can change the issue from one of a few bad incidents to one requiring structural reform.*"[36]

c. Structural, state-sanctioned violence and discrimination

17. It is crucial to recognise that sterilisations of women are often a pattern of state-tolerated or sanctioned discriminatory policies of women from certain backgrounds. Without appreciating the context that allows these abuses to appear so extensively for groups of women who have historically been subject to discrimination, prejudice, and stigma, one cannot locate the elements enabling it

[30] The United Nations Special Rapporteur on the Right to Health stated that *"(f)orced sterilizations, (...), which women with mental disabilities are vulnerable to, are inherently inconsistent with their sexual and reproductive health rights and freedoms*." Report E/CN.4/2005/51, 2005, §§ 38, 48-50.
[31] CESCR, General Comment No. 5, Persons with disabilities, E/1995/22, 1994, §§ 30-31.
[32] Article 17 of the UN CRPD, see also UN CRPD, General Comment No. 1, *Equal recognition before the law*, CRPD/C/GC/1, 2014, § 42.
[33] Report of the European Parliament, Women with disabilities (2013/2065(INI), 14 October 2013, § 34. Available at: https://www.europarl.europa.eu/doceo/document/A-7-2013-0329_EN.html?redirect
[34] The conclusion was reached despite the fact that the procedure was considered as medically necessary, and some form of consent was requested, albeit certainly not "free and informed".
[35] See the many observations of international bodies presented in *V.C. v. Slovakia.* A number of similar applications were presented to the Court, some of whom have ended in a friendly settlement. See, in this vein, *I.G. and Others vs. Slovakia*; no. 15966/04, 13 November 2002. See also similar cases submitted against the Czech Republic: *Ferenčíková v. Czech Republic*, no. 21826/10; *Červenáková v. Czech Republic*, no. 26852/09.
[36] Priti Patel, "Forced Sterilisation of Women as Discrimination" (2017) 38 Public Health Review 15, p. 8.

and ensure effective human rights protection in the future. The Parliamentary Assembly of the Council of Europe, cited above, recognised that women with disabilities belong among the few remaining populations in Europe which are still subject to the eugenic practice of involuntary sterilisations.[37] This statement does not imply that no other women are ever victims of this abuse. Rather, it acknowledges the different nature of such violations if they are a part of a structural discriminatory pattern, which is state-tolerated (as in the case of Roma women) or state-sanctioned (in the case of trans women or women with disabilities).

18. Many countries have a horrifyingly extensive history of using forced abortions or sterilisations as a means of controlling vulnerable populations within their borders. [38] Tens of thousands of people with intellectual and psychosocial disabilities have been victims of these programmes.[39] Only in France, over 15,000 institutionalised women with disabilities had been forcibly sterilised, [40] and this practice continued well into the 1990s.[41] Forced sterilisation of girls and young women with disabilities still represents a widespread human rights violation across the globe. Studies show that the sterilisation of women with disabilities is three times higher than the rate for the general population.[42] According to the report of the United Nations Special Rapporteur on the Rights of Persons with Disabilities, "*girls and young women with disabilities are frequently pressured to end their pregnancies owing to negative stereotypes about their parenting skills and eugenics-based concerns about giving birth to a child with disabilities*."[43] The rapporteur herself, during her monitoring visits, received information about forced abortion in institutions to contain the institution's population.[44]
19. Prior to 1945, forced sterilisations of selected groups were aimed to "*improve the genetic constitution of the human species*".[45] In the aftermath, they have been used as a means of population control, a practice that continues to this day. Both rationales derive from prejudices and stereotypes about certain populations, following an assumption of fundamental inequality of human beings.

---

[37] Together with Roma women, and trans persons. *Putting an end to coerced sterilisations and castrations* (no. 1945(2013), § 4-5.

