

WRITTEN COMMENTS

OF THE EUROPEAN ROMA RIGHTS CENTRE, MENTAL DISABILITY
ADVOCACY CENTER AND PLATFORM FOR SOCIAL HOUSING,
CONCERNING THE CZECH REPUBLIC

for consideration by the United Nations Committee on the Elimination of Racial
Discrimination, at its 87th Session (3-28 August 2015)

**Platforma
pro sociální
bydlení**



CHALLENGING DISCRIMINATION PROMOTING EQUALITY



**Platforma
pro sociální
bydlení**

**Parallel report to the United Nations Committee on the Elimination of Racial
Discrimination**

**For consideration when compiling the Concluding Observations on the Czech Republic
during its 87th session (3 August 2015-28 August 2015)**

Submitted by

European Roma Rights Centre (ERRC)

Mental Disability Advocacy Center (MDAC) and

the Platform for Social Housing

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Introduction

1. This joint written submission outlines key issues of concern with regard to the Czech Republic's implementation of the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the "CERD Convention"). These key issues of concern are the following:
 - a. general legal framework on discrimination;
 - b. housing and adequate living conditions;
 - c. inclusive education;
 - d. ill-treatment and harassment; and
 - e. involuntary sterilisations.
2. The purpose of this joint submission is to inform the Committee on the Elimination of Racial Discrimination (hereinafter the "Committee") of legislation, policies and practices implemented by the Czech Republic which violate the CERD Convention. We are also recommending the Committee to remind the State Party that, when acting upon the Committee's recommendations, it has to take into consideration the entire body of UN human rights jurisprudence (rather than looking at separate treaty-based bodies) and respect all the obligations it has assumed by ratifying numerous UN human rights treaties. To this end we are providing, where relevant, information on the jurisprudence and practices of other UN human rights bodies.
3. This joint submission has been prepared by the European Roma Rights Centre (ERRC)¹, the Mental Disability Advocacy Center (MDAC)² and the Platform for Social Housing.³

¹The ERRC is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. Since its establishment in 1996, the ERRC has endeavoured to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

²The Mental Disability Advocacy Center (MDAC) is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. MDAC has special consultative status with the United Nations Economic and Social Council, and participatory status at the Council of Europe.

³The Platform for Social Housing is a platform of Czech NGOs and expert association which advocates for the introduction of social housing policies and practices in the Czech Republic, and monitors the implementation of the current policies and their impacts on vulnerable groups. The Platform currently consists of 32 members, of which 20 are organisations (social housing and social services providers, and human rights organisations). Among others, all Czech members of FEANTSA are included.

General legal framework on discrimination and hate crimes

4. The Charter of Fundamental Rights and Basic Freedoms⁴ together with Act no. 198/2009 Coll. on Equal Treatment and on Legal Means of Protection against Discrimination prohibits discrimination on the following grounds: race, ethnicity, nationality, gender, sexual orientation, age, disability, religion, faith or belief.⁵
5. There is however no legislation specifically addressing cases of multiple and intersectional discrimination. Recognition of multiple and intersectional discrimination is important for victims such as Roma children with disabilities who, like all children with disabilities, are more likely to be denied their right to inclusive education by being placed in segregated schooling; or Romani women who have been involuntarily sterilised and who are victims of discrimination on the basis of gender, ethnicity and sometimes disability.⁶
6. The submitting organisations are concerned about the lack of case law on racial, disability-based and other forms of discrimination. There is no case-law specifically addressing multiple discrimination, and the Czech courts have issued very few final decisions: in 2013, for example, only 10 discrimination cases were decided. Moreover, case-law in the field of equal treatment is often inconsistent; in 2012, the Czech Supreme Court held that discriminatory intent is essential both in cases of direct and indirect discrimination, however, subsequent case law has not been consistent on the matter.⁷
7. Alleged victims of discrimination, as well as potential victims, face several obstacles when claiming violation of their right to equal treatment due to barriers in accessing redress. The Office of the Public Defender of Rights (Czech Ombudsperson) is the Czech equality body according to the requirements of the Article 13 of the EU Racial Equality Directive. The Ombudsperson can provide independent methodological assistance to victims, conduct research and publish independent reports and make recommendations. However, her mandate is limited and she is not entitled to represent victims of discrimination in court proceedings. The law allows for legal entities established or active in the field of protection against discrimination to provide legal assistance to victims, but this is far from sufficient. The Czech Anti-discrimination Act does not regulate *actio popularis* (public actions) that would make it possible to file a legal action in discrimination cases with higher numbers and unknown identities of

⁴ Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the CHARTER OF FUNDAMENTAL RIGHTS AND BASIC FREEDOMS as a part of the constitutional order of the Czech Republic, available at: <http://legislationline.org/documents/section/constitutions>.

⁵ Parliament of the Czech Republic, *Antidiscrimination Act 198/2009*, Article 2(1)

⁶ In General Recommendation No.28 of the UN Committee on the Elimination of all forms of Discrimination Against Women has recognized that discrimination that women experience because of their sex/gender is “*inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.*”

⁷ Záhumnenský David, REPORT ON MEASURES TO COMBAT DISCRIMINATION Directives 2000/43/EC and 2000/78/EC, COUNTRY REPORT 2013 Czech Republic, p. 7, available at: <http://www.non-discrimination.net/countries/czech-republic>

victims (e.g. in cases of discrimination in advertising, systemic discrimination, etc.). Free legal aid is granted only to people with proven limited financial resources.

Recommendations:

The ERRC, MDAC and the Platform for Social Housing make the following recommendations to the Czech Government:

- Adopt legislation specifically addressing multiple discrimination;
- Facilitate access to justice for victims of discrimination; and
- Adopt legislation to allow for *actio popularis* (public actions) in cases of systemic discrimination, of discrimination in advertising and other similar situations.

Housing and adequate living conditions⁸

1. The Government's Strategy for Combating Social Exclusion for 2011-2015 estimates that there are between 80,000 and 100,000 Roma experiencing social exclusion.⁹ A newly introduced Strategy covering the period up to 2020 points out that approximately one third of the overall Romani population in the Czech Republic lives in socially excluded settings.¹⁰ Most recently, research from this year commissioned by the government revealed that the number of socially excluded areas, which are inhabited mostly by Roma, doubled over the last decade, and there are currently more than 600 socially excluded areas in the Czech Republic.¹¹
2. Among the hidden homeless (those not showing up in official figures), there has been an increasing number of young people, people with disabilities, women, and whole families with children. Amongst youth, the most vulnerable to homelessness are those who are leaving institutional care. As Romani children are overrepresented in institutional care settings in the Czech Republic, Roma are disproportionately affected by hidden homelessness.¹²

⁸This chapter has been developed jointly with the Platform for Social Housing, <http://www.socialnibydleni.org/> and its member R-Mosty NGO, <http://www.r-mosty.cz/>.

⁹ Government's Agency for Social Inclusion, *Strategy for Combating Social Exclusion for the Period 2011-2015*, available at: <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>

¹⁰ Government of the Czech Republic, *Strategy for Combating Social Exclusion up for the Period 2011-2015*, p. 6, available at: <http://www.socialni-zaclenovani.cz/dokumenty/strategie-boje-proti-socialnimu-vyloucení>, (accessed: June 25, 2015).

¹¹GAC, *Analysis of Socially Excluded Areas in the Czech Republic, 2015*, available (in Czech), available at: http://www.gac.cz/userfiles/File/nase_prace_vystupy/Analyza_socialne_vyloucených_lokalit_GAC.pdf (accessed: June 25, 2015).

¹²ERRC, *Doživotní trest: Romské děti v ústavní péči v České Republice* (Life Sentence – Romani Children in Institutional Care in the Czech Republic), available at: <http://www.errc.org/cms/upload/file/dozivotni-trest-romske-deti-v-ustavni-peci-v-ceske-republice-20-june-2011.pdf>. In its 2011 Concluding Observations on the Czech Republic, the Committee had manifested concern about “the results of a study ... which show that, in 22 childcare institutions in the five regions of the State party included in the study, 40.6 per cent of children were Roma” (Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial*

3. Romani people living in institutionalised settings must also be considered here after being diagnosed or labelled as having a disability, leading to them being automatically institutionalised or placed in special schools. There are almost 70,000 people with disabilities in such institutions in the Czech Republic.¹³ However there is a lack of disaggregated data on ethnicity, therefore it is not possible to estimate the number of Roma in these institutions. Institutionalisation on the basis of disability and race are equally unacceptable under international law.¹⁴
4. In 2012-2013, the Ombudsperson conducted situation testing on the discrimination of Roma in rental accommodation, which confirmed that Roma are denied access to housing because of their ethnicity.¹⁵ Where Roma have an intellectual or psycho-social disability, no form of reasonable accommodation is provided which would allow them to apply for public housing or to rent in the private market. The government has acknowledged discrimination against Roma in housing in its 2013 Report.¹⁶ A survey carried out by STEM Trendy 2014 agency found that 89 per cent of respondents would not like to have a Roma person as their neighbour.¹⁷ For many Romani families the only way to find accommodation is through privately- (or municipally-) owned residential hostels. The Czech Trade Inspection Authority has launched several discrimination proceedings against real estate agencies, house administrators and owners who have refused to rent accommodation to Roma.¹⁸ The Romani women who participated in the situation testing have filed a discrimination claim with the Ombudsperson against the real estate agencies involved.¹⁹
5. New owners of private property have evicted Roma from city centres to peripheries, from developed areas to structurally disadvantaged regions and socially excluded localities. The government has not introduced any policy to control or halt these evictions therefore

Discrimination - Czech Republic (CERD/C/CZE/CO/8-9), 14 September 2011, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCZE%2fCO%2f8-9&Lang=en (accessed: 25 May 2015)).

¹³ Committee on the Rights of Persons with Disabilities considers initial report of the Czech Republic - See more at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15788&LangID=E#sthash.DD2rjwSZ.dpuf>

¹⁴ See Article 19 of the UN Convention on the Rights of persons with Disabilities on the right to living independently and being included in the community

¹⁵ Czech Ombudsperson, *Press statements*, available at: <http://www.ochrance.cz/aktualne/tiskove-zpravy-2015/pripad-testovani-realitnich-kancelari-je-vic-nez-2-roky-stary/>; <http://www.ochrance.cz/aktualne/tiskove-zpravy-2015/chybuje-verejna-ochrankyne-prav-tim-ze-poukazuje-na-nezakonny-postup-realitnich-kancela/>

¹⁶ Romea, *Czech Gov't report finds Roma cannot access ordinary housing*, available at:

<http://www.romea.cz/en/news/czech/czech-gov-t-report-finds-roma-cannot-access-ordinary-housing>

¹⁷ STEM, *Relationship of Czechs to other minorities*, available at: <http://www.stem.cz/clanek/2941>

¹⁸ Romea, *Discrimination proceedings launched against Czech property management company over Roma segregation*, available at: <http://www.romea.cz/en/news/czech/discrimination-proceedings-launched-against-czech-property-management-company-over-roma-segregation>

¹⁹ Romea, *Czech trial hears recording of real estate broker rejecting Romani customer*, available at:

<http://www.romea.cz/en/news/czech/czech-trial-hears-recording-of-real-estate-broker-rejecting-romani-customer>

Roma continue to be evicted from cities to smaller towns and the countryside, where they are forced to live in segregated neighbourhoods.

8. According to the Regional Roma Housing survey, almost half of Roma in the Czech Republic feel under the threat of being evicted. From the 11 countries included in the study, the Czech Republic has the largest share of Roma that perceive themselves as threatened by evictions.²⁰ Moreover, a significant number of Romani families (14%) live in ruined houses and slums, and one in ten households reported living in very poor accommodation conditions.²¹ Roma with disabilities who live in such settings face multiple disadvantages as they are also deprived of the support they need, of reasonable accommodation, accessible transport, and access to medical, psychological, vocational or educational services. There is however no information on how many Roma with disabilities live in such settings and what their needs are. The Government does not collect disaggregated data and has yet to undertake any thematic research in this area. By failing to adopt comprehensive accessibility provisions, the Czech Government continues to marginalise and violate the rights of Roma people with disabilities.²²

6. The housing situation was further worsened by the introduction of a new Civil Code,²³ which came into force on 1 January 2014, limiting the rights of tenants. For example, when a rental contract is terminated by a landlord (as opposed to expiring), there is no requirement to have a court review of the decision to terminate. If the tenant seeks a review, tenants are required to initiate a lawsuit themselves, further disadvantaging tenants reliant on private rental accommodation, shifting the law in favour of landlords. Moreover, landlords can disregard the notice period for eviction where a tenant breaches their obligations in a 'specifically serious way' – such as by failing to pay rent for a three month period. The provision requiring landlords to provide equivalent alternative housing before terminating a rental contract was also abolished. Finally, the maximum deposit that landlords can require has been raised from three to six times the monthly rent.

7. There is no comprehensive policy on social housing in the Czech Republic. A previously centralised state housing stock was, through previous decentralisation policies, transferred to the administration of local authorities. Since the 1990s, most local authorities decided to privatise their housing capacities and thus up to 90% of municipal housing stock has been privatised to date. Roma, low-income and indebted households, were those who lost out during privatisation. These vulnerable groups were neither offered nor capable of buying the flats they were renting from the municipalities, and their housing, especially in lucrative areas of cities, was sold to private landlords. Thus

²⁰ UNDP, *The Housing Situation of Roma Communities: Regional Roma Survey 2011*, p. 41

²¹ UNDP, *The Housing Situation of Roma Communities: Regional Roma Survey 2011*, p. 31-32

²² In order to see the measures the Czech Republic needs to take, refer to the concluding observations of the UN Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report of the Czech Republic", 2015, CRPD/C/CZE/CO/1, paras.. 18-19. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/098/68/PDF/G1509868.pdf?OpenElement>.

²³ Act no. 89/2012 Coll.

most municipalities currently do not have sufficient social housing facilities, nor do they have plans to build. Instead of maintaining and renting out social housing stock, social housing subsidies were distributed to socially vulnerable and marginalised people. The manner of allocating social housing subsidies is however problematic. In 2011, decision-making power shifted from local authorities to State Labour Offices in relation to the allocation of such subsidies. Housing allowances are paid directly to landlords. For the majority of Roma, these housing subsidies were paid to the owners of residential hostels, who charged significantly overpriced rents compared to the broader rental market.

8. The practice of directly paying landlords was restricted only in November 2014 with a new set of normative instructions from the Ministry of Labour and Social Affairs. Now, landlords receive the subsidy directly only in exceptional cases.²⁴ In May 2015, an amendment to the Act on Material Need²⁵ made the conditions for paying subsidies stricter and subject to approval by the municipality under whose territory a residential hostel belongs. Some parts of the amendment were, however, criticised by the Minister of Human Rights,²⁶ Ombudsperson and civil society.²⁷ With this new authority, some municipalities have refused to approve housing subsidies collectively across the board to all inhabitants of residential hostels, the majority of which are Roma. Consequently, as the media reported, 17.000 to 25.000 people, including families with children, are at an imminent risk of homelessness.²⁸ This situation sparked social unrest among Roma inhabiting residential hostels.²⁹ Eventually, despite the Czech Labour Office announcing it would not intervene in the new competences of the municipalities,³⁰ the government introduced an ad-hoc measure declaring the decisions of municipalities not binding for

²⁴Normative instruction of the Ministry of Labour and Social Affairs of the Czech Republic no. 10/2013, available at: http://www.azylovedomy.cz/soubory/499_Normativn%C3%AD%20instrukce%2010_2013_DnB.pdf.

²⁵Amendment of Act no. 111/2006 Coll. (změnazákona č. 111/2006 Sb., o pomoci v hmotné nouzi, vezněnpozdějšichpředpisů, kteroubyla do uvedenéhozákona do § 33 odstavce 6 vloženasplaneckýmposměňovacímnávrhem „podmínkasouhlasuobce“

v případěposuzovánínárokunadoplatakabydlení u žadatele o dávku, kterýužívabydlení v ubytovacímzařízenícházejícím se v katastrálnímúzemídanéobce).

²⁶Romea, *Human Rights Activist: Czech state is holding impoverished people hostages*, available at:

<http://www.romea.cz/en/news/czech/human-rights-activist-the-czech-state-is-holding-impoverished-people-hostage-the-ombud-will-do-what-she-can>.

²⁷Romea, *Czech Human Rights Minister: Housing benefits legislation is unsustainable and must be changed*, available at: <http://www.romea.cz/en/news/czech/czech-human-rights-minister-housing-benefits-legislation-is-unsustainable-and-must-be-changed>.

²⁸Romea, *Czech Republic: 17000 to lose benefits for tenancy in residential hotels*, available at:

<http://www.romea.cz/en/news/czech/czech-republic-17-000-to-lose-benefits-for-tenancy-in-residential-hotels>.

²⁹Czech Radio, *Inhabitants of Residential Hostels consider protesting in public*, available at:

http://www.rozhlas.cz/zpravy/regiony/_zprava/lide-z-ubytoven-v-ostrave-hrozi-ze-kvuli-sporu-o-davky-vyjdou-do-ulic--1502454.

³⁰Romea, *Czech Labour Office says it cannot tell municipalities how to award housing benefits*, available at:

<http://www.romea.cz/en/news/czech/czech-labor-office-says-it-cannot-tell-municipalities-how-to-award-housing-benefits>

allocating housing benefits and promised to amend the Act. This governmental intervention has created a state of legislative limbo.³¹

9. Since the 1990s housing experts have called for the introduction of a Social Housing Act, but the government has shown no commitment to this. Recently, the Ministry of Regional Development and the Ministry of Labour and Social Affairs have been jointly preparing a new comprehensive Concept on Social Housing, which would create a system of available social housing allocations for people in housing emergency (seniors, people with health impairments, the poor and those experiencing discrimination). This Concept has been however robustly opposed by the associations of cities and the regions and criticised by some right-wing political parties.³² It is therefore unclear whether it will succeed in the Czech Parliament.

Recommendations:

The ERRC, MDAC, and the Platform for Social Housing make the following recommendations to the Czech Government:

- Ensure that any evictions that do take place are a means of last resort, and are carried out in accordance with both national and international law, including ensuring that those evicted have access to effective remedies against forced eviction;
- Engage meaningfully with representatives of the Roma community and local NGOs actively to seek solutions that fully satisfy the right to adequate housing;
- Introduce adequate social housing policies without further delay, namely; adoption of legal provisions for social housing, which would detail the role of the state and municipalities, target groups and minimal standards of social housing;
- Ensure funding schemes for the provision, reconstruction or construction of new social housing premises, in adequate scale and under conditions which meet the expectations of municipalities and civil society;
- Ensure vulnerable Roma do not lose their eligibility to social housing. Test the use of socially-innovative measures, specifically housing-led approaches, and social rent agencies and programmes of housing. Introduce eligibility criteria that could be met by vulnerable Roma; and
- Develop and implement policies to address the vulnerabilities of persons with disabilities, children, young people and others leaving institutional care; such policies should take into consideration individual needs and characteristics, ensure the provision of reasonable accommodations where necessary, targeted to ensure social inclusion.

³¹Romea, *Czech Labour Minister and Ombudsman at odds over housing benefits law*, available at: <http://www.romea.cz/en/news/czech/commentary-czech-labor-minister-and-ombud-at-odds-over-housing-benefit-law-mayor-says-state-administration-is-collapsing>.

³² Association of Czech cities and towns, Press statement to proposed Concept of social housing, available at: <http://www.smocr.cz/cz/tiskovy-servis/tiskove-zpravy/koncepci-socialniho-bydleni-je-treba-prepracovat.aspx>.

Inclusive education

1. Eight years ago, the European Court of Human Rights (ECtHR) announced its judgment in *D.H. and Others v the Czech Republic*³³ and ruled that the Czech Republic discriminated against Romani pupils by offering them inferior education in doubly-segregated schools. Since then, the Czech Republic has made very little progress in securing non-discriminatory access to education for all children and establishing an inclusive system of education, irrespective of social status, ethnicity or disability. Historically, education in the Czech Republic has been provided through a two-stream parallel system – “mainstream” and “special” education. A special education stream was created in order to provide education to those children believed to be unable to attend mainstream schools because of their physical, sensory or mental disabilities. To this day, the majority of children with mental disabilities or multiple disabilities are educated in the segregated schooling system,³⁴ including children from Romani communities who have mental, physical or sensory disability or who have been labelled as having a ‘mild intellectual disability’.
2. Approximately one third of all children labelled with a ‘mild intellectual disability’, and therefore educated in segregated settings, are Roma. According to research of the Czech Ombudsperson from 2012 - which is considered by a broad coalition of experts to be the most representative out of six existing statistical surveys on the proportion of Romani children in practical education - Romani children continue to be overrepresented in schools and classes designed for children with ‘mild mental disabilities’ where they constitute around 35 per cent of all children. According to different estimates, 150,000 to 300,000 Roma live in the Czech Republic (1.4 to 2.8 per cent of the population), therefore the proportion of Romani children in schools and classes designed for children with mental disabilities is more than 10-times higher than expected.³⁵ Furthermore, the 2012 UNDP household survey emphasizes that 17% of all Romani children between ages 7 to 15 attend practical and special schools and 60% out these Roma children are placed in ethnically segregated special/practical schools, the majority of whose schoolmates are Roma.³⁶
3. According to a 2014 analysis focusing on the representation of children with intellectual disabilities (mild, medium and severe) in the school age population,³⁷ the number of children considered to have an intellectual disability (mild, medium and severe) decreased by 40% over the last five years – equating to 1.84 per cent of the school age population. Whilst this

³³European Court of Human Rights, *D.H. and Others v. The Czech Republic* [GC], application no. 57325/00, judgment of 13 November 2007.

³⁴ See The Concluding Observations of 23 June 2014 of the Committee on Economic, Social and Cultural Rights on the second periodic report of the Czech Republic.

³⁵ Public Defender of Rights, Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools, Brno, 2012, available at:

http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf

³⁶ UNDP, *Roma Education in Comparative Perspective*, 2012, pp. 67-68.

³⁷ Klusáček, J. Nálepkování dětí diagnózou mentální postižení v České republice, ČOSIV, December 2014. Available in Czech at: <http://www.cosiv.cz/analyza-cosiv-nalepkovani-deti-diagnozou-mentalni-postizeni-v-ceske-republice/>

represents progress, the overall reduction fails to reflect significant regional variances and a lack of a national approach to providing inclusive education for all children, regardless of ethnicity or disability. Firstly, the number of children diagnosed with intellectual disabilities in the Czech Republic remains significantly higher than the international average. Moreover, the decrease in diagnoses of intellectual disability does not correspond with the decrease in the total number of children attending practical or special schools. Some Romani children are placed in these schools based on the re-diagnosis of social disadvantage.. Finally, some regions continue to have significantly more children labelled as having an intellectual disability. These are also the regions where higher numbers of special schools have been maintained. It is no coincidence these are the same regions where the Roma communities are larger. For example, there are twice as many children diagnosed with intellectual dis in Ústecký region, which has the largest Romani population in the Czech Republic, than is the national average.³⁸

4. The segregation of Romani children in education is the result of discrimination and prejudices related to the Roma community and also of the well-established “special schools” system. The core of the problem is the very existence of the special education system. This system denies all enrolled children their right to inclusive education, disproportionately impacting on Romani children who are often misdiagnosed with mental disability. Inclusive education recognises that all children are different and acknowledges that children with disabilities must be able to access the general education system, on an equal basis.³⁹ According to the Office of the UN High Commissioner for Human Rights (OHCHR), inclusion is “a process that recognizes: (a) the obligation to eliminate barriers that restrict or ban participation, and (b) the need to change culture, policy and practice of the mainstream schools to accommodate the needs of all students, including those with impairments”.⁴⁰
5. In March 2010, the Ministry of Education adopted a non-binding National Action Plan on Inclusive Education (NAPIE). It has also developed an inclusive education related plan amid a larger strategy for Roma. It however failed to allocate any specific budget to implement NAPIE and therefore the document carries no weight. Besides these plans, the Government has not adopted any other specific policies aimed at disassembling the special educational system or advancing the right to inclusive education on a comprehensive national basis for all children.
6. Regarding concrete legislative developments and concerns, recently, the Czech Parliament adopted an amendment to the School Act which provides for a new system of support for children with special educational needs (SEN).⁴¹ The amendment to the School Act

³⁸ ČOSIV, *Analysis of the Occurrence of Intellectual Disability in the Czech Republic*, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2694916&SecMode=1&DocId=2233300&Usage=2>

³⁹ UNCHR, ‘The right to education of persons with disabilities. Report of the Special Rapporteur on the Right to Education’ (2007) UN Doc A/HRC/4/29, 9.

⁴⁰ OHCHR issued a thematic study on the topic: OHCHR, ‘Thematic study on the right of persons with disabilities to education’ (2013) UN Doc A/HRC/25/29, p. 5.

⁴¹ Amended School Act is due to come into force by the school year 2016/17.

introduces a new classification of children with SEN based on identifying supportive measures which they need in education and includes a list of measures such as teacher assistance, special didactic and compensatory aids, individual educational planning and architectural adjustments. It states that supportive measures are provided free of charge. Whilst the introduction of supportive measures is acknowledged as a positive development, the new amendment also introduced some controversial provisions,⁴² which allows for the segregation of children with disabilities or those labelled as having a disability (including Romani children). The amendment therefore reinforces the segregated education system in contradiction to the international standard of inclusive education.

7. In addition, the legal order of the Czech Republic does not recognise the term 'inclusive education' and principles of inclusive education are not enshrined in Czech law. Legislation does not provide explicitly for reasonable accommodations nor ensure that children have a right to be educated in the least restrictive environment. The School Act only recognises the right to equal access of all persons to education and consideration of their individual needs.⁴³ Therefore, the Government should amend the law in order to ensure all children have equal access to *mainstream* education in an *inclusive* environment, as already recommended by the UN Committee on the Rights of Persons with Disabilities.⁴⁴ This is of significant importance for Romani children because currently they are not guaranteed the right to attend mainstream non-segregated education. Transferring children from practical to mainstream schools is not in itself sufficient to address their needs and educational exclusion. Many of these children will need some form of individualised support, either due to disabilities, or due to the long-term effects of educational segregation such as the lack of opportunity to develop specific sets of social and other skills. These obstacles must be recognised and support provided, in order for Romani children, and those with disabilities, to truly benefit from mainstream schooling.
8. In terms of finance, the Ministry of Education announced that there will be some level of financial reform for the education of pupils with SEN. No details have yet been provided on the budget the Government is planning to allocate. We do however know that the Czech Republic spends less than average per student than OECD countries. Despite this, there is no policy to bring education expenditure in line with other OECD countries. Therefore there is a need to emphasise that the new system of supportive measures is unlikely to have practical benefits for children unless sufficient funds are allocated to it.
9. It has been pointed out by several UN bodies (including the CERD Committee) that, in addition to segregation of children with disabilities and Romani children misdiagnosed with mental disability, Romani children are also educated separately from their peers in mainstream elementary schools. In many towns and villages there are schools known as "Roma schools", which are made up almost exclusively of Roma pupils while a few hundred metres away there are usually other schools which are attended by other pupils, the vast

⁴² See amended § 16 para. 8 of Act No. 561/2004 Coll., Education Act. (not yet in force)

⁴³ See § 2 para. 1 of Act No. 561/2004 Coll., Education Act.

⁴⁴ UN Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report of the Czech Republic", 2015, CRPD/C/CZE/CO/1, para. 48.

majority of who are non-Roma. These segregated settings within mainstream education are usually caused by three main factors; residential segregation (the catchment area of a school is identical to that of the Roma neighbourhood/settlement); unwillingness of “non-Roma elementary schools” to enrol Romani children; and enrolment and transfers of non-Roma children to different catchment areas with “non-Roma schools”.

10. In September 2014, the European Commission initiated infringement proceedings against the Czech Republic. The proceedings were initiated due to ongoing discrimination of Romani children in the Czech Republic in the field of education and non-compliance with relevant anti-discrimination EU law.⁴⁵

Recommendations:

The ERRC, MDAC, and the Platform for Social Housing make the following recommendations to the Czech Government:

- The Government should take steps to dissemble the special educational system and ensure the realisation of the right to inclusive education for all children by taking concrete and targeted legislative and administrative steps within a reasonable timeframe to achieve these goals;
- The Government should amend the Educational Act to ensure the right of all children to inclusive education. The law should therefore enshrine the principle of inclusion among other principles guiding education system reforms, and specifically including the right to inclusive education for all children, pupils and students. The law should also explicitly provide for the right to benefit from reasonable accommodations, individualised supports and establish the principle that children have a right to be educated in the least restrictive environment. These legislative changes should be introduced within a reasonable timeframe;
- All legislative and policy changes should be accompanied by the allocation of necessary financial and human resources. The Government must allocate adequate resources in order to fully implement measures to end segregated educational provision and ensure that all mainstream education is accessible to all children, including Romani children; and
- The Government should end segregation of Romani children in mainstream “Roma schools”. To achieve this aim, it should consider re-drawing catchment areas and adopt concrete plans of desegregation.

⁴⁵ <http://www.errc.org/article/errc-hopes-that-eus-proceedings-against-the-czech-republic-sends-a-strong-signal-to-all-member-states-that-discrimination-will-not-be-tolerated/4326>

III-treatment and harassment

1. There are systemic shortcomings related to alleged racially-motivated violence perpetuated by public officials and ineffective investigation into such acts of police brutality. According to this Committee it is necessary that the state, “protect[s] persons against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (art. 5(b)),” and “secure[s] effective remedies and ensure[s] that justice is fully and promptly done in cases concerning violations of fundamental rights and freedoms”.⁴⁶ In its 2011 concluding observations, the Committee recommended that the Czech Republic “ensure that racial motivated acts of violence against Roma are investigated, and that perpetrators, including public officials, do not remain unpunished.” The Government informed the Committee in their report about offences related to hate crime. It, however, omitted to include the number of state investigations of torture and ill-treatment inflicted by public officials.
2. The Czech Criminal Code introduced under Article 149 an offence of torture and other inhuman and cruel treatment in connection with the exercise of the powers of central government authorities, local authorities, courts or other public authorities. The aim of the provision is also to target racially-motivated violence conducted by public officials, typically police officers, and this is recognised under Article 149(2)(c) of the Criminal Code which provides for harsher sentences. It is striking that according to official data, since its introduction in 2010, not one public official has been prosecuted under this provision.⁴⁷
3. ERRC and MDAC argue that the lack of convictions of public officials for torture or inhuman and cruel treatment clearly demonstrates an unwillingness within the criminal justice system to investigate and prosecute allegedly violent conduct. Such situations are perpetuated by the fact that the Criminal Code does not define torture and courts are reticent to use definitions provided by international human rights law. What the law does, however, is to require intention to cause physical or mental suffering not only for acts of torture, but also for acts of inhuman and degrading treatment, which contradicts well-established standards of international human rights law. And thirdly, the notion of “public official”, referring to the people who can be charged with such crime, is defined in a restrictive manner and does not include individuals working in specific places of detention like children homes (where significantly higher numbers of Romani children are placed), psychiatric hospitals or social care institutions. Such institutions are widely known as places of human rights abuses, where people are vulnerable to violence, torture, ill-treatment, exploitation and abuse.⁴⁸ The Czech Government, however, has

⁴⁶See CERD, General Recommendation No. 27, para. 7 and 12

⁴⁷ Judicial Yearbooks of the Ministry of Justice, available in Czech at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html>

⁴⁸ See, for example, Mental Disability Advocacy Center, Cage beds and coercion in Czech psychiatric institutions, 2014, available at http://www.mdac.org/sites/mdac.info/files/cagebed_web_en_20140624.pdf; also, the UN Committee on the Rights of Persons with Disabilities, “Concluding observations on the initial report of the Czech Republic”, 2015, CRPD/C/CZE/CO/1, paras. 29-37.

the obligation to exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors,⁴⁹ in all type of institutions.

4. The General Inspectorate for Security Forces (GIBS) is the authority responsible for investigations into misconduct committed by the Czech police. The Inspectorate was established by Czech Government in 2011. However, the Inspectorate has been criticised for its lack of independence by the European Court of Human Rights (ECtHR) in the cases of *Eremiášová and Pechová v the Czech Republic*⁵⁰ and *Kummer v the Czech Republic*.⁵¹
5. The submitting NGOs also note that, since 2011, there has been an increasing number of anti-Roma marches and rallies in the Czech Republic. In the summer of 2011, local police headquarters reported two allegedly racially-motivated attacks of Roma against non-Roma in Northern Bohemia. These incidents initiated a series of anti-Roma marches in the region; the ERRC monitored at least nine marches called with the intention of spreading anti-Roma sentiments. One of the more serious incidents involved a mob on 26 August 2012, when locals went on a spontaneous march to houses inhabited by Roma and attacked their houses and flats by throwing stones and branches. Despite the fact that the march was not officially registered with authorities, police forces did not act to dismantle it; moreover they lost control over the mob which resulted in damage to the property of local Roma. In the following months the region experienced dozens of hate rallies against Roma, some of them involving thousands of locals, and resulting in physical confrontations with police forces. Numerous protests and demonstrations organised by both residents and extreme right wing organisations against Roma in towns turned violent, with several attacks on Romani property. In response, national authorities dispatched 120 riot police to the region to protect Romani residents from harm. In 2013, extremists in the Czech Republic organised 272 anti-Roma events. There were 217 extremist-related crimes.⁵² In 2014, the Roma press agency (ROMEIA) reported at least 8 anti-Roma marches and rallies.⁵³

Recommendations:

⁴⁹ See, A/HRC/22/53UN, para. 24; UN Committee against Torture, General Comment No. 2, paras. 15, 17 and 18. See also Committee against Torture, Communication No. 161/2000, *Dzemajl et al. v. Serbia and Montenegro*, para. 9.2; Human Rights Committee, General Comment No. 20 (1992), para. 2.

⁵⁰ Application no. 23944/04, Judgment of 6 February 2012.

⁵¹ Application no. 32133/11, Judgment of 27 March 2014.

⁵² Draft Czech intelligence report: Anti-Roma campaign of 2013 was a significant ultra-right action, ROMEIA, available at: <http://www.romeia.cz/en/news/czech/draft-czech-intelligence-report-anti-roma-campaign-of-2013-was-a-significant-ultra-right-action>.

⁵³ Romeia, *On-line: Romové v Ostravě demonstrovali proti rasismu. Neonacisté, kterých přijelo jen pár, se snažili provokovat*, 6 December 2014, <http://www.romeia.cz/cz/zpravodajstvi/on-line>

The ERRC, MDAC, and the Platform for Social Housing make the following recommendations to the Czech Government:

- The Government must amend the Criminal Code to:
 - Introduce a clear definition of “torture”, and this should rely on settled international human rights standards;
 - Remove the requirement of having intent to cause physical and mental suffering in order for an act to constitute inhuman and degrading treatment;
- Redefine the definition of who can be a perpetrator of the offence of torture and other inhuman and cruel treatment to ensure that there is not impunity for offences committed by non-state actors working in institutions such as children homes, psychiatric hospitals and social care institutions;
- The Government must take measures to address racially motivated violence in general, including when inflicted by public officials;
- The Government shall establish a fully independent autonomous institution which will be responsible for the investigation of complaints of alleged misconduct of police officers as well as all complaints with a possible racial motive; and
- The Government shall ensure that any protests and/or assemblies do not result in violence against Roma.

Coercive Sterilisations of Romani Women and Girls

1. In the former Czechoslovakia,⁵⁴ a Public Decree on Sterilisation from 1971,⁵⁵ 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 institutions,⁵⁶ often without their full and informed consent. In 1979, Czechoslovakia also initiated a programme providing financial incentives to Romani women to undergo sterilisations.⁵⁷
2. Sterilisations were a recognised state policy encouraged by the Czechoslovak Government until 1993 when the specific legal provisions were abolished.⁵⁸ However,

⁵⁴ Czechoslovakia was a federal state of Czechs and Slovak, which existed from 1918 to 1993, when it dissolved in two separate states of the Czech Republic and Slovakia.

⁵⁵ Government of the Czech Republic, *Decree on Sterilisation No. 01/1972* passed on 17 December 1971, valid from 1 January 1972. The Decree expanded the provisions of the Law on Public Health from 1966.

⁵⁶ 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>.

⁵⁷ Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures (VOP), p. 3.

⁵⁸ Směrnice Ministerstva zdravotnictví ČSR ze dne 17. prosince 1971 o provádění sterilizace [*Decree on Sterilisation No. 01/1972* passed on 17 December 1971, valid from 1 January 1972. Number 252.3-19. 11. 71].

the practice of sterilising Romani women and women with disabilities against their will continued throughout the 1990s and 2000s, with the last known case occurring as recently as 2007.⁵⁹ The Czech Human Rights Council estimates as few as 50 (the cases previously documented by the Czech Ombudsman), and as many as thousands (an estimate based on the Swedish experience) of women could be entitled to compensation because they have been subjected to coercive sterilisation.⁶⁰

3. The law currently in force includes the obligation to acquire informed consent from the patient,⁶¹ as well as instructions for medical personnel on how to consult with patients on the sterilisation's nature, risks and consequences. An independent witness (with medical expertise) is now required to attend the consultation with the patient and one more witness can attend at the request of the patient. The Act also incorporates some of the provisions from the International Federation of Gynaecology and Obstetrics (FIGO) Guidelines,⁶² and forbids sterilisations performed in prisons.
4. There are however several prevailing shortcomings in this law. The Act does not define the concepts of informed consent and informed choices. It does not clearly state when it is appropriate for doctors to initiate a discussion on sterilisation with patients and finally it does not oblige medical personnel to inform the patient that sterilisation is only one of many methods of contraception. Moreover, with respect to persons with disabilities it does not provide for an obligation to ensure accessible information specifically for women with disabilities, nor to provide reasonable accommodations when needed.
5. Moreover, Section 12 of the Act defines sterilisation and describes the medical and other situations under which it can be performed.⁶³ It doesn't however indicate that sterilisations are never a solution to a medical emergency and do not constitute a life-saving intervention,⁶⁴ and it does not ban sterilisations from taking place in psychiatric

⁵⁹ ERRC, Coercive sterilization of Romani women, available at: <http://www.errc.org/article/coercive-sterilisation-of-romani-women/3843>. For more details see also ERRC, *Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe*, Budapest, 2006; ERRC, *Parallel Submission to the Committee on the Elimination of All Forms of Discrimination Against Women for the Czech Republic*, October 2010, available at: <http://www.errc.org/cms/upload/file/cz-cedaw-sterilisations-errc-czech-republic.pdf>; Public Defender of Rights, *Final Statement of the Public Defender of Rights in the Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures*, Brno 2005: available at: http://www.upr-info.org/IMG/pdf/PDR_CZE_UPR_S1_2008anx_MatterofSterilisation.pdf;

⁶⁰ Human Rights Council, *Recommendation related to the sterilization of women executed in the Czech Republic in breach with the law, 2012*, available at (in Czech): <http://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/zasedani-rady-dne-17--unora-2012-98737/>.

⁶¹ Government of the Czech Republic, *Act on Specific Health Services*, November 6, 2011, available at: <https://www.zakonyprolidi.cz/cs/2011-373>

⁶² FIGO, *Guidelines for Female Contraceptive Sterilisation*, available at: http://www.womenenabled.org/pdfs/International_Federation_of_Gynecology_and_Obstetrics_Sterilization_Guidelines_FIGO_2011.pdf?attredirects=0.

⁶³ Government of the Czech Republic, *Act on Specific Health Services*, Section 12.

⁶⁴ See the ECtHR case *V.C. v. Slovakia*, November 2011, para. 110, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107364#%7B%22itemid%22:%5B%22001-107364%22%5D%7D>, or FIGO *Guidelines for Female Contraceptive Sterilisation*.

hospitals or social care institutions. Such provisