

Anna Maděrová

APPLICANT

v

Czech Republic

RESPONDENT STATE

THIRD-PARTY INTERVENTION

1. Pursuant to the permission granted by the Court, the European Roma Rights Centre (ERRC) submits the following observations on this case. These observations cover the following topics:
 - a. an overview of the history of forced sterilisations of Romani women and others in the Czech Republic, with a particular emphasis on compensation;
 - b. a comparative look at special remedies for victims of forced sterilisation; and
 - c. a discussion of forced sterilisation as a human rights violation under international and regional human rights law.
2. **Summary of the submission.** In order to facilitate the Court's task of summarising this submission in its judgment, the ERRC has prepared the following summary:

The ERRC sought to demonstrate that the intersectional discrimination suffered by victims of forced sterilisation requires States to offer a specific remedy to compensate victims of this practice; treating forced sterilisation on an equal footing with other forms of ill-treatment, by requiring victims to use the ordinary legal remedies generally available to victims of ill-treatment, "*would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights*". *Šečić and others v Croatia* (2007), § 67. The ERRC first provided an overview of the history of forced sterilisations of Romani women and others in Czechoslovakia and the Czech Republic. The ERRC put a particular focus on the recent proposals for compensating victims of forced sterilisation which have been rejected by the Czech Government; the ERRC also provided details of the domestic case law and legislation which make it impossible for victims to claim compensation after the general three-year statute of limitations that applies to all civil cases has expired. The ERRC provided an overview of the special remedies that have been put in place in Austria, Germany, Sweden, and the United States (North Carolina and Virginia) to compensate victims of forced sterilisation; the ERRC also described the recent introduction of a decree in Peru providing comprehensive support, including free legal aid, to victims of forced sterilisation there. The ERRC saw these developments as evidence of an emerging international recognition of the need to provide victims of forced sterilisation with special remedies and support for claiming compensation. Finally, the ERRC provided an overview of the international materials demonstrating that forced sterilisation violates the rights protected under Articles 3 and 8 of the Convention and is a particularly serious form of discrimination. The ERRC concluded by describing forced sterilisation as a form of intersectional discrimination against women. The ERRC urged the Court to apply the notion of intersectional discrimination under Article 14 of the Convention and recognise the particular vulnerability of victims of forced sterilisation and their need for a separate remedy apart from the ordinary legal procedures open generally to victims of ill-treatment.

A. Forced Sterilisations of Romani Women and Others in the Czech Republic and Czechoslovakia

3. This section provides a brief overview of the well-known history of forced sterilisations in Czechoslovakia and the Czech Republic in the late twentieth and early twenty-first centuries, followed by a lengthier discussion of the failed initiatives to put in place a compensation scheme and a discussion of the domestic case law governing claims by victims of forced sterilisation.

i. The history of forced sterilisation

4. In the former Czechoslovakia, a Public Decree on Sterilisation¹, in force from January 1972, enabled public authorities to take programmatic steps to encourage the sterilisation of Romani women and women with disabilities placed in mental institutions, in order to control their birth rate.² Public authorities were able to sterilise Romani women and women with disabilities without their full and informed consent. In 1979, Czechoslovakia also initiated a programme providing financial incentives to Romani women to undergo sterilisation; its purpose was “*to control the highly unhealthy Roma population through family planning and contraception*”.³
5. Sterilisations were a recognised state policy encouraged by the Czechoslovak Government until 1993 when the legal provisions governing sterilisation were abolished. However, the practice of sterilising Romani women and women with disabilities against their will did not end with the fall of communism. It continued through the 1990s and 2000s; the last case of which the ERRC is aware occurred in 2007.

ii. Proposals for compensating victims

6. Many international bodies have urged the Czech Government to establish an effective compensation mechanism for victims of forced sterilisation.⁴
7. The Czech Public Defender of Rights (Ombudsperson) launched its own investigation and in 2005 published a report on the practice of sterilising Romani women before and after 1989.⁵ According to the Ombudsperson’s report, the following emerge as the four most significant characteristics of this practice:
 - a. the absence of free will, notably due to pressure from welfare officers and medical professionals;
 - b. insufficient patient information;
 - c. a lack of formal requirements for sterilisation; and
 - d. the complete absence of consent.
8. In November 2009, Czech authorities acknowledged individual failures on the part of medical personnel and expressed regret for forced or coerced sterilisations.⁶ However, the Government denied any systemic practice of sterilisation.
9. In 2009 and 2012, the Czech Government’s Human Rights Council passed resolutions recommending that the Government introduce a mechanism for adequate financial redress for

¹ Decree on Sterilisation No. 01/1972, passed on 17 December 1971, in force from 1 January 1972.

² See ERRC, *Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe*, 2006, available at <http://www.errc.org/cms/upload/media/01/E6/m000001E6.pdf>.

³ *Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures*, 2005, p. 3, available (in English) at http://www.ochrance.cz/fileadmin/user_upload/ENGLISH/Sterilisation.pdf.

⁴ Such recommendations were made by: the UN Committee on the Elimination of All Forms of Discrimination Against Women in 2006 and 2010; the UN Committee on the Elimination of Racial Discrimination in 2007, 2011, and 2015; the UN Human Rights Committee in 2007 and 2013; the UN Human Rights Council under the Universal Periodic Review in 2008 and 2012; the European Commission against Racism and Intolerance in 2009; the Council of Europe Commissioner for Human Rights in 2010; the UN Committee Against Torture in 2012; and the UN Committee on the Rights of Persons with Disabilities in 2015.

⁵ See above, note 3.

⁶ Resolution of the Government of the Czech Republic 1424, 23 November 2009, available (in Czech) at [http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/\\$FILE/1424%20uv091123.1424.pdf](http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/$FILE/1424%20uv091123.1424.pdf).

victims of involuntary sterilisation.⁷ The Council proposed that the Government establish a systematic and transparent compensation mechanism for women subjected to involuntary sterilisations. The Council's recommendation proposed compensation of between 300,000 and 400,000 CZK (approximately 11,000 to 15,000 EUR) depending on the degree of harm caused and the degree to which regulations in force at the time were violated. The Council also recommended providing free legal assistance to sterilised women as well as preserving medical documentation on sterilisation, given that the law currently allows hospitals to dispose of such documents after retaining them for 40 years.

10. The relevant Czech ministries did not endorse the Human Rights Council's recommendations. The Ministry of Health in particular denied the existence of any problem with sterilisation and refused to review the period for retaining documentation in hospitals. The Ministry of Justice was opposed to introducing free legal aid for victims.
11. In 2014, the Czech Helsinki Committee (CHC), an NGO, designed a new legislative proposal for an alternative compensation scheme for victims of involuntary sterilisation.⁸ The CHC submitted their proposal to the Ministry of Justice in January 2014.⁹ Meanwhile, Anna Šabatová, the former President of the CHC, was elected as the new Czech Ombudsperson and made a public commitment to prioritise the introduction of a compensation mechanism for victims of involuntary sterilisation. The Minister of Human Rights made similar statements around that time and established a new inter-ministerial working group entrusted with preparing legislation on a compensation mechanism.¹⁰
12. In February 2015, this working group adopted a piece of draft legislation.¹¹ This draft legislation called for the Ministry of Health to establish an independent expert committee which would review the individual claims of involuntarily sterilised people and advise the Ministry on appropriate remedies. The committee of nine members would have had at least one practising lawyer, one practising gynaecologist, and one social worker, each nominated by a ministry (with one member nominated by the Ombudsperson). The remedy provided for under the proposed legislation would have included an official apology, compensation, and free-of-charge rehabilitation or artificial fertilisation treatment. The compensation was set at 300,000 CZK. The law would have been valid for three years, during which time affected women could have made their claims. People involuntarily sterilised between July 1966, when the Public Health Act was adopted, and March 2012, when a new Special Health Services Act replaced it, would have been eligible for compensation. The draft legislation was put forward for the Government's approval. In October 2015, the Czech Government rejected the draft Compensation Act without providing any reasons.¹²

iii. The current case law on compensation

13. There is no specific remedy in Czech law for victims of forced sterilisation. A person who has undergone an unlawful medical intervention can seek redress by claiming a violation of her personality rights under the 2012 Civil Code (previously, the 1964 Civil Code). The general statute of limitation for civil claims is three years.¹³ In cases concerning personality rights, this limitation only affects the right to seek monetary compensation for violations.¹⁴ The law does not specify whether those bringing claims for violations of personality rights can seek non-

⁷ Human Rights Council of the Government of the Czech Republic, *Recommendation related to the sterilisation of women executed in the Czech Republic in breach of the law*, 2012, available (in Czech) at <http://www.vlada.cz/cz/ppov/rfp/cinnost-rady/zasedani-rady/zasedani-rady-dne-17--unora-2012-98737/>.

⁸ Romea, *Czech Helsinki Committee designs law to compensate illegally sterilized people*, January 2014, available at <http://www.romea.cz/en/news/czech/czech-helsinki-committee-designs-law-to-compensate-illegally-sterilized-people>.

⁹ Czech TV, *A Compensation for Illegal Sterilisations*, January 2014, available at: <http://www.ceskatelevize.cz/ivysilani/1097181328-udalosti/214411000100113/obsah/302100-odskodneni-za-protipravni-sterilizaci/>.

¹⁰ Romea, *Czech Human Rights Minister drafting law to compensate*, February 2014, available at:

<http://www.romea.cz/en/news/czech/czech-human-rights-minister-drafting-law-to-compensate-illegally-sterilized-women>.

¹¹ Human Rights Council of the Government of the Czech Republic, *Draft Law of the Compensation for Illegally Sterilised Persons*, February 2015, available (in Czech) at <https://apps.odok.cz/kpl-detail?pid=KORN9UYE4ZVB>.

¹² Romea, *Czech Government rejects bill to compensate victims of illegal sterilizations*, October 2015, available at: <http://www.romea.cz/en/news/czech/czech-government-rejects-bill-to-compensate-victims-of-illegal-sterilizations>.

¹³ Article 629 of (1) Act No. 89/2012, Civil Code.

¹⁴ Article 612 of Act No. 89/2012, Civil Code.

pecuniary (i.e. moral) damages if they bring their claims after the three-year time limit has expired. However, the Constitutional Court, deciding a case of unlawful sterilisation in 2013, stated that plaintiffs who make their claims after the three-year time limit has expired cannot claim non-pecuniary damages, unless the effect would be contrary to “good manners” (*dobré mravy*).¹⁵ The notion of “good manners” is not explicitly defined in Czech law. The case law describes it as “a significant value in law that serves to balance legal norms and their realisation against the moral intention of the regulation or some notion of equity, such as a morality or equality of arms.”¹⁶ The courts assess compatibility with “good manners” on a case-by-case basis. However, as a matter of practice, this notion is not applied in cases where the complainant was responsible for letting the limitation period expire.¹⁷ As a result, victims of forced sterilisation have only been able to make claims and secure compensation for non-pecuniary damage if they have complied with the general three-year statute of limitations or, in some cases, if they have applied to this Court,¹⁸ if they are outside the statute of limitations, under domestic law victims can only secure a finding of a breach of their rights and an apology.

14. A victim of forced sterilisation can also seek a remedy through a criminal investigation and criminal proceedings under the Code of Criminal Procedure and might, theoretically, secure compensation through those proceedings.¹⁹ Law enforcement agencies have taken action on some cases, but criminal proceedings have been repeatedly discontinued and the ERRC is unaware of any criminal sanction imposed in any of the cases investigated. The Czech Ombudsperson filed criminal complaints with the General Prosecutor in 50 cases of unlawful sterilisations (out of 87 requests which came to the Ombudsperson), as a follow-up to the above-mentioned 2005 report.²⁰ All of these cases were dismissed for procedural reasons or due to the statute of limitations.

B. Comparative Look at Special Remedies for Victims of Forced Sterilisation²¹

15. The Czech Republic is not alone among States with a recent history of forced sterilisation. Forced sterilisation in the twentieth and early twenty-first centuries has often been based on the ethnicity or the disability of the victims, but has also targeted unmarried mothers, pregnant women who have sought to terminate pregnancies, and the poor. The most prominent involuntary sterilisation policies were carried out in countries that are now members of the Council of Europe: Austria, the Czech Republic, Denmark, Finland, France, Germany, Norway, Slovakia, Sweden, and Switzerland. Of those countries, Austria, Germany, and Sweden have assumed responsibility for those policies and put in place special remedies for victims. So have Peru and the US states of North Carolina and Virginia. The ERRC provides an overview of the developments in these six places in order to demonstrate an emerging international recognition of the need to provide special remedies for victims of forced sterilisation.
16. **Austria.** Victims of forced sterilisation during the Nazi period are eligible for compensation under the Victims’ Pension Law (*Opferfürsorgegesetz*). Article 1(2)(j) of the law specifically recognises forced sterilisation (*Zwangsterilisation*) as a form of damage entitling someone to compensation. Victims of forced sterilisation receive various forms of compensation, including reduced payments for social insurance and studies.
17. **Germany.** Compensation for victims of forced sterilisation during the Nazi period has been a contentious issue in Germany, particularly in relation to the extent to which victims of forced

¹⁵ Constitutional Court judgment of 17 January 2013, no.II. ÚS 7/13.

¹⁶ Hendrych, D. and coll., *Právnícký slovník* (legal dictionary), Prague, 2009.

¹⁷ Constitutional Court judgment of 8 August 2013, no.II. ÚS 3403/11.

¹⁸ *R.K. v the Czech Republic* (decision, 2012); *Ferenčíková v the Czech Republic* (decision, 2011); *Červeňáková v the Czech Republic* (2003).

¹⁹ Act no.141/1961, Coll., Code of Criminal Procedure.

²⁰ See above, note 3.

²¹ The Social Sciences and Humanities Research Council of Canada has established a website – www.eugenicsarchive.ca – with extensive information about eugenics, including information on forced sterilisations. The page <http://eugenicsarchive.ca/discover/connections/535eeaff7095aa0000000217> contains a table with references detailing the number of forced sterilisations that have happened in the countries referred to in this section. The information on this page is drawn from the site as well as other sources cited below.

sterilisation could be considered victims of Nazi persecution. However, in 1980 a fund was established to make lump sum payments to victims, and since 1988 victims of forced sterilisation have been able to claim a monthly pension (currently in the amount of 291 EUR). According to figures made available by the German Government in response to a question from Parliament,²² as of 27 February 2012, 13,816 people who were forcibly sterilised received the lump-sum payment and 9,604 victims received monthly payments.

18. **Sweden.** In 1934 Sweden approved a law allowing for forced sterilisations of “inferior” members of society, which included Roma, people in prison, people with intellectual disabilities, and women who had sought to terminate their pregnancies. The law was changed in 1976 to require freely given consent for sterilisation. The issue of forced sterilisations came to popular attention in 1997, when the newspaper *Dagens Nyheter* published a series of articles about it. In response, the Swedish Government established a committee to investigate the practice. The committee’s report²³ set out the total estimated number of sterilisations between 1934 and 1976 (some 63,000) and broke them down into various categories based on the voluntary or involuntary nature of the sterilisation. Legislation²⁴ was introduced in 1999 to provide compensation for people who were sterilised and met certain criteria (such as never signing an authorisation for sterilisation, being an inmate, or having been subjected to undue influence). Victims were given until December 2002 to make compensation claims. Some 1,600 victims of forced sterilisation received compensation of 175,000 SEK each.²⁵
19. **Peru.** In the 1990s some 300,000 women and 22,000 men, mostly poor indigenous and rural people, were forcibly sterilised by the authorities. In 2003, the Inter-American Commission on Human Rights approved a friendly settlement agreement²⁶ in a case of forced sterilisation and subsequent death; the Peruvian Government agreed to pay 80,000 USD to the heirs of the deceased victim and to undertake a series of individual measures, such as a thorough investigation of what happened to her. In October 2015, the Peruvian Government announced that they will offer free services and create a national registry of victims of forced sterilisation. The Government adopted Supreme Decree 006-2015-JUS²⁷ to this end; the decree, among other things, guarantees free legal assistance to victims of sterilisation to ensure they have access to justice to pursue any claims they may have. Victims will also receive psychological and social support.
20. **USA.** In 1927, the US Supreme Court held²⁸ that it was compatible with the federal constitution for individual states to sterilise people forcibly, so as to reduce the economic and social burden they posed. More than 65,000 people were involuntarily sterilised in over fifteen US states. In 2013, North Carolina became the first state to legislate compensation for forced sterilisations, awarding those victims who were still alive 50,000 USD each.²⁹ The State’s Office of Justice for Sterilization Victims³⁰ is administering the compensation scheme. In February 2015, Virginia followed suit, passing a law to provide compensation of 25,000 USD to those forcibly sterilised under the state’s eugenics law. Victims are currently able to fill out a form to submit a claim to the competent authority.³¹
21. The ERRC sees these examples, and particularly the recent developments in Sweden, Peru, North Carolina, and Virginia, as evidence of an emerging international recognition of a need to provide forced sterilisation victims with a special mechanism and special support for

²² The response is available at <http://dip21.bundestag.de/dip21/btd/17/087/1708729.pdf>.

²³ The full report (in Swedish) is available at

<http://www.regeringen.se/contentassets/68b217b7f8e746a799536f3ad851c05e/steriliseringsfragan-i-sverige-1935---1975>.

²⁴ Lag (1999:332) om ersättning till steriliserade i vissa fall.

²⁵ Karin Johannson, “1 600 tvångssteriliserade har fått skadestånd”, *Sydsvenskan*, April 2005, available at

<http://www.sydsvenskan.se/sverige/1-600-tvangssteriliserade-har-fatt-skadestand/>.

²⁶ Report no.71/03, petition 12.191, friendly settlement, María Mamérita Mestana Chávez, Peru, 22 October 2003.

²⁷ The decree can be found (in Spanish) at <http://busquedas.elperuano.com.pe/normaslegales/decreto-supremo-que-declara-de-interes-nacional-la-atencion-decreto-supremo-n-006-2015-jus-1308828-2/>.

²⁸ *Buck v Bell*, 274 U.S. 200 (1927). Justice Oliver Wendell Holmes, Jr. famously wrote that “three generations of imbeciles are enough” in his opinion for the majority and found that forced sterilisation of people who were “feeble-minded” and “promiscuous” was not incompatible with the due process clause of the US Constitution’s Fourteenth Amendment, by analogy with compulsory vaccination programmes.

²⁹ The appropriations bill can be found at <http://www.ncleg.net/sessions/2013/bills/senate/pdf/s402v7.pdf>.

³⁰ The office’s website is <http://www.sterilizationvictims.nc.gov/>.

³¹ Full information is available at <http://www.dbhds.virginia.gov/individuals-and-families/sterilization-compensation>.

claiming compensation outside the normal legal procedures open generally to victims of ill-treatment.

C. Forced Sterilisation as a Human Rights Violation Requiring Compensation as a Remedy

22. Subsections i and ii below briefly review the international materials supporting the position – already clear in the Court’s case law³² – that forced sterilisation is a violation of Articles 3 and 8 of the Convention. Subsection iii urges the Court to recognise forced sterilisation as a situation of intersectional discrimination and to recognise the resulting need for special remedies to reflect the vulnerabilities of those concerned.

i. Forced sterilisation as a violation of Article 3

23. Sterilisation without fully informed consent is a violation of the individual right to be free from torture and inhuman and degrading treatment or punishment. The UN Human Rights Committee has specifically noted that coerced sterilisation violates Article 7 of the International Covenant on Civil and Political Rights.³³ Forced sterilisation likewise amounts to discrimination prohibited by Article 10(h), Article 12, and Article 16(1)(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);³⁴ the requirement to provide a remedy, under Article 2(b) and Article 2(e) CEDAW, is also engaged.
24. Forced sterilisation causes serious, long lasting physical and emotional suffering to the victims: evidence shows that victims often develop depression, psychological trauma, false-pregnancy symptoms, low self-esteem, fear, anguish, and inferiority, in addition to the loss of reproductive ability.³⁵ In many cases, forced sterilisation fundamentally alters people’s family lives; victims often cite forced sterilisation and consequent infertility as a reason for divorce, for example.

ii. Forced sterilisation, and particularly the failure to ensure free and informed consent to sterilisation, as a violation of Article 8

25. Sterilisation without fully informed consent is a severe interference with reproductive freedom and the right of individuals to decide freely on the number and spacing of their children. Forced sterilisation therefore constitutes a violation of the right to respect for private and family life.³⁶ There is an international consensus that free and informed consent must be obtained before any medical intervention.³⁷ The International Federation of Gynecology and Obstetrics issued detailed *Guidelines on Contraceptive Female Sterilisation* in 2011.³⁸ The ERRC respectfully urges the Court to consider these guidelines as a reflection of the international medico-ethical consensus on the issue.
26. CEDAW General Recommendation no.19 highlights the grave effect of coercive sterilisation and refers to women’s rights of choice in relation to reproductive freedom: “*Compulsory sterilisation adversely affects women’s physical and mental health and infringes the right of women to decide on the number and spacing of their children.*”³⁹ CEDAW General Recommendation no.21 stresses the importance of access to information that will allow for informed consent to sterilisation procedures; this requires actual knowledge of the extent and consequences of the procedure. CEDAW General Recommendation no.24 urges States Parties to provide high-quality services in relation to reproductive health: “*Acceptable services are those which are delivered in a way that ensures that a woman gives her fully informed*

³² See, e.g., *V.C. v Slovakia* (2011).

³³ See, Human Rights Committee, General Comment no.28: Equality of rights between men and women (Art. 3), § 11.

³⁴ Views of the Committee in respect of communication no.4/2004, *A.S. v Hungary*.

³⁵ See, inter alia, CEDAW Communication no.4/2004, *A.S. v Hungary*.

³⁶ See, inter alia, CEDAW Communication no.4/2004, *A.S. v Hungary*.

³⁷ See, for example, Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, Chapter II – Consent, Article 5.

³⁸ These can be found at

http://www.womenenabled.org/pdfs/International_Federation_of_Gynecology_and_Obstetrics_Sterilization_Guidelines_FIGO_2011.pdf?attredirects=0.

³⁹ CEDAW, General Recommendation no.19, § 22.

consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives."⁴⁰

27. In the case of *A.S. v Hungary*, an individual communication, the CEDAW Committee found a violation of Article 16(1)(e) CEDAW as a result of sterilisation surgery performed on the victim without her full and informed consent, and which permanently deprived her of her natural reproductive capacity.

iii. Forced sterilisation as a form of intersectional discrimination against women (Article 14)

28. The Court has only rarely had the opportunity to deal with the notion of intersectional discrimination under Article 14. See *B.S. v Spain* (2012), § 71 ("*les décisions rendues en l'espèce par les juridictions internes n'ont pas pris en considération la vulnérabilité spécifique de la requérante, inhérente à sa qualité de femme africaine exerçant la prostitution*"). The term "intersectional discrimination" describes human rights violations which occur on the basis of multiple grounds (for example gender and ethnicity), and where these grounds do not merely add to each other, but interact to create a complex dynamic of exclusion.
29. Forced sterilisation of women is of course a form of gender-based violence, affecting mainly (but as the example from Peru above⁴¹ shows, not exclusively) women. As such it is a form of discrimination against women, as recognised by the CEDAW Committee in its General Recommendation no.19.⁴² This is in line with the Court's own case law on gender-based violence. *Opuz v Turkey* (2009), §§ 184-191.
30. The Committee on the Elimination of Racial Discrimination (CERD Committee) has also recognised forced sterilisation as a discriminatory practice affecting women belonging to some groups. In its General Comment no.25, the CERD Committee referred to the double inequity suffered by women members of minority groups.⁴³ As stated above, forced sterilisation policies do not merely target their victims based on sex, but also based on ethnicity, disability, and other characteristics covered by Article 14 of the Convention (see above, § 15).
31. The ERRC submits that given the history of forced sterilisations in the Czech Republic, any case of forced sterilisation, regardless of the particular identity of the victim, involves intersectional discrimination: sterilisations in that country were based on eugenic theories and therefore targeted women based on their (Roma) ethnicity, disability, or other protected status. If a victim does not herself identify as a member of one of these groups (self-identification), the authorities almost inevitably identified her as such (third-party identification).
32. As the Court itself has recognised, women victims of intersectional discrimination suffer from "specific vulnerabilities" (see above, § 28). Women who are members of particularly vulnerable groups – such as Romani women and women with intellectual disabilities – suffer from exclusion in many spheres of life, making it particularly difficult for them to secure access to justice. They are subjected to deeply-rooted stereotypes and stigma based on their gender and ethnicity or disability. Gender and other vulnerability factors are mutually reinforcing and exacerbate the discrimination women experience, including in the area of reproductive freedom. Women who are perceived as being Roma or disabled face numerous disadvantages in securing access to justice. This explains why in the jurisdictions covered in

⁴⁰ CEDAW, General Recommendation no.24, § 22.

⁴¹ See above, § 19.

⁴² §§ 1 and 22.

⁴³ General Recommendation no.25, § 2: "*Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. The consequences of racial discrimination may primarily or only affect women, such as pregnancy, and in some societies ostracism, as the result of racial bias-motivated rape. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender related impediments, such as gender-bias in the legal system and discrimination against women in private spheres of life.*"

section B above, the authorities have created special remedial systems for victims of forced sterilisation to secure compensation outside the courts, or, in the case of Peru, to guarantee victims' access to justice through the courts.

33. The ERRC submits that requiring victims of forced sterilisation to secure a remedy for what they have suffered under the general civil or criminal law framework for ill-treatment, including subjecting them to the ordinary statute of limitations, amounts to a failure to recognise their inherent vulnerabilities as victims of intersectional discrimination. Treating forced sterilisation on an equal footing with other forms of ill-treatment by requiring victims to use ordinary legal remedies "*would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights*". *Šečić and others v Croatia* (2007), § 67.

The European Roma Rights Centre
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