[38] Indigenous women, Roma women, or poor women have often been victims to this abuse. See, for instance, a useful summary of many resources on this issue in the UN interagency statement "*Eliminating forced, coercive and otherwise involuntary sterilization*: *an interagency statement"*, op. cit. fn. 16, p. 2. For a more detailed analysis see Jean-Jacques Amy and Sam Rowlands, "Legalised non-consensual sterilisation - Eugenics put into practice before 1945, and the aftermath. Part 1: USA, Japan, Canada and Mexico", and ibid., Part 2: Europe. 23 The European Journal of Contraception & Reproductive Health Care 3 (2018) 194–200.

[39] R. Sifris, "Conceptualising Involuntary Sterilisation as 'Severe Pain or Suffering' for the Purposes of Torture Discourse", op. cit., fn. 22.

[40] Le Monde, *Des Stérilisations de Handicapés Mentaux ont été Effectuées en France*, 11 September 1997, available at: https://www.lemonde.fr/archives/article/1997/09/11/des-sterilisations-de-handicapes-mentaux-ont-ete-effectuees-en-france_3780452_1819218.html

[41] Liberation, *Handicapés mentaux: des stérilisations en toute illégalité. Un rapport de l'Igas confirme la pratique, qui n'est pas systématique*, 1 October 1998, available at: https://www.liberation.fr/societe/1998/10/01/handicapes-mentaux-des-sterilisations-en-toute-illegalite-un-rapport-de-l-igas-confirme-la-pratique-_249653/

[42] See, for instance, the information in the following research papers: L. Servais, R. Leach, D. Jacques, and J. P. Roussaux, "Sterilisation of intellectually disabled women" (2004) 19 *European Psychiatry* 7; L. Lennerhed, "Sterilisation on eugenic grounds in Europe in the 1930s: news in 1997 but why?" (1997) 5 *Reproductive Health Matters* 10.

[43] Report entitled "Sexual and reproductive health and rights of girls and young women with disabilities", 14 July 2017, A/72/133, § 31.

[44] Ibid.

[45] UN interagency statement "*Eliminating forced, coercive and otherwise involuntary sterilization*: *an interagency statement"*, op. cit, p. 2. These practices have been extensively described in the. United States, Sweden, Japan, China, Brazil, and many other countries. See Jean-Jacques Amy and Sam Rowlands, "Legalised non-consensual sterilisation - Eugenics put into practice before 1945, and the aftermath", op. cit., fn. 39; Michael G. Silver, "Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History," 72 George Washington Law Review 4 (2004), 862-892; or R. Sifris, "Conceptualising Involuntary Sterilisation as 'Severe Pain or Suffering' for the Purposes of Torture Discourse", op. cit., fn. 22.

When it comes to persons with disabilities, this rationale either openly articulates the desirability to stop reproduction of persons with disabilities or relies on narratives of their "parental incapacity"[46] or inability to manage their own family planning.[47]

20. The UN CRPD Committee also reminds that forced abortions or sterilisations are linked to the "*harmful eugenic stereotypes*"[48]and "*harmful gender and/or disability stereotypes such as incapacity and inability*."[49] It also notes that these interventions are sometimes used to cover previous sexual violence, especially when it comes to women with psychosocial or intellectual disabilities and those in psychiatric or other institutions or custody.[50] Indeed, women with disabilities in institutions and/or under guardianship are often invisible to the justice system, and human rights abuses occurring in these contexts are, therefore, uncovered and unpunished.[51]
21. The United Nations Special Rapporteur on the Rights of Persons with Disabilities also highlighted that discrimination against women with disabilities is central to the practice of forced abortions and sterilisations in her report *Sexual and reproductive health and rights of girls and young women with disabilities.*[52] Moreover, the rapporteur links the stigma and stereotypes against women with disabilities[53] to systematic denials of legal capacity, lack of information and support in decision-making,[54] and to institutionalisation depriving women with disabilities of the capacity to make the most fundamental as well as mundane decisions about their lives.[55] As she notes, "(*m)any of those practices occur in institutions*"[56] where "*girls and young women with disabilities have no control over their own sexual and reproductive lives, as decisions are taken for them under the paternalistic guise of "for their own good*".[57]
22. Forced abortions and sterilisations of women with intellectual and psychosocial disabilities are not exceptions, individual wrongdoings which sometimes occur in otherwise human rights-compliant systems. They are structural discrimination and violence against women with disabilities, enabled by widespread and legalised practices of institutionalisation and denial of legal capacity. This observation has already been made, for instance, by the UN Special Rapporteur on the Rights of Persons with Disabilities,[58] the UN CRPD Committee,[59] and the UN Human Rights Committee, which affirmed that this human rights violation is structural in nature and stems from discriminatory

[46] Michael G. Silver, "Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History," op. cit., fn. 45.
[47] Ibid. See a similar observation in UN CRPD General Comment No. 3, op. cit, fn. 25, § 44.
[48] UN CRPD General Comment No. 3, op. cit, fn. 25, § 39.
[49] Ibid., § 46
[50] Ibid., § 45
[51] *Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/63/175, 28 July 2008, §§ 41, 60, 69.
[52] Report A/72/133, 14 July 2017, op. cit, fn. 43.
[53] Ibid., § 18. The report references another report by the Office of the High Commissioner of Human Rights "Gender stereotyping as a human rights violation", October 2013. Available at https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx
[54] Report A/72/133, 14 July 2017, op. cit, fn. 43, § 28. See also UN CRPD General Comment No. 3, op. cit, fn. 25, § 44: "*Restricting or removing legal capacity can facilitate forced interventions, such as: sterilisation, abortion, (…).*"
[55] Report A/72/133, 14 July 2017, op. cit, fn. 43, §§ 8, 19: "*Moreover, as many girls and young women with more severe impairments live at home or in institutions, often completely dependent on or controlled by others, they are denied the full exercise of their autonomy and privacy, whether that is intentional or not*." See a similar observation made by the European Parliament in Report "Women with disabilities" (2013/2065), 14 October 2013, § 28-29. Available at: https://www.europarl.europa.eu/doceo/document/A-7-2013-0329_EN.html
[56] Report A/72/133, 14 July 2017, op. cit, fn. 43, § 8.
[57] Ibid., § 28, citing a report of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, A/67/227, 3 August 2012, § 36
[58] Report A/72/133, 14 July 2017, op. cit, fn. 43, § 19.
[59] UN CRPD General Comment No. 3, op. cit, fn. 25, § 45.

legislation.[60] The fact that many legal systems enable forced abortions or sterilisations subject to an authorisation of a legal guardian, specialised committee, or a court does not legitimate these human rights abuses.[61] It only makes them state-sanctioned.[62]

3. State obligations to prevent, investigate and redress

23. Human rights violations of systemic and structural nature, enabled or encouraged by the legislation and policies of the state, require a different response than individual human rights violations. This case provides an opportunity for the Court to reiterate and specify the obligations of the state to give practical meaning to the human rights of women with disabilities protected under Articles 3 and 8 of the Convention. The remaining paragraphs will briefly discuss the elementary parameters of preventing, investigating, and remedying these human rights abuses.
24. Forced sterilisations and abortions, which are a structural and state-condoned form of torture and ill-treatment, are gross human rights violations. Both the Council of Europe[63] and the United Nations[64] have adopted guidelines on fighting and remedying these types of human rights violations which specify the state obligations. The Special Rapporteur on the Rights of Person with Disabilities summarised that states have an obligation to prevent, investigate, prosecute, and try instances of forced sterilisations and abortions, and consider reparations and redress mechanisms, especially when these violations occurred in institutions.[65] These obligations, in so far as forced sterilisations and abortions violate Articles 3 and 8 of the Convention, should translate into positive obligations under these provisions.
25. An obligation to prevent human rights violations committed by private individuals[66] enabled by legislation or legalised practices inevitably requires legislative reform.[67] Following Article 39 of the Council of Europe *Convention on combating violence against women and domestic violence* (Istanbul Convention), sterilisations and abortions without informed consent must be criminalised as crimes against women. States must repeal all laws allowing replacement of personal informed consent by any kind of third-party substitution,[68] abolish guardianships, and amend their laws to

[60] Human Rights Committee, General Comment no. 28, *Equality of rights between men and women*, op. cit., fn. 4, § 11; Concluding observations: CCPR/CO/78/SVK, § 12; CCPR/C/79/Add.102, § 31; CCPR/CO/70/PER, § 21. Available online at: https://uhri.ohchr.org/en/

[61] Parliamentary Assembly of the Council of Europe, *Putting an end to coerced sterilisations and castrations* (no. 1945(2013), 26 June 2013, § 4: "*neither forced nor coerced sterilisations or castrations can be legitimated in any way in the 21st century – they must stop.*" Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19984&lang=en

[62] The Court has identified a similar kind of structural violence in the context of domestic violence. In *Opuz v. Turkey* (no. 33401/02, 9 June 2009) and *Halime Kılıç v. Turkey* (no. 63034/11, 28 June 2016), it noted that "*the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence.*" (§ 197 and § 120, respectively).

[63] Council of Europe, Eradicating impunity for serious human rights violations, Guidelines adopted by the Committee of Ministers on 30 March 2011, H/Inf (2011).

[64] United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 2006.

[65] Report A/72/133, 14 July 2017, op. cit, fn. 43, § 49.

[66] Established by the Court in *Osman v. The United Kingdom* (GC), no. 23452/94, 28 October 1998, § 116. Violation occurs when the authorities knew or ought to have known that there was a serious risk to the rights of the individual and failed to take measures reasonably within their power to prevent it.

[67] These must include explicit prohibition of sterilisations of women without their informed consent. UN CEDAW Concluding observations CEDAW/C/HUN/CO/6, § 8; CEDAW/C/CZE/CO/3, § 23. UN CRC General comment no. 13, *The right of the child to freedom from all forms of violenc*e, CRC/C/GC/13, 2011, §§23a, 41d; General comment no. 9, *The rights of children with disabilities*, CRC/C/GC/9, 2007, § 60. Available online at: https://uhri.ohchr.org/en/

[68] UN CRPD Committee Concluding observations CRPD/C/CHN/CO/1, § 34; CRPD/C/HUN/CO/1, § 38; CRPD/C/Per/CO/1, § 35.

facilitate supported rather than substitute decision-making.[69] As these human rights violations are enabled by institutionalisation, states are obliged to adopt deinstitutionalisation policies and facilitate independent life in the community of all persons with disabilities.[70] The UN CAT Committee urges the adoption of guidelines and training of public officials "*on the criminal liability of medical personnel conducting sterilisations without free, full and informed consent, and on how to obtain such consent from women undergoing sterilisation*."[71] WHO also recommends putting in place reporting and enforcement mechanisms "*to ensure that, whenever sterilisation is requested, the rights of persons with disabilities are always respected above other competing interests*."[72]

26. When it comes to torture and ill-treatment, the states also have an obligation to conduct an effective investigation on their own motion and prosecute those responsible.[73] The Court has an extensively developed doctrine of the right to effective investigation,[74] which also requires effective victim involvement in the process.[75] Such participation cannot be ensured without removing the barriers women with intellectual and psychosocial disabilities face in these proceedings.[76] The barriers derive from prejudice, discrimination, "*and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed*."[77] States must ensure that criminal justice authorities are aware of impermissibility to discount testimonies of women due to their disability and that they are trained in the effective provision of procedural accommodations.[78]
27. Lastly, a response to a gross human rights violation must incorporate effective redress, comprising rehabilitation, compensation, satisfaction, such as an official apology, restitution, and guarantees of non-repetition, restitution, compensation, and rehabilitation.[79] Rehabilitation measures include, for example, psychological, physical, health and medical care; legal and social services; economic empowerment; housing; education and employment; transport; access to justice; as well as the elements of political and moral rehabilitation.[80] Several countries have already adopted or

[69] Ibid.
[70] UN CRPD Committee Concluding observations CRPD/C/EST/CO/1, § 39; CRPD/C/IND/CO/1 , § 41; CRPD/C/ALB/CO/1, § 34; CRPD/C/SLV/CO/2-3, § 39, and many others.
[71] UN CAT, Concluding Observations CAT/C/SVK/CO/2, § 14.
[72] WHO, World Report on Disability, p. 78. Available at: https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability
[73] CAT Committee, General Comment No. 2, AT/C/GC/2, 24 January 2008, § 9; Concluding observations CAT/C/SVK/CO/2, § 14; CEDAW Committee, General Recommendation No. 19, § 9.
[74] See, for instance, the overview of the requirements when it comes to investigations of forced sterilisations presented in *V. C. v. Slovakia*, no. 18968/07, 8 November 2011, §§ 123-124.
[75] Council of Europe, Eradicating impunity for serious human rights violations, op. cit. fn. 63, point VII, p. 13. See also the Council of Europe Guidelines on European Standards, "Effective investigation of ill-treatment", 2014, § 4.5.1. Available at: https://rm.coe.int/16806f11a3
[76] See for an extensive description of this problem, the Report of the Special Rapporteur on the Rights of Persons with Disabilities, A/72/133, op. cit, fn. 43, §§ 36-37. The barriers in access to justice for persons with disabilities have also been described by the Court in *Shtukaturov v. Russia*, no. 44009/05, 27 March 2008; *Salontaji-Drobnak v. Serbia*, no. 36500/05, 13 October 2009.
[77] UN CRPD General Comment No. 3, op. cit, fn. 25, § 52: „*Procedures or enforcement attitudes may intimidate victims or discourage them from pursuing justice. These can include complicated or degrading reporting procedures; referral of victims to social services rather than legal remedies; dismissive attitudes by police or other enforcement agencies. This can lead to impunity and invisibility of the issue, resulting in violence lasting for extended periods of time*."
[78] Report A/72/133, 14 July 2017, op. cit, fn. 43, § 48.
[79] Council of Europe, Eradicating impunity for serious human rights violations, op. cit. fn. 63, XVI, p. 15.
[80] REDRESS, Rehabilitation as a Form of Reparation, 2010. Available at: http://www.redress.org/downloads/publications/Report_of_the_Expert_Seminar_on_Rehabilitation_October_2010.pdf

announced compensation schemes of this kind for victims of forced sterilisations and issued a public apology.[81]

28. All these standards can provide a useful guidance for the Court in formulating the positive obligations of the state to ensure effective protection of women with disabilities against forced sterilisations and abortions, as violations of Articles 3 and 8 of the Convention.

4. Conclusion

29. The submission offered an overview of international human rights standards related to forced sterilisations and abortions of women with intellectual and psychosocial disabilities. In the first part, we underscored that it is indisputable that these interventions constitute serious human rights violations, including torture and ill-treatment, violence against women, violation of the right to family, or the right to health. We explained that these gross human rights violations are not individual wrongdoings, but a form of structural discrimination, inherently linked to denials of legal capacity and forced institutionalisation, enabled, or condoned by states. In the second part of the submission, we then outlined basic elements of the response necessary if the state is to ensure effective prevention and protection against these human rights abuses. The Court normally requires that protection of human rights is practical and effective, and for this purpose it looks "*for any consensus and common values emerging from the practices of the European States and specialised international instruments… as well as giving heed to the evolution of norms and principles in international law*."[82] We submit that in the case of forced sterilisations of women with disabilities, the consensus exists. This case provides an opportunity for the Court to reiterate its commitment to effectively protect the rights of women with disabilities.

In Budapest, 29 November 2021

Validity Foundation

[81] See, for instance, The Reuters, Virginia lawmakers OK payout to forced sterilization survivors, 26 February 2015, available at: https://www.reuters.com/article/us-usa-virginia-sterilization-idUSKBN0LU2D420150226; The Guardian, Illegally sterilised Czech women to be offered compensation, 4 August 2021, available at: https://www.theguardian.com/global-development/2021/aug/04/illegally-sterilised-czech-women-to-be-offered-compensation; or Euronews, Slovakian government apologises for forced sterilisations of Roma women, 25 November 2021, available at: https://www.euronews.com/2021/11/25/slovakian-government-apologises-for-forced-sterilisations-of-roma-women

[82] *Opuz v. Turkey,* no. 33401/02, § 164.