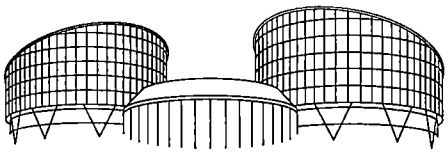

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF S.F.K. v. RUSSIA

(Application no. 5578/12)

JUDGMENT

STRASBOURG

11 October 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of S.F.K. v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Georges Ravarani, *President,*
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Frédéric Krenc,
Mikhail Lobov, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 5578/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms S.F.K. ("the applicant"), on 18 January 2012;

the decision to give notice to the Russian Government ("the Government") of the complaints under Articles 3 and 8 of the Convention, and Article 13 in conjunction with Articles 3 and 8, concerning the forced abortion performed on the applicant and to declare the remainder of the complaints inadmissible;

the decision not to disclose the applicant's name;

the parties' observations;

Having deliberated in private on 5 July and 6 September 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. In the present case, the applicant, a 20-year-old mother-to-be at the time of the events, was forced by her parents to have her pregnancy terminated after her partner and would-be father of the child was arrested on suspicion of having committed a violent crime. The medical intervention was carried out by a duty doctor at a public hospital.

THE FACTS

2. The applicant was born in 1989 and lives in the Republic of Bashkortostan. She was represented before the Court by Ms O. Sadovskaya, a lawyer practising in Nizhniy Novgorod.

3. The Government were initially represented by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in that office, Mr M. Vinogradov.

4. The facts of the case may be summarised as follows.

5. At the material time the applicant, a distance-learning student, lived with her parents. In 2009 she met Mr G., and some time later they started cohabiting, having, according to the applicant, entered into a marriage in accordance with Muslim traditions.

I. THE APPLICANT'S ABORTION

6. On 27 April 2010 Mr G. was arrested on suspicion of having committed a violent criminal offence.

7. On 28 April 2010, during a routine medical check-up, the applicant was informed that she was in the fourth or fifth week of pregnancy. Her parents, who were opposed to her relationship with Mr G., insisted that she terminate the pregnancy. According to the applicant, her father beat her.

8. On 1 May 2010 the applicant's parents took her to a hospital to undergo an abortion; the applicant only found out that this was their intention on the way to the hospital. According to the applicant, she protested strongly and cried, but her father hit her on the head and threatened to beat her and throw her out of the car in order to make her miscarry. The applicant managed to send a text message to her brother, informing him of the situation. It appears that her brother then alerted the police (see paragraph 13 below).

9. The applicant and her parents arrived at the maternity department of the municipal State-financed Central District Hospital of the Tuymazy District of Bashkortostan (*Муниципальное бюджетное учреждение здравоохранения «Центральная районная больница» Туймазинского района Республики Башкортостан* – hereinafter "the Tuymazy Central Hospital"). According to the applicant, she had clearly stated to a nurse and a gynaecologist, who were on duty that day, that she did not wish to terminate her pregnancy. The doctor and the nurse had then attempted to persuade her to have an abortion, but she had strongly objected.

10. The doctor and the nurse then accompanied the applicant and her mother to an operating theatre. The nurse and the applicant's mother left the room, and the applicant asked the doctor to let her continue with the pregnancy, but to tell her parents that she had allowed the abortion to be performed; the doctor replied that she was unable to do so, as the applicant would not be able to keep her pregnancy a secret, and the lie would be exposed. The applicant's mother then entered the room and stated that the applicant's father, who was waiting outside, would kill both of them (that is to say, the applicant and her mother) if she refused to undergo the abortion. According to the applicant, she had seriously feared for her life, and therefore she had relented and let the doctor, assisted by the nurse, perform the abortion. The applicant's parents took her home immediately after the surgery.

11. Neither before nor after the abortion did the applicant receive any information, sign any documents or undergo any medical examinations or tests.

12. In the context of the proceedings before the Court, the applicant submitted medical documents. According to an extract from her medical file, she had had two miscarriages, one in 2015 and the other in 2016; in 2017 she was diagnosed with infertility and inability to carry a pregnancy to term. A report on a psychological examination of the applicant dated 20 January 2017 stated that she was anxious and suffered from post-traumatic stress disorder provoked by the forced abortion and the ensuing inquiries into that event. A medical expert report of 6 March 2017 stated that the forced interruption of a pregnancy without the patient's informed consent should be classified as causing serious damage to the patient's health. The report also stated that the interruption of the applicant's pregnancy in 2010 could have been one of the factors that triggered her miscarriages in 2015 and 2016, but that other factors (genetic predisposition, hormones and infection) should likewise be taken into consideration; it also called into question the applicant's diagnosis of infertility.

II. PRE-INVESTIGATION INQUIRIES

13. On 1 May 2010, after the applicant and her parents had returned from hospital, the police came to their home address in the context of a check (*проверка*) that the police had initiated after having received a telephone call (registered under no. 723) from the applicant's brother, who had complained that his sister had been taken by her parents for a forced abortion (see paragraph 8 above).

14. An investigating officer interviewed the applicant, her parents and her brother.

15. The applicant's parents confirmed that following Mr G.'s arrest, they had decided that it would be better for their daughter to terminate her pregnancy and had therefore taken her to the Tuymazy Central Hospital that day. The applicant's father then stated that he did not know the identity of the doctor who had performed the abortion, as it was his wife who had negotiated with the doctor. The applicant's mother refused to disclose the doctor's identity. The applicant's brother confirmed the applicant's version of events. He stated that he did not know who and where had performed the abortion.

16. On the same day, the applicant lodged a formal complaint in which she requested that criminal proceedings be instituted against her parents, who had forced her to terminate her pregnancy. In an interview with the investigating officer she confirmed that she had not wanted to have the abortion, and had forcefully informed both her parents and the personnel of the Tuymazy Central Hospital thereof; nevertheless, her pregnancy had been

terminated by a duty doctor whom the applicant did not know but whom the others had addressed by her first name, F.

17. On the same date the applicant underwent a medical examination, which showed signs of a terminated pregnancy: traces of injections in the area of the uterine cervix and scattered blood-tinged discharge from the uterus.

18. The pre-investigation inquiry lasted from 1 May until 3 June 2010. On the latter date the investigating officer decided not to institute criminal proceedings against the applicant's parents in the absence in their actions of the constituent elements of an offence punishable under Article 126 of the Russian Criminal Code (see paragraph 42 below); the investigating officer stated that the parents had "had no malicious intent" to cause the applicant any harm and that they had "believed that they had acted in the best interests of their child".

19. On 15 June 2010 another pre-investigation inquiry was initiated under Article 123 of the Russian Criminal Code, and some time later, it was continued under Article 111 of that Code as well (see paragraph 42 below).

20. During the course of the inquiry, the gynaecologist who had been on duty in the maternity department of the Tuymazy Central Hospital on 1 May 2010 was identified as Ms F. Kh. The latter denied knowing or having ever met the applicant, or having performed surgery to terminate the applicant's pregnancy.

21. A report dated 8 July 2010 on a forensic medical examination of the applicant confirmed the findings of the medical examination of 1 May 2010 (see paragraph 17 above), but failed to establish the degree of physical harm suffered by her; in that connection, the report referred to the fact that the applicant's medical file from the Tuymazy Central Hospital was missing, and to paragraph 27 of Decree no. 194 n of 27 April 2008 of the Russian Ministry of Healthcare (see paragraph 44 below).

22. The inquiry lasted until 13 September 2010, when the investigating officer took the decision not to institute criminal proceedings against Ms F. Kh. owing to the absence in her actions of any of the constituent elements of offences punishable under Articles 111 and/or 123 of the Russian Criminal Code (see paragraph 42 below). The decision stated, in particular, that "on their face" Ms F. Kh.'s actions had displayed certain elements of the above-mentioned offences. However, for those actions to have constituted an offence punishable under Article 123 of the Russian Criminal Code, they would have had to have been undertaken by a person without a higher medical education in the relevant specialisation, whereas Ms F. Kh. had had such an education and therefore could not be regarded as having perpetrated the offence in question. Moreover, an abortion could only have been regarded as "illegal" within the meaning of Article 123 of the Russian Criminal Code if it had not been performed in a specialist medical institution, whereas in the present case the applicant's pregnancy had been terminated in the maternity department of the Tuymazy Central Hospital. Lastly, the abortion would have

been considered "illegal" in the event that there had been medical counter-indications to it – for instance, if the term of the pregnancy had already exceeded twelve weeks, whereas the applicant had been approximately five weeks pregnant at the time of the abortion. The decision also stated that, as the report of 8 July 2010 on the applicant's forensic medical examination (see the previous paragraph) had failed to establish the degree of physical harm inflicted on her, it was also impossible to prosecute Ms F. Kh. on the basis of Article 111 of the Russian Criminal Code.

23. In a report dated 13 September 2010, the investigating officer stated that the Tuymazy Central Hospital had no records regarding the applicant's stay there and that no medical file had ever been drawn up in respect of her.

24. An additional pre-investigation inquiry was opened on 2 December 2016, after notice of the present application had been given to the respondent Government, and was closed on 15 December 2016 with a decision by the investigating officer not to institute criminal proceedings in connection with the incident of 1 May 2010. The relevant decision essentially restated the reasons of the investigating officer's decision of 13 September 2010 (see paragraph 22 above).

III. THE APPLICANT'S COMPLAINT TO THE PROSECUTOR'S OFFICE

25. On an unspecified date, the applicant also complained about the incident of 1 May 2010 to the Tuymazy inter-district prosecutor's office ("the Tuymazy prosecutor's office").

26. On 23 November 2010 the Tuymazy prosecutor's office sent the chief medical officer of Tuymazy Central Hospital a note regarding the elimination of violations of healthcare legislation (*представление об устранении нарушений законодательства*). The note stated that the termination of the applicant's pregnancy had been carried out without her consent, in breach of the relevant law, and that before the abortion, in breach of relevant medical regulations, she had not undergone the necessary medical examinations and no medical tests had been carried out, and that after the abortion the state of her health had not been monitored for at least four hours, which may have led to undesirable consequences for her health. The note urged the hospital's chief medical officer to take the steps necessary to hold those responsible liable to disciplinary measures, to "enhance the personal accountability" of all those employees responsible for the incident in question, and to ensure that no such incidents took place in the future.

27. In a letter of 9 December 2010 the chief medical officer of the Tuymazy Central Hospital informed the Tuymazy prosecutor's office that a general meeting of the hospital staff had been held on 2 December 2010, and that during that meeting all those in attendance had been made aware of the provisions of the relevant healthcare legislation. The letter also stated that in

the absence of any documents confirming the illegal termination of the applicant's pregnancy in the Tuymazy Central Hospital, and in view of the fact that no criminal charges had ever been brought against Ms F. Kh. to that effect, it was impossible to hold her liable in disciplinary proceedings.

IV. CIVIL PROCEEDINGS

A. Proceedings before the first-instance court

28. On 23 March 2011 the applicant lodged a claim against the Tuymazy Central Hospital with the Tuymazy District Court. She sought compensation for non-pecuniary damage in respect of the severe mental and physical suffering she had endured in connection with her forced abortion. The applicant pointed out that the termination of her pregnancy had been carried out against her will, in breach of section 36 of the Healthcare Act (see paragraph 43 below). She stressed that her parents and the medical personnel of the Tuymazy Central Hospital had exercised physical and moral pressure on her in a situation in which she had made it clear that she had not wished to terminate her pregnancy. She also stressed that no medical history or record of the surgery or her stay in the hospital had ever been drawn up. The applicant further pointed out that, in breach of a number of the relevant rules and regulations of the Russian Ministry of Healthcare, she had not been afforded adequate medical assistance either before or after the abortion (including mandatory medical examinations and tests and follow-up examinations after the surgery), which could have resulted in the development of unexpected health complications. The applicant also complained that the forced abortion and the conditions in which it had been performed had constituted inhuman treatment, in breach of Article 3 of the Convention, and had violated her right to respect for her private life, including her right to be a mother, under Article 8 of the Convention. In addition, she argued that she had been deprived of effective remedies in respect of the violations alleged, in breach of Article 13 of the Convention, as Russian law had given her no possibility of holding those responsible criminally liable.

29. The applicant attached the Tuymazy prosecutor's office's note of 23 November 2010 (see paragraph 26 above) to her claim.

30. At the hearing before the Tuymazy District Court the applicant maintained her claim and reiterated her version of events. She stated, in particular, that the abortion surgery had been very painful, and that ever since then she had been suffering constant, severe abdominal pain.

31. A representative of the Tuymazy Central Hospital disagreed with the applicant's claim and stated that in the absence of any relevant record, there was no evidence that she had undergone any abortion at the hospital on 1 May 2010. The representative confirmed that Ms F. Kh. had been a doctor on duty on the date in question.

32. Ms F. Kh. denied knowing the applicant or having performed any abortions on the date in question.

33. The applicant's parents confirmed that they had taken the applicant to the Tuymazy Central Hospital on 1 May 2010 for an abortion, but refused to disclose the identities of the medical personnel with whom they had negotiated and communicated.

34. In a judgment of 11 May 2011, the Tuymazy District Court rejected the applicant's claim as groundless. The court found it established, with reference to the material gathered during the police's preliminary check, including the medical report of 1 May 2010 (see paragraphs 13-23 above), that the applicant's pregnancy had been terminated and that the abortion had been performed in the maternity department of the Tuymazy Central Hospital.

35. It further held as follows:

> "[The applicant] has not submitted evidence proving that she sustained any non-pecuniary damage on account of interference with her private life or evidence proving that the termination of her pregnancy was carried out by means of inhuman and degrading treatment, or that the abortion caused any harm to her health.
>
> No evidence has been submitted to the court proving that the surgery was carried out forcibly, against [the applicant's] will. [The applicant's oral and written] statements given during the police check and before the court reveal that she gave her consent to the abortion, as she feared her father's threats, from which it follows that her consent to the abortion was free; no evidence has been found that the termination of [the applicant's] pregnancy in the [Tuymazy Central Hospital] was forced."

36. On the same day the Tuymazy District Court delivered a special ruling (*частное определение*) addressed to the chief medical officer of the Tuymazy Central Hospital. The ruling drew that official's attention to breaches of the relevant medical rules and regulations by the medical staff of that hospital during the abortion surgery performed in respect of the applicant. The ruling stated, in particular, that during the examination of the applicant's claim of 23 March 2011 against the Tuymazy Central Hospital it had been established that Ms F. Kh., a doctor at that hospital, had terminated the applicant's pregnancy and that prior to that surgery, the applicant's informed consent had not been received, the applicant had not undergone a mandatory medical examination and no mandatory medical tests had been performed; this could have had irreversible consequences for the applicant's health.

B. Proceedings before the appellate court

37. The applicant lodged an appeal against the first-instance judgment with the Supreme Court of the Republic of Bashkortostan ("the Bashkortostan Supreme Court").

38. On 18 July 2011 the Bashkortostan Supreme Court overturned the judgment of 11 May 2011 and delivered a new decision. It upheld the factual findings made by the Tuymazy District Court (see paragraph 34 above). It

also took into account that the applicant's father had confirmed in the context of civil proceedings that he had taken her to the hospital in issue for an abortion.

39. The appellate court further referred to the relevant provisions of the healthcare legislation, which stated that a person's explicit consent was a prerequisite for any medical intervention, that a woman was free to decide whether or not to be a mother, and that the termination of a pregnancy could only be performed with the consent of the woman concerned. The court further pointed out that the relevant regulations of the Russian Ministry of Healthcare imposed on medical personnel the obligation to obtain a patient's written consent to an abortion and to take a number of steps before and after the abortion, including performing medical examinations and tests in respect of the patient before such surgery and monitoring the patient for at least four hours after such surgery.

40. The Bashkortostan Supreme Court went on to observe that the defendant hospital had not adduced any evidence proving that the applicant had given her free consent to the abortion. Moreover, as had been pointed out in the Tuymazy District Court's special ruling of 11 May 2011 (see paragraph 36 above), the necessary pre- and post-abortion procedures had not been observed in respect of the applicant. The appellate court then referred to Article 8 of the Convention and concluded that the health professionals' actions at the hospital had breached sections 32 and 36 of the Healthcare Act (see paragraph 43 below) and relevant regulations of the Russian Ministry of Healthcare, had violated the applicant's right to respect for her private life and her right to be a mother and had caused her psychological suffering.

41. The Bashkortostan Supreme Court considered it appropriate to award the applicant 20,000 Russian roubles (approximately 500 euros (EUR) at the time) in respect of the non-pecuniary damage she had sustained, stating that there had been no serious consequences for her health.

RELEVANT LEGAL FRAMEWORK

I. RUSSIAN CRIMINAL CODE

42. The Russian Criminal Code, as in force at the relevant time, provided, in so far as relevant, as follows:

Article 111: Intentional infliction of serious harm to a person's health

"1. Intentional infliction of serious harm to a person's health ... entailing the termination of a pregnancy... shall be punishable by ... imprisonment ..."

Article 123: Performance of an illegal abortion

"1. The performance of an abortion by a person without a higher medical education in the relevant specialisation shall be punishable by a fine ... or forced labour ... or correctional labour ...

...

3. The same offence which, through negligence, causes a victim's death or serious harm to her health shall be punishable by forced labour ... or imprisonment ..."

Article 126: Kidnapping

"1. Kidnapping shall be punishable by forced labour ... or imprisonment ...

2. The same offence committed:

(a) by a group of persons after their prior agreement;

...

(c) with the use of violence that endangers [the victim's] life or health, or with the threat of such violence;

...

(f) in respect of a pregnant woman, if the fact of her pregnancy is known to those responsible ...;

shall be punishable by ... imprisonment ..."

II. HEALTHCARE ACT

43. The relevant parts of the Basic Principles of Public Health Law (Federal law no. 5487-1 dated 22 July 1993 – hereinafter "the Healthcare Act"), as in force at the material time, provided as follows:

Section 32: Consent to medical intervention

"The informed, free consent of [the person concerned] is a prerequisite for medical intervention ..."

Section 36: Termination of pregnancy

"Each woman has a right to independently decide whether to be a mother. The termination of a pregnancy may be carried out with the woman's consent for any reason if the term of that pregnancy has not exceeded twelve weeks; in the light of social factors, if the term of her pregnancy has not exceeded twenty-two weeks; and on account of medical necessity, at any term of pregnancy.

...

The illegal termination of pregnancy shall carry criminal liability under the law of the Russian Federation".

III. MINISTERIAL DECREE

44. Decree no. 194 n, dated 24 April 2008, of the Russian Ministry of Healthcare and Social Development provides as follows, in so far as relevant:

> "27. The degree of harm caused to a person's health shall not be established if:
>
> – from a medical examination of the person, or the study of a case file or medical documents it is not possible to determine the essence of any harm to that person's health;
>
> – at the time of a medical examination of the person, the consequences of any harm to the person's health not endangering the person's life are unclear;
>
> – a person in respect of whom a forensic medical examination has been ordered has failed to appear and cannot be brought for a forensic medical examination or refuses to undergo a medical examination;
>
> – medical documents, including the results of clinical and laboratory research, are missing or do not contain sufficient information, the absence of which makes it impossible to establish the nature and degree of harm [caused] to a person's health."

IV. LEGAL STATUS OF HEALTHCARE INSTITUTIONS AND PROVIDERS

45. At the material time, the relevant provisions relating to the legal status and functioning of healthcare institutions and their personnel were set forth in various legal acts, including the Russian Civil Code; Law on Non-Commercial Organisations (Federal Law no. 7-FZ of 12 January 1996); the Healthcare Act (see paragraph 43 above); Law on Medical Insurance of Citizens in the Russian Federation (Federal law no. 1499-1 of 28 June 1993); Law on Licensing of Particular Activities (Federal Law no. 128-FZ of 8 August 2001).

46. According to the above-mentioned legislation, healthcare institutions, including hospitals, could be founded by the State, a region, or a municipality (public healthcare institutions) or by a private person (private healthcare institutions).

47. Public healthcare institutions were non-commercial organisations created for providing services in the relevant sphere. They were financed by their founders from the State (as regards federal institutions), regional (as regards regional institutions) or municipal (as regards municipal institutions) budgets.

48. Every healthcare institution, whether public or private, was to be registered as a separate legal entity. It could acquire and exercise rights and bear obligations, to be a claimant and a defendant in proceedings before a court.

49. Founders of public healthcare institutions retained ownership of the property assigned to any such institution, but the latter had the right of operational management over that property. A public healthcare institution

was liable for its obligations within the limits of that property. If an institution's own property was insufficient, its founders bore subsidiary liability for such obligations.

50. Every healthcare institution, whether public or private, could only start operating after receiving a State licence for its relevant activities. The procedure for obtaining a State licence was the same for any healthcare institution, whether public or private.

51. Every healthcare institution, whether public or private, was to comply with the standards and procedures set by the competent State authorities in the healthcare sphere.

52. Provision of services in the healthcare sphere was financed through the programme of compulsory health insurance as well as from the State, regional and municipal budgets. Medical care in the context of the compulsory health insurance could be provided by any healthcare institution, whether private or public. Those institutions were independent economic entities which provided their services on the basis of contracts with the relevant health insurance organisations.

53. The head of a public healthcare institution was appointed and dismissed from office by the relevant public authority. In particular, the head of a municipal hospital was appointed and dismissed from office by the municipal authorities. The head of a public healthcare institution employed and dismissed other personnel of that institution.

54. In any healthcare institution, whether public or private, healthcare professionals could only exercise their professional activity (provide medical assistance) if they met a number of statutory requirements. In particular, they were to have a higher or secondary medical education in Russia, to have a relevant diploma and title, to have a specialist certificate and a license for activity in the field of medical assistance.

THE LAW

I. THE GOVERNMENT'S OBJECTION CONCERNING THE SIX-MONTH TIME-LIMIT

55. The Government argued that, in the present case, the final domestic decision that had triggered the running of the six-month time-limit was the Bashkortostan Supreme Court's decision of 18 July 2011 (see paragraph 38 above). They pointed out that the application form was dated 20 April 2012 and argued that the application had thus been lodged outside the six-month time-limit, which had expired on 18 January 2012.

56. The applicant insisted that she had complied with the requisite time-limit, as she had submitted her first letter describing the facts and her complaints on 18 January 2012.

57. According to the Court's case-law, before the amended Rule 47 of the Rules of Court entered into force on 1 January 2014, the date of introduction of the application was as a rule considered to be the date of the first communication from the applicant setting out – even summarily – the object of the application, on condition that a duly completed application form was then submitted within the time-limit fixed by the Court (see *Malysh and Ivanin v. Ukraine* (dec.), nos. 40139/14 and 41418/14, 9 September 2014). The Court observes that on 18 January 2012 the applicant sent a preliminary letter which set out the facts and complaints of the alleged violations of her Convention rights; eventually, on 20 April 2012, she submitted a completed application form. It is thus satisfied that the present application was lodged in compliance with the six-month requirement under Article 35 § 1 of the Convention. The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicant complained that her abortion and the manner in which it had been carried out, including by the use of coercion, and the absence of medical care of the requisite standard before and after the abortion had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Applicability of Article 3

59. The Government made no submissions on this point.

60. The applicant maintained that her pregnancy had been aborted against her will and she had been forced by her parents to undergo the procedure. She asserted that the health professionals involved had been aware of those circumstances but rather than providing her with protection and informing the law-enforcement agencies, they had performed the abortion as requested by her parents. She argued that she had therefore been subjected to treatment falling within the scope of Article 3 of the Convention. She referred to somatic and psychological after-effects which she had suffered in connection with the incident in question (see paragraph 12 above).

61. The Court observes that cases concerning medical interventions, including those carried out without the consent of the patient, will generally lend themselves to be examined under Article 8 of the Convention (see, for instance, *Solomakhin v. Ukraine*, no. 24429/03, § 33, 15 March 2012; *Csoma v. Romania*, no. 8759/05, § 45, 15 January 2013; and *L.F. v. Ireland* (dec.),

no. 62007/17, § 95, 10 November 2020, with further references). In a number of cases the Court has nonetheless accepted that under certain conditions medical interventions can reach the threshold of severity to fall within the scope of Article 3 of the Convention.

62. In particular, the Court has held that a medical intervention to which a person was subjected against his or her will may be regarded as treatment prohibited by Article 3 of the Convention (see, for instance, *Akopyan v. Ukraine*, no. 12317/06, § 102, 5 June 2014, and the cases cited therein). Thus, the Court considered that forced gynaecological examinations (virginity tests) to which two applicants, then aged 16 and 19, had been subjected while in police custody constituted severe ill-treatment. It reached that conclusion taking into account the circumstances of the case as a whole, in particular the virginity tests carried out without any medical or legal necessity at the start of the applicants' detention in custody and the post-traumatic stress disorders from which both applicants had subsequently suffered, as well as the serious depressive disorder experienced by the second applicant (see *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 96, 17 March 2009).

63. The Court has also found that the sterilisation of mentally competent adults without their full and informed consent, when there was no immediate threat to their lives, amounted to treatment contrary to Article 3 of the Convention. It reached that conclusion taking into account the particular circumstances of the cases concerned, in particular, their young age and the fact that they were at an early stage of their reproductive life; and the serious medical and psychological after-effects of the sterilisation procedure (see *V.C. v. Slovakia*, no. 18968/07, §§ 116-19, ECHR 2011 (extracts); *N.B. v. Slovakia*, no. 29518/10, §§ 79-80, 12 June 2012; and *I.G. and Others v. Slovakia*, no. 15966/04, §§ 123-25, 13 November 2012).

64. In this connection, the Court reaffirms that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see, for instance, *V.C. v. Slovakia*, cited above, § 101). The Court has confirmed the applicability of the "threshold of severity" test to ill-treatment inflicted by private individuals (see *Ćwik v. Poland*, no. 31454/10, § 66, 5 November 2020). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of

similar unrebutted presumptions of fact (see, among other authorities, *Akopyan*, cited above, § 103).

65. In the present case, it was established at the domestic level that the applicant's pregnancy had been aborted and that this medical intervention had been performed by the medical personnel of a public hospital (see paragraphs 17, 34 and 38 above). It was furthermore established at the national level that that medical intervention had been carried out in breach of the applicable medical standards, as well as of the rules and safeguards envisaged in the domestic law. In particular, the procedure in question remained unrecorded and was performed in the absence of the applicant's express, free and informed consent; moreover, she was not provided with the necessary medical supervision and care either before or after the intervention, which put her health at risk (see paragraphs 26, 36 and 40 above).

66. The Court further observes that the applicant, consistently and with perseverance, complained to various domestic authorities that her pregnancy had been aborted against her will; that she had been forced by her parents to undergo that procedure; and that she had informed the relevant medical personnel of the situation (see paragraphs 16, 25, 28 and 30 above). Her version of events was confirmed by her brother, and her parents confirmed that on the relevant date they had taken her to the Tuymazy Central Hospital maternity department to undergo an abortion (see paragraphs 15 and 33 above). The latter fact was accepted by the law-enforcement agencies, as well as by the national courts (see paragraphs 18, 22, 34 and 38 above). Moreover, the first-instance court accepted that the applicant had let the abortion be performed because she had feared her father's threats – a situation which that court strikingly considered to have demonstrated that the applicant had given her free consent to the medical intervention in question (see paragraph 35 above).

67. Against this background, the Court finds that the applicant has submitted sufficient evidence enabling it to conclude that she underwent that procedure against her will. It further notes the applicant's vulnerability at the relevant time, given her apparent dependence on her parents, her young age and the fact that it was her first pregnancy. Furthermore, whilst there is insufficient evidence to conclude that the relevant health professionals exercised coercion, as alleged by the applicant, the Court notes that, at the very least, they displayed both indifference and negligence towards her situation, having failed to obtain her free consent and to ensure the necessary medical care (see paragraph 65 above). She must have suffered distress, anxiety and humiliation on account of the circumstances surrounding the interruption of her pregnancy. The Court also takes note of the medical evidence attesting to the presence of psychological and physical after-effects of the medical intervention in question (see paragraph 12 above).

68. Therefore, taking into account the circumstances of the case as a whole, the Court finds that the applicant's forced abortion, combined with her

feelings of fear and helplessness, was sufficiently serious to reach the level of severity required to fall within the scope of Article 3 of the Convention and thus make this provision applicable in the present case.

2. The applicant's victim status

69. The Court observes that the Bashkortostan Supreme Court, in its decision of 18 July 2012, acknowledged that the termination of the applicant's pregnancy, carried out in the absence of her consent and in breach of the requisite standards of medical care, had violated her right to respect for her private life as well as her right to be a mother and had caused her psychological suffering. It awarded her the equivalent of EUR 500 in that connection (see paragraphs 40-41 above). The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V). It therefore falls to the Court to decide whether the applicant retains her victim status in the circumstances of the present case.

70. The Government made no submissions on this point.

71. The applicant argued that the relevant court decision could not be regarded as an acknowledgment of a breach of her Article 3 rights. She further contended that the amount of the compensation awarded was very low and thus could not be regarded as sufficient redress for the purposes of Article 3 of the Convention.

72. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of the status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (ibid., § 180). The question whether the victim of a violation of the Convention has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue (see *Otgon v. the Republic of Moldova*, no. 22743/07, § 16, 25 October 2016).

73. In the present case, the Court considers that the question of whether the applicant retains her victim status for the purpose of Article 3 of the Convention is closely linked to the substance of her complaint under this provision and that its examination should therefore be joined to the merits of that complaint.

3. Conclusion

74. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

75. The applicant argued that the forced interruption of her pregnancy had grossly interfered with her physical integrity. That medical intervention had been performed against her will, in the absence of any medical necessity and in breach of the requirements of domestic law. She pointed out, in particular, that at the relevant time, she had been a mentally competent adult, and that therefore her express, free and informed consent had been required for the abortion, whereas her parents had had no right to take any such decision in her stead. She further argued that she had made it clear to the medical personnel of a public hospital that she did not wish to terminate her pregnancy and that it was her parents who were forcing her to have it terminated. In such circumstances, the hospital personnel had been under an obligation to protect the applicant and to alert the law-enforcement agencies of the situation; instead, the duty doctor, assisted by a nurse, had performed the abortion procedure.

76. The applicant also argued that since she had been subjected to treatment in breach of Article 3 of the Convention, the respondent State had been under an obligation to carry out an effective criminal investigation into the incident. However, the police had repeatedly refused to institute criminal proceedings in connection with the incident with reference to the absence of evidence that any crime had been committed.

77. The Government made no submissions on the merits of the application.

2. Alleged violation of Article 3 of the Convention

(a) General principles

78. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, as a recent authority, *X and Others v. Bulgaria* [GC], no. 22457/16, § 176, 2 February 2021). As a general rule, actions contrary to Article 3 will not engage the State's responsibility if they have not been committed by its agents (see, for instance, *Vasil Hristov v. Bulgaria*, no. 81260/12, § 37, 16 June 2015). At the same time, the Court has consistently found that the States' obligation under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined therein, requires them not only to refrain from an active infringement by their representatives of the relevant rights, but also to take appropriate steps to provide protection against an interference with those rights (see, for a summary of the States' obligations under Article 1 to secure rights set forth in various Convention provisions, *Storck v. Germany*, no. 61603/00, § 101, ECHR 2005-V). Taken, more specifically, together with

Article 3, that obligation requires the States to take measures designed to ensure that individuals are not subjected to torture or inhuman or degrading treatment, including in the hands of private individuals (see, among other authorities, *Vasil Hristov*, cited above, § 37).

(b) Application of the general principles in the present case

79. The Court has found above that the circumstances in which the applicant's pregnancy was aborted reached the threshold of severity to attract the protection of Article 3 of the Convention. It further notes that the situation under examination was the result of the actions of the applicant's parents as well as those of a doctor and a nurse of a public hospital.

(i) Substantive limb of Article 3 (infliction of inhuman and degrading treatment)

80. It must be observed that the respondent State bears no direct responsibility under the substantive limb of Article 3 of the Convention in respect of the acts of the applicant's parents, who are private individuals (see *Valiulienė v. Lithuania*, no. 33234/07, § 73, 26 March 2013). It is undisputed in the present case that the abortion took place in a public hospital and was performed by a doctor and a nurse employed by this public hospital. These findings are sufficient for the Court to conclude that the respondent State bears the direct responsibility under Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected (see paragraphs 65-68 above) as long as it involved the relevant medical personnel of the Tuymazy Central Hospital (see, among other authorities, *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II; *Avilkina and Others v. Russia*, no. 1585/09, § 31, 6 June 2013; *Petrova v. Latvia*, no. 4605/05, § 88, 24 June 2014; and *Elberte v. Latvia*, no. 61243/08, § 106, ECHR 2015).

81. The Court observes that the applicant's abortion was carried out against her will and in breach of all the applicable medical rules (see paragraphs 39 and 40 above). Such a forced abortion undergone in these circumstances was contrary to the applicant's human dignity. It was an egregious form of inhuman and degrading treatment which not only resulted in a serious immediate damage to her health – that is the loss of her unborn child – but also entailed long-lasting negative physical and psychological effects (see paragraph 12 above).

82. Accordingly, there has been a violation by the respondent State of the substantive head of Article 3.

(ii) Procedural limb of Article 3 (lack of effective investigation)

83. The Court further reiterates that where an individual claims on arguable grounds to have suffered acts contrary to Article 3, that Article requires the national authorities to conduct an effective official investigation

to establish the facts of the case and identify and, if appropriate, punish those responsible. Such an obligation cannot be considered to be limited solely to cases of ill-treatment by State agents (see *X and Others v. Bulgaria*, cited above, § 184).

84. In the present case, the applicant lodged complaints with various law-enforcement authorities in an attempt to have criminal proceedings instituted against her parents and the relevant health professionals in connection with the forced interruption of her pregnancy (see paragraphs 16 and 25 above). Although a number of facts proving the credibility of the applicant's assertions were established, including the fact that she had been taken to the relevant hospital by her parents, her pregnancy had been aborted and the procedure at issue had been performed by the medical personnel of the relevant hospital, no criminal proceedings in that connection were ever instituted. In particular, the relevant authorities considered that the applicant's parents had "had no malicious intent" and had "believed that they had acted in the best interests of their child" (see paragraph 18 above). They also found that there had been no constituent elements of offences punishable under the specific Articles of the Russian Criminal Code in the acts of the doctor who had performed the surgery (see paragraph 22 above).

85. The Court reiterates in that connection that it is not its task to verify whether the law-enforcement authorities correctly applied domestic criminal law; what is in issue in the present case is not individual criminal-law liability, but the State's responsibility under the Convention. The Court must grant substantial deference to the national authorities in the choice of appropriate measures, while also maintaining a certain power of review and the power to intervene in cases of manifest disproportion between the gravity of the act and the results obtained at domestic level. It emphasises that the obligation on the State to bring to justice perpetrators of acts contrary to Article 3 of the Convention serves mainly to ensure that acts of ill-treatment do not remain ignored by the relevant authorities and to provide effective protection against acts of ill-treatment (see *Valiulienė*, cited above, §§ 76-77, with further references).

86. The Court has found in many previous Russian cases that the authorities, when confronted with credible allegations of ill-treatment, have a duty to open a criminal case, a "pre-investigation inquiry" alone not being capable of meeting the requirements for an effective investigation under Article 3. That preliminary stage has too restricted a scope and cannot lead to the trial and punishment of the perpetrator, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges that may then be examined by a court. The Court has held that a refusal to open a criminal investigation into credible allegations of serious ill-treatment is indicative of the State's failure to comply with its procedural obligation under Article 3 (see *Volodina v. Russia*, no. 41261/17, § 95, 9 July 2019, with further references).

87. In the present case, the criminal-law mechanisms proved clearly ineffective in respect of the applicant's complaint about the forced abortion both as regards her parents' actions and as regards the actions of the medical personnel of the relevant hospital. In the latter connection, the Court further notes that, in the absence of any findings made in the context of criminal-law mechanisms, the hospital refused to hold the relevant doctor liable in disciplinary proceedings (see paragraph 27 above).

88. Lastly, as regards the civil proceedings brought by the applicant against the hospital, the Court reiterates its constant case-law stating that compensation awarded in civil proceedings could not be considered sufficient for the fulfilment of the State's positive obligations under Article 3 of the Convention, as such a civil remedy is aimed at awarding damages rather than identifying and punishing those responsible (see, for instance, *Kosteckas v. Lithuania*, no. 960/13, § 46, 13 June 2017, with the authorities cited therein). The applicant thus retained her victim status for the purpose of Article 3 of the Convention.

89. In view of the manner in which the authorities handled the case – notably the authorities' reluctance to open a criminal investigation into the applicant's credible claims of forced abortion and their failure to take effective measures against the applicant's parents and the relevant health professionals, ensuring their punishment under the applicable legal provisions – the Court finds that the State has failed to discharge its duty to investigate the ill-treatment that the applicant had endured.

90. The Court consequently finds a violation of the procedural head of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

91. The applicant complained that her forced abortion had also violated her right to respect for her private life under Article 8 of the Convention, which, in its relevant parts, reads as follows:

Article 8

"1. Everyone has the right to respect for his private ... life ..."

A. Admissibility

92. The Court reiterates that the notion of "private life" includes a person's physical and psychological integrity (see, for instance, *Tysiąc v. Poland*, no. 5410/03, § 107, ECHR 2007-I, and the authorities cited therein) and also applies to decisions both to have and not to have a child or become parents (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007-I, and *A, B and C v. Ireland* [GC], no. 25579/05, § 212, ECHR 2010). The Court has previously found that the decision of a pregnant

woman to continue her pregnancy or not belongs to the sphere of private life and autonomy (see *R.R. v. Poland*, no. 27617/04, § 181, ECHR 2011 (extracts)). Moreover, individuals' involvement in the choice of medical care provided to them and consent to such treatment fall within the scope of Article 8 of the Convention (see *A.K. v. Latvia*, no. 33011/08, § 63, 24 June 2014, and the cases cited therein). Having regard to the circumstances of the present case, the Court has no doubt that the applicant's complaint falls within the ambit of Article 8 of the Convention.

93. As regards the applicant's victim status for the purpose of her complaint under examination, in its decision of 18 July 2012, the Bashkortostan Supreme Court expressly acknowledged a breach of the applicant's right to respect for her private life (see paragraph 40 above). On the question of the adequacy of the redress afforded, the Court notes that the applicant was awarded the equivalent of EUR 500 (see paragraph 41 above). It observes in this connection that in its practice it has found higher amounts to be insufficient to deprive the applicants of their victim status (compare *R.R. v. Poland*, cited above, §§ 108-09; *G.B. and R.B. v. the Republic of Moldova*, no. 16761/09, §§ 30 and 35, 18 December 2012; and *Otgon*, cited above, §§ 18 and 20). It is also relevant that the sum awarded to the applicant by the domestic court is considerably below the minimum generally awarded by the Court in cases in which it has found a violation of Article 8 in respect of Russia. In such circumstances, the Court finds that the applicant has not ceased to be a victim of the alleged breach of Article 8 of the Convention within the meaning of Article 34 of the Convention.

94. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

95. In the light of its findings under Article 3 of the Convention, the Court finds that it is not necessary to examine the merits of the complaint separately under Article 8 of the Convention (compare *V.C. v. Slovakia*, cited above, § 144).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

96. The applicant complained that she had had no effective domestic remedies in respect of her complaint about her forced abortion. She relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

97. The Government made no comments on the admissibility or merits of this complaint.

98. The applicant maintained her complaint.

99. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible. It further finds that, in the light of its findings under Article 3 of the Convention, it is not necessary to examine this complaint separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

101. The applicant argued that she had sustained mental suffering in connection with the violations alleged and invited the Court to award her adequate compensation in respect of non-pecuniary damage, leaving the amount to the Court's discretion.

102. The Government submitted that should the Court find a violation of the applicant's rights secured by the Convention and decide to make an award for just satisfaction, Article 41 of the Convention should be applied in compliance with the Court's well-established case-law.

103. The Court reiterates that it has found that the applicant has been subjected to treatment reaching the threshold of severity under Article 3 and that the respondent State was directly responsible for that treatment and failed in its obligation duly to investigate it. It considers that she incurred non-pecuniary damage which cannot be compensated for by the mere finding of a violation. Taking into account that the applicant was awarded the equivalent of 500 euros (EUR) in that connection at the domestic level, the Court considers it appropriate to award her EUR 19,500 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

104. The applicant also claimed EUR 6,500 for the costs and expenses incurred at the national level and before the Court.

105. The Government made no comments on this point.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to

quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full amount claimed by the applicant. It thus awards EUR 6,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

107. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares,* unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 3 of the Convention, under its substantive limb;

3. *Holds,* unanimously, that there has been a violation of Article 3 of the Convention, under its procedural limb;

4. *Holds,* unanimously, that there is no need to examine the merits of the complaints under Articles 8 and 13 of the Convention;

5. *Holds*, unanimously,
   (a) that 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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 19,500 (nineteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 6,500 (six thousand five hundred 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.

Done in English, and notified in writing on 11 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Roosma and Lobov is annexed to this judgment.

G.R.
O.C.

PARTLY DISSENTING OPINION OF JUDGES ROOSMA AND LOBOV

1. We voted in favour of finding a violation of Article 3 of the Convention under its procedural limb, but we respectfully disagree with the majority that there has also been a violation of the respondent State's negative obligation under the substantive limb of Article 3, for the following reasons.

2. The majority considered that the respondent State bore direct responsibility for the inhuman and degrading treatment to which the applicant was subjected in so far as that treatment had been inflicted by the medical personnel of the Tuymazy Central Hospital (see paragraph 80 of the judgment). That finding was based on the sole fact that those health professionals were employees of a public hospital. In support of that argument, the majority referred, in particular, to the case of *Glass v. the United Kingdom* (no. 61827/00, § 71, ECHR 2004-II).

3. It must be noted, however, that the Court's approach to the question of the Contracting States' responsibility for acts or omissions of health professionals is far more nuanced than the majority seem to have assumed. Thus, in its judgment in *Calvelli and Ciglio v. Italy* ([GC], no. 32967/96, § 49, ECHR 2002-I) the Grand Chamber clearly established the scope of the Contracting Sates' obligations in the public-health sphere as requiring them "to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives", as well as to set up "an effective judicial system ... so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, [could] be determined and those responsible made accountable". In our view, such a reasonable and well-balanced approach was adopted for a good reason – indeed, the public-health sphere is an area where its professionals, irrespective of whether they are employed in the public or private sector, routinely engage in activities that potentially can cause harm to patients' lives or health. Both public and private healthcare institutions provide their services in compliance with the same healthcare standards and procedures, which are set by the relevant State; the same requirements are to be observed by both public and private healthcare institutions as regards professional qualifications of their personnel, health insurance, licensing of their relevant activities, and the like. Importantly, medical personnel, even if employed by public healthcare institutions, normally have no coercive or regulatory powers in respect of third parties. Against this background, there is clearly no reason to draw any distinction between public or private healthcare institutions in terms of the Contracting States' responsibility and the scope of their obligations in this field.

4. The judgment adopted by the Chamber in *Glass* (cited above, § 71), deviated from the above-mentioned principles, without any references to the then existing case-law and, in particular, the Grand Chamber judgment in

Calvelli and Ciglio (cited above). Whilst stating that "it [had] not been contested that the hospital was a public institution and that the acts and omissions of its medical staff were capable of engaging the responsibility of the respondent State under the Convention", the *Glass* judgment offered no clarification or guidance with a view to resolving an apparent conflict with the approach adopted by the Grand Chamber in *Calvelli and Ciglio*; nor did it provide any criteria which made it possible to distinguish between the relevant cases, or to define situations in which acts or omissions of healthcare providers would be directly imputable to the State. The fact that the above-mentioned wording from the *Glass* judgment was subsequently reproduced verbatim in a number of Chamber cases, including those on which the majority relied in paragraph 80 of the present judgment, does not resolve the above-mentioned problems or make the reasoning in *Glass* on the question of States' responsibility for acts or omissions of health professionals any more convincing.

5. Moreover, the Court's approach to that question in its subsequent case-law can hardly be described as coherent and consistent. Indeed, if the acts or omissions of health professionals can and should be directly imputable to the respondent State on the sole basis of them being employed by a public medical institution, as suggested by *Glass*, then it is unclear why the Court has preferred to examine a number of cases involving medical personnel of public hospitals from the standpoint of the respondent State's positive obligations (see, for instance, *Lambert and Others v. France* ([GC], no. 46043/14, § 124, ECHR 2015 (extracts), or *Gard and Others v. the United Kingdom* ((dec.), no. 39793/17, § 79, 27 June 2017, both cases concerning withdrawal of life-sustaining treatment, that is, clearly intentional – rather than just negligent – acts of medical staff of public hospitals). Recently, the Third Section of the Court has also examined two cases involving intentional acts of medical personnel of public hospitals from the perspective of the States' positive obligations (see *Reyes Jimenez v. Spain*, no. 57020/18, § 33, 8 March 2022, concerning allegations of medical intervention performed in the absence of informed consent, and *Mortier v. Belgium*, no. 78017/17, § 141, 4 October 2022, not yet final, concerning the novel issue of an act of euthanasia performed at a public hospital). At the same time, in the present case the majority within the same Section favoured the *Glass* case-law without any distinction, clarification or explanation.

6. The foregoing considerations make it clear that the question of the Contracting States' responsibility for acts or omissions of healthcare providers is a complex and sensitive one, and that the Court's case-law on that issue is somewhat contradictory and inconsistent, so it would arguably be for the Grand Chamber to provide appropriate guidance. Be that as it may, we believe that the mere fact that the relevant healthcare providers are employees of a public medical institution is insufficient, on its own, to engage the direct responsibility of a Contracting State for their acts or omissions, be

they intentional or negligent. In our view, in the present case, it would have been more prudent to leave open the more general question of whether acts or omissions of personnel of public healthcare institutions, as such, should be imputable to a Contracting State, as in any event there were no reasons in the specific circumstances of this case to hold the respondent State directly responsible for the ill-treatment inflicted on the applicant.

7. It is of relevance in the above connection that, according to the Court's settled case-law, a Contracting State will be responsible under the Convention for violations of human rights caused by acts of its agents carried out in the performance of their duties. Where the behaviour of a State agent is unlawful, the question of whether the impugned acts can be imputed to the State requires an assessment of the totality of the circumstances and consideration of the nature and circumstances of the conduct in question (see, as a recent authority, *V.K. v. Russia*, no. 68059/13, § 174, 7 March 2017). It is noteworthy that in the present case the tragic situation which the Chamber had to examine was the result of the concerted actions of the applicant's parents and the relevant medical personnel of a public hospital. More specifically, the medical personnel concerned subjected the applicant to inhuman treatment in the context of their criminal venture with the applicant's parents rather than as a patient admitted to the hospital in a regular manner. Being in flagrant violation of domestic law, as was acknowledged by the public prosecutor and the domestic courts themselves (see paragraphs 26, 36 and 40 of the judgment), and prompted in essence by a joint criminal deal between the applicant's parents and the medical personnel concerned, the latter's actions were therefore very far removed from the performance of their regular professional duties. Furthermore, in view of the blatantly irregular way in which the applicant was received at the hospital without any records being kept by anyone (see paragraph 23 of the judgment), there is no reason to suspect the hospital management or the public authorities of any acquiescence or connivance (contrast, for instance, *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, §§ 94 and 103-04, ECHR 2005-VII (extracts)).

8. In view of the above, it can hardly be argued in the present case that the acts of the medical personnel concerned were performed within their professional functions and thus can or ought to be imputed to the respondent State. The Chamber could, and indeed should, have approached this case as one centrally concerning an incident where a family had imposed a serious medical procedure on the applicant to assert their dominance over her, and thus a form of domestic violence, with the respondent State's positive obligation in this area being at stake, rather than as a case involving direct responsibility of the State for the acts of medical personnel, thereby equating the latter, in essence, with State agents, such as police officers or service personnel. This approach by the majority does not seem consistent with international law on State responsibility.