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An X-Ray of Medical Negligence error and Malpractice in the Context of the Right to Non-Discrimination in Nigeria

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Abstract

The Nigerian medical system on which a large percentage of Nigerians depend for healthcare is bedeviled with numerous challenges which cause systemic dysfunction and inefficiencies for safe quality healthcare delivery. This problem worsens with the incidents of medical negligence, error and malpractice which are caused by medical practitioners on the one hand and government on the other, through institutional weaknesses with the consequences for patients amounting to the violation of the right to the prohibition against discrimination. As regards Nigerian medical professionals, the occurrence of harm to patients is prohibited under a medical rights enforcement mechanism. However, in the face of the continuing occurrence of these events, the objective of this study is to determine whether patients have fundamental rights and whether harm to patients through medical negligence, error and malpractice was in violation of their fundamental right to prohibition against discrimination. Pursuant to this, the doctrinal research method was employed to undertake the evaluation through reliance on available Library literature, Journal publications and Internet sources. It was found that the harmful consequences due to medical negligence, error and malpractice are in violation of the fundamental right to prohibition against discrimination in Nigeria. Furthermore, it was found that although there is the problem of the significant violation of the fundamental right to prohibition of discrimination against patients in medical practice in Nigeria, fundamental rights has not been enforced to prevent this from happening or provide remedy upon occurrence. The identification of this problem, the opportunity for the use of fundamental rights enforcement procedure as a basis for medical malpractice claim. Accordingly, it was recommended that the fundamental right to prohibition of discrimination against patients be enforced in medical practice in Nigeria through the instrumentality of the fundamental rights enforcement procedure.

Keywords: Right to Prohibition of Discrimination, Medical Negligence, Error, Malpractice, Fundamental Rights, Fundamental Rights Enforcement Procedure

1. Introduction

Patients have been at the receiving end inflicted with various forms of harm while receiving treatment in Nigerian hospitals. of harm when receiving treatment in Nigerian hospitals. Available evidence demonstrates that there is the violation of right to prohibition of discrimination against patients as provided in the Constitution of Republic of Nigeria 1999 (as amended).[1] The

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fundamental rights of patients include the right to life,[2] the prohibition against torture, inhuman and degrading treatment and punishment,[3] the right to liberty,[4]the right to privacy and confidentiality[5] and the prohibition against discrimination.[6] This study will x-ray and spell out clearly how medical malpractice claims can be made under the fundamental rights enforcement procedure as it pertains to the fundamental right to right to prohibition of discrimination against patients in Nigeria.

2. Medical Negligence, Error and Malpractice

Medical negligence derives its origins from the tortious principle of negligence.[7]The essence of the tort of negligence was that a person should be subject to liability for carelessly causing harm to another.[8]In addition, it was also recognized that there was the necessity of a causal connection between the defendant's breach of duty and the damage on the plaintiff hat was natural, probable, proximate, and not too remote.[9]

Relatedly, medical negligence constitutes an act or omission by a medical practitioner that breaches the duty of care the practitioner owes the patient resulting in jury or death of the patient.[10]With specific reference to the practice of medicine, negligence assumes a peculiar character which has been aptly identified by Enemo as follows, "Medical negligence is, therefore, a breach of a duty of care by a person in the medical profession, to a patient, which results in damage to the patient."[11]Abegunde provides deeper clarity as follows, "medical negligence is a branch of negligence which has it root in medical law. Medical negligence law covers the consequences for medical practitioner's non-exercise of appropriate care and rights of patients when a medical practitioner makes an error or fails to provide an acceptable level of care in the execution of his duty. This is called "fault liability".[12] Hence, for a doctor to be liable in negligence, the duty of care must exist.

Generally, errors are unintentional because an error occurs 'when someone is trying to do the right thing, but actually does the wrong thing'.[13]Thus, a medical error is a commission or an omission with potentially negative consequences to the patient that would have been judged wrong by skilled and knowledgeable peers at the time it occurred, independent of whether there were any negative

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[1] The 2009 Rules was made by the then Chief Justice of Nigeria, Hon. Justice, I. L. Kutigi, CJN (as he then was) pursuant to S. 46 (3) of the 1999 Constitution, which empowers the Chief Justice of Nigeria to make Rules with respect to practice and procedure of a High Court for the purpose of Enforcement of Fundamental Rights. Flowing from the above, breach of Fundamental Rights in Nigeria can now be redressed under the Fundamental Rights (Enforcement Procedure) Rules, 2009.

[2] Section 33 Constitution of Nigeria, 1999 (as amended).

[3] Section 34 Constitution of Nigeria, 1999 (as amended).

[4] Section 35 Constitution of Nigeria, 1999 (as amended).

[5] Section 37 Constitution of Nigeria, 1999 (as amended).

[6] Section 42 Constitution of Nigeria, 1999 (as amended).

[7]Ojo v. Gharoro & UBTH Management Board (2006)10 NWLR, 987

[8] JH, Deering, *The Law of Negligence*, (Book on Demand Ltd, 2020), p. 45.

[9] F, Wharton, *Law of Negligence*, (Gale, Making of Modern Law, 2010), p. 3; See also WB, Hale, *Handbook on the Law of Torts* (Gale, Making of Modern Law, 2010), p. 19.

[10] FN, Chukwuneke, 'Medical Incidents in Developing Countries: A few case studies from Nigeria' [2015] (18(7) *Niger J Clin Prac;* 20

[11] PI, Enemo, 'Medical Negligence: Liability of Health Care Providers and Hospital' (2011-2012)(10) *Nig. J.R*; 117.

[12] B, Abegunde, n. 167.

[13] B, Runciman, et al, *Safety and Ethics in Healthcare: A Guide to Getting it Right,* (Ashgate, 2007), p. 5.

consequences.[14]Essentially, medical errors occur in the treatment of patients with deleterious consequences for those affected.[15]

A hospital, doctor, or other health care professional is expected to provide a certain standard of care. Thus, medical malpractice is a legal cause of action that occurs when a medical or health care professional, through a negligent act or omission, deviates from standards in their profession, thereby causing injury to a patient.[16]The negligence might arise from errors in diagnosis, treatment, and aftercare or health management.[17] In this regard, medical malpractice happens when a doctor or another medical professional whose actions fall below the appropriate standard of care hurts a patient.[18]

3. Medical Malpractice Claims under the right to Prohibition of Discrimination against Patients

Discrimination is the intellectual faculty of noting differences and similarities.[19] What this means is that discrimination is a practice that confers privileges on certain class or that denies privileges to a certain class because of race, age sex, nationality, religion, or handicap or differential treatment, especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.[20] Thus, discrimination is to show favour, prejudice or bias for or against a person on any arbitrary grounds, for example on the basis of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth by an employer.[21] Essentially, discrimination is the most comprehensive, systematic and severe deprivation of human rights.[22]

4. Prohibition against Discrimination under the Nigerian Constitution

The prohibition against discrimination is provided under section 42(1) Constitution of Nigeria, 1999 (as amended) as it relates to the right to freedom from discrimination. Section 42 deals specifically with the right to freedom from discrimination of Nigerian citizens, that is, the right to equality of citizens. Thus, in *Augustine Nwafor Mojekwu v Caroline Mgbafor Mojekwu*[23]the facts of the case are that under the Olu Ekpe custom of Anambra State, only male children can inherit their father's property. When a man dies leaving no male child behind, his brother inherits his property and if this brother dies, his own male child inherits the property. In its ruling, the Court of Appeal condemned the practice as repugnant to natural justice, equity and good conscience.

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[14] JO, Lokulo-Sodipe, 'An Examination of the Legal Rights of Surgical Patients under the Nigerian Laws' [2009] (4)(1) *J Law Conflict Resolut.;* 79.
[15]L, LA Pietra, et al, 'Medical Errors and Clinical Risk Management: State of the Art' [2005] (25) *Acta Otorhinolaryngol Ital*; 339.
[16] Physician Weekly, 'Proving a Medical Malpractice Case I – Proving Negligence (Part I)' <https://www.physiciansweekly.com/proving-a-medical-malpractice-case-i-proving-negligence-part-i> Accessed 29/09/2021.
[17] Ibid.
[18]Justia, 'Medical Malpractice' <https://www.justia.com/injury/medical-malpractice/> Accessed 29/09/2021.
[19]BA, Garner, (ed.), Black's Law Dictionary, (10th ed.), (Thomson Reuters, 2014), p. 566.
[20]Ibid.
[21] ML, Saunders, 'Equal Protection, Class Legislation and Color Blindness' [1997] (96)(2) *Michigan Law Review*; 245.
[22] MOU, Gasiokwu, *Human Rights: History, Ideology and Law,* (Fab Educational Books, 2003), p. 34.
[23] (1997) 7 NWLR 288.

In addition to the constitutional provisions on the prohibition of discrimination, the African Charter on Human and Peoples' Rights in its Articles 1 and 5 prohibits discrimination.

5. Exceptions to the Prohibition against Discrimination under the Nigerian Constitution

Section 42 (3) provides exception to discrimination in Nigeria. For example, in *Obeya v Soluade*[24] the facts of the case are that section 387 of the Penal Code Law of Northern Nigeria prescribed a punishment for adultery under criminal law which was not so all over the country. The court held that, "this was not discriminatory because it only gave effect to the personal law of particular communities, and because it was desirable 'to protect and sustain public morality among the members of that community'. Also, in *Adewole v Jakande*[25]the facts are that a circular purported to indicate that only public schools would be allowed to operate in the state. The court held that it was unconstitutional, since it tended to subject the citizens of that state to disabilities not available in other states.

6. Medical Negligence, Error and Malpractice as conduct in violation of the Prohibition against Discrimination

Evidence demonstrates that discrimination is conduct that is in violation of the fundamental right of non-discrimination of patient, example include members of certain communities being treated in separate ways with a lower standard of care. Health workers refuse to treat sex workers, drug workers or persons with different sexual orientations. Maternal and reproductive health services for women are lacking. A country fails to provide health services to the poor or non-citizens. These examples point to the fact that medical negligence, error and malpractice are conducts that do not fall under the exception to the prohibition against discrimination as enunciated under section 42.

6.1. International Practice

As it concerns the human rights of patients under International Human Rights standards, Article 2International Covenant on Economic, Social and Cultural Rights (ICESCR) provides:

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenants will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

In interpreting this human rights standard, the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 14 stated:

> *With respect to the right to health, equality of access to health care and health services has to be emphasized. States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health.*

The CESCR in relation to General Comment No. 14 (14) explained that:

> *health facilities, goods and services must be accessible to all without discrimination, especially to the most vulnerable and marginalized sections of the population.*

[24] (1969) NNLR 17
[25] Supra.

The CESCR stated that this included the health care access needs of "ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS."

6.2. Regional Practice

Regional practice provides evidence of the violation of the prohibition of discrimination of patients through medical negligence error and malpractice.

6.2.1. Practice under the European System for the Protection of Human Rights

Under the European system for the protection of human rights, Article 14 of the European Convention on Human Rights (ECHR) provides that:

> *The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

Article 14 ECHR is similar to section 42 of the Constitution of Nigeria 1999 (as amended).

The case of N.B. v Slovakia demonstrate how the European Court of Human Rights relying on the European Human Rights Convention protected the right to prohibition of discrimination against patients.

Case of n.b. v slovakia

The case of *N.B. v Slovakia*[26]originated in an application against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Ms N.B. ("the applicant"), on 20 May 2010. The President acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

The applicant is of Roma ethnic origin. She was born in 1983 and lives in Nálepkovo. On 25 April 2001, during the delivery of her second child, the applicant was sterilised by means of tubal ligation at the gynecology and obstetrics department of the hospital in Gelnica ("the Gelnica Hospital"). The Gelnica Hospital was a public hospital administered by the Ministry of Health at that time and until the end of 2002. During her pregnancy the applicant visited her doctor regularly. She was informed that the delivery would be via caesarean section.

According to the applicant's medical records, the applicant was brought to the hospital in labour by an ambulance at 7.50 a.m. on 25 April 2001. At 9 a.m. on the same day, when her contractions were occurring at five,minutes intervals, the applicant was administered premedication in view of the envisaged caesarean section. It included a benzodiazepine derivative which is used for its sedative, anxiety-relieving and muscle-relaxing effects.

Following a handwritten entry on the administration of the premedication, the medical record contains a typed entry on the next page, according to which the applicant had requested that a sterilisation procedure be carried out on her reproductive organs during the delivery, and that she had been informed about the irreversible nature of such an operation and of her being unable to

[26] Application No. 29518/10; See also findings by the ECtHR of substantive and procedural violations of the prohibition of discrimination of patients under Article 14 ECHR due to medical negligence, error and malpractice in the following case: Case VC. v Slovakia, Application No. 18968/07.

conceive a child in the future. The entry signed by a doctor and it also bears the signature of the applicant.

The applicant later declared that, after the administration of the premedication, she had been approached by a member of the medical staff who was carrying three A4 size pieces of paper. The staff member had taken her hand to help her sign the papers. The applicant had been in labour and had felt as if she were intoxicated under the influence of the medication. She had neither had the strength nor the will to ask what the documents contained. She remembers a doctor who was present saying that she would die unless she signed the papers. She had therefore not objected to signing the papers with the assistance of the staff member. The applicant's child was born at 9.35 a.m. Another section of the medical records, dated 11 May 2001, indicates that the child was delivered by caesarean section.

According to a surgical report in the applicant's medical file, in the course of the operation the doctors discovered a large fissure running the length of the scar from a previous caesarean section on the applicant. After the child's delivery, the doctors discovered a rupture of the applicant's uterus. It had probably been the result of the secondary healing of a suture which had become loose during the course of the applicant's second pregnancy. As a result, the applicant's life had been at risk. The doctors had therefore considered a hysterectomy as a radical solution to the problem. However, in view of the patient's age, they had preferred to carry out reconstructive surgery despite the risk of complications. Since the applicant's uterus was severely damaged, it had been considered certain that a similar situation would occur in any future pregnancy and would pose a grave risk to the life of the applicant and her foetus. After the reconstructive surgery, the doctors had therefore decided to sterilise the applicant in accordance with the request she had made prior to the operation. The report indicates that no complications occurred in the course of the surgery. The applicant was released from the Gelnica Hospital on 11 May 2001.

The medical records also contain a copy of a decision of the sterilisation commission established at the Gelnica Hospital. The decision was dated 15 May 2001 and indicates that the commission approved, ex post facto, the applicant's sterilisation, which had been carried out at her request.

According to the document, a sterilisation procedure had been justified within the meaning of the Sterilisation Regulation 1972 in view of the applicant's health. At the time of the delivery and sterilisation procedure the applicant was underage. She reached the age of majority ten days later. Her mother, who was the applicant's representative while she was under the age of majority, was not present during the delivery and she had not been asked to give her consent to the sterilisation. The applicant learned about the operation and its nature in December 2002, when her lawyer reviewed her medical file in the Gelnica Hospital.

According to the applicant, as a result of the operation, she has suffered from serious physical and mental health problems. The applicant's psychological problems were recognised by a psychologist in a statement dated 7 September 2007. She maintained that she had been ostracised by her husband and the Roma community because of her infertility.

With a view to describing the overall situation and context in which she had been sterilised, the applicant submitted that she had experienced inferior treatment during her stay at the Gelnica Hospital. In particular, the applicant indicated that patients in the gynecological and obstetrics ward had been segregated according to their ethnic origin. The applicant had been accommodated in a "Gypsy room" separated from women who were not of Roma ethnic origin. The applicant

considered that her ethnic origin had played a decisive role in the decision of the medical staff to sterilise her. Citing a number of international reports, the applicant submitted that discrimination against Roma in Slovakia extended to all facets of their lives. The Government were in disagreement with the applicant's allegations.

On 8 December 2004 the applicant sued the Gelnica Hospital for damages before the Spišská Nová Ves District Court. Apart from the relevant provisions of the Slovakian Civil Code, she also relied on Articles 3, 8 and 12 of the Convention. The applicant argued that she had been sterilised contrary to the relevant provisions of Slovak law, as her mother had not given consent to the operation. It had also run counter to relevant international human rights standards. The applicant claimed the equivalent of 17,310 euros (EUR) in damages and also claimed reimbursement of her costs. Following the privatisation of the Gelnica Hospital, the District Court substituted the Gelnica Municipality as the defendant in the proceedings on 25 May 2005.

On 10 February 2006 the District Court dismissed the applicant's action. With reference to the evidence available, it concluded that the operation had been necessary with a view to saving the applicant's life. As such, it could have been performed without her prior consent. On 28 March 2006 the applicant appealed. She maintained, inter alia, that her ethnic origin had motivated the doctors to sterilise her. On 28 February 2007 the Košice Regional Court quashed the first-instance judgment. It expressed the view that the sterilisation operation on the applicant could not be considered as life-saving surgery and ordered the first-instance court to re-examine the case in light of that opinion.

An expert opinion submitted to the District Court indicated that during the caesarean section the doctors had discovered an extensive injury to the applicant's uterus. A hysterectomy, which they had originally considered carrying out, would have been, in the expert's view, acceptable medical practice in the circumstances. The expert considered the alternative solution which the doctors had chosen, namely reconstructive surgery of the uterus, as an intervention which had saved the applicant's life in the circumstances. However, the subsequent sterilisation of the applicant had not been indispensable with a view to preventing an imminent danger to her life.

On 7 September 2007 a psychology Centre conducted an examination of the applicant and issued a report at the request of the applicant's representative. It was noted that during the examination the applicant had indicated that there was conflict in her marriage, as her husband frequently reproached her for her inability to have more children. The applicant had further indicated that she suffered from stomach pains, loss of appetite and breathing problems. The psychologist concluded that the depressive and pessimistic moods from which the applicant suffered were possibly related to her inability to conceive. In her submissions to the District Court the applicant also relied on views expressed by several experts on sociology and Roma culture indicating that the inability to have children strongly diminished the position of a woman and her family in the Roma community. On 14 May 2008 the District Court ordered the defendant to pay the equivalent of EUR 1,593 to the applicant. It further held that none of the parties were entitled to have the costs of the proceedings reimbursed.

The District Court established that the medical staff had failed to obtain informed consent to the applicant's sterilisation prior to the operation. At the relevant time, the applicant had been underage and her legal representative had not signed the request. It determined the amount of compensation with reference to Regulation 32/1965. The court did not consider it necessary to avail itself of its right to increase the award of compensation above the rates indicated in the regulation. It noted

that the applicant had married the father of her children since bringing the action and had not shown that her position in the Roma community had deteriorated. By an additional judgment of 11 June 2008 the District Court formally rejected the remainder of the applicant's claims and ordered the defendant to reimburse the State's costs incurred in the proceedings. On 23 June 2008 the applicant appealed. She argued that the compensation awarded to her was insufficient in view of the scope and consequences of the damage which she had suffered, and complained that the District Court had dismissed her request for reimbursement of her legal costs.

On 27 October 2009 the Regional Court upheld the first-instance judgment on the merits to the extent that it was challenged by the applicant. The Regional Court referred to the opinion of an expert indicating that a third pregnancy would be highly risky for both the applicant and the foetus. If the applicant had not agreed to her sterilisation, she would have been required to confirm in writing that she had been advised that any future pregnancy would threaten her life. Albeit that it could not be established with absolute certainty that such a situation would occur, the existence of such a risk nevertheless justified the conclusion that an increase in compensation under sections 6(2) and 7(3) of Regulation 32/1965 was not justified in the circumstances. The Regional Court further quashed the first-instance decision as to the costs of the proceedings and ordered the District Court to re-examine the issue.

On 26 August 2008 the applicant filed a criminal complaint with the District Prosecutor's Office in Spišská Nová Ves. She alleged that the sterilisation operation had been unlawful and had caused her serious bodily harm. The applicant also relied on her rights under the Convention. On 20 October 2008 the District Directorate of the Office of the Judicial and Criminal Police in Spišská Nová Ves dismissed the applicant's complaint. It concluded that no offence had been committed, as the medical staff involved had acted with a view to protecting the applicant's life and health. Furthermore, it was still possible for the applicant to conceive by means of in vitro fertilisation. On 14 November 2008 the Spišská Nová Ves District Prosecutor's Office dismissed the applicant's complaint against that decision. On 14 January 2009 the Košice Regional Prosecutor's Office quashed the lower prosecutor's decision as being premature.

Subsequently, the police started a criminal investigation. They took statements from the applicant, her mother and a doctor from the Gelnica Hospital. The doctor stated that complications had occurred in the course of the delivery, as a result of which the applicant's life had been at risk. It had therefore been decided to perform a sterilisation, with the applicant's approval, as a life-saving procedure. In contrast, an expert provided an opinion to the effect that it had not been necessary to sterilise the applicant during the delivery with a view to saving her life. Both the doctor and the expert concurred that the operation had not prevented the applicant from becoming pregnant by means of assisted reproduction. On 31 July 2009 the police closed the investigation, concluding that no criminal offence had been committed.

On 16 September 2009 the Spišská Nová Ves District Prosecutor's Office dismissed the applicant's complaint against that decision. It held, with reference to an expert opinion, that the operation had become necessary as, in the course of the delivery, extensive bleeding had occurred due to a rupture of the applicant's uterus. In that situation, the doctors had had to take a decision immediately. After consultation with the head physician, they had decided not to carry out a hysterectomy, which was normally indicated in similar situations, but had elected to reconstruct the uterus with a view to preserving it. The surgical team had then carried out a sterilisation by means of tubal ligation so that the applicant could lead a normal life. The applicant had not suffered irreversible damage to her health and she had given her consent to the procedure. She had reached the age of majority

only ten days thereafter. Prior to the delivery she had lived with her partner and had taken care of one child. On 18 November 2009 the Košice Regional Prosecutor's Office, in response to a complaint by the applicant, upheld the findings reached by the police and the District Prosecutor's Office. The letter informing the applicant of this decision further stated that the above-mentioned findings of the civil courts in relation to the case did not bind the prosecuting authorities.

At the applicant's request, a prosecutor from the General Prosecutor's Office reviewed the case. In a letter of 8 March 2010 the prosecutor admitted that the operation had not been consented to by the applicant's representative, contrary to the relevant law. That did not mean, however, that the doctors had committed an offence. In particular, they had acted in good faith with a view to protecting the applicant, as they had considered the operation necessary in view of the applicant's health. The public prosecutor noted that the applicant had signed the request while experiencing labour pains and that her sterilisation had not been a life-saving intervention. The provisions of the Sterilisation Regulation 1972 had been interpreted and applied for many years in such a manner that, where it was medically indicated and where the prior agreement of the woman concerned was obtained, sterilisation was carried out immediately after delivery by means of caesarean section.

On 18 January 2010 the applicant lodged a complaint with the Constitutional Court. She alleged a breach, in the above civil and criminal proceedings, of her rights under Articles 3, 8, 13 and 14 of the Convention, of several provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, of the Convention on the Elimination of All Forms of Discrimination against Women, and a number of constitutional provisions. As regards the civil proceedings, she also alleged a breach of Article 6 of the Convention.

The Constitutional Court dismissed the complaint on 5 May 2010. It held that the prosecuting authorities involved could not be held liable for the alleged breach of the applicant's substantive rights which had primarily resulted from her sterilisation in the Gelnica Hospital. As to the civil proceedings, the Constitutional Court found that the Košice Regional Court had given sufficient and relevant reasons for its judgment of 27 October 2009, which had therefore not been arbitrary. There was no appearance of a breach of Article 6 § 1 of the Convention in the proceedings leading to that judgment. The Constitutional Court further found no causal link between the Regional Court's judgment and the other rights on which the applicant had relied.

Before the European Court of Human Rights, the applicant complained that she had been discriminated against on the grounds of her race/ethnic origin and sex in the enjoyment of her rights under Articles 3, 8 and 12 of the Convention. She alleged a violation of Article 14 of the Convention, which provides:

> *The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

The applicant reiterated that her race/ethnic origin had played a determining role in her sterilisation and that she had also been discriminated against on the grounds of her sex in that respect. The Government was in disagreement with the applicant.

The applicant alleged a breach of Article 14 read in conjunction with Articles 3, 8 and 12 of the Convention. In the circumstances of the case, the Court considers it most natural to entertain the discrimination complaint in conjunction with Article 8, as the interference in issue affected one of

her important bodily capacities and entailed numerous adverse consequences for, in particular, her private and family life.

The Court has previously found that the practice of sterilization of women without their prior informed consent affected vulnerable individuals from various ethnic groups. In view of the documents available, it cannot be established that the doctors involved acted in bad faith, that the applicant's sterilization was a part of an organized policy, or that the hospital staff's conduct was intentionally racially motivated. At the same time, the Court finds no reason for departing from its earlier finding that shortcomings in legislation and practice relating to sterilizations were liable to particularly affect members of the Roma community. In that connection, the Court has found that the respondent State failed to comply with its positive obligation under Article 8 of the Convention to secure to the applicant a sufficient measure of protection enabling her, as a member of the vulnerable Roma community, to effectively enjoy her right to respect for her private and family life in the context of her sterilization. In these circumstances, the Court does not find it necessary to separately determine whether the facts of the case also gave rise to a breach of Article 14 of the Convention.

The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. She submitted that she had been sterilised at an early stage of her reproductive life and that the procedure had had lasting consequences for her. The Government considered the sum claimed excessive. In case of a finding of a breach of the applicant's rights, they submitted that any award should be proportionate to the circumstances of the case.

The Court notes that the applicant obtained partial redress at the domestic level. Having regard to the circumstances of the case seen as a whole and deciding on equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage.

The respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts: (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

7. Conclusion

This study involved an x-ray on the enforcement of the fundamental right to the prohibition of discrimination against patients under the Fundamental Rights Enforcement Procedure in the context of medical negligence, error and malpractice. In the course of the x-ray, it was shown that patients have the right to the prohibition of discrimination against patients and that this right is protected under the Fundamental Right Enforcement Procedure Rules. It was demonstrated that medical negligence, error and malpractice are conduct that violates the right to the prohibition of discrimination against patients in Nigerian hospitals. In the main, it is recommended that the Fundamental Rights Enforcement Procedure Rules be used by Legal Practitioners as a medical malpractice claims regime to enable the enforcement of the right to the prohibition of discrimination against patients in Nigeria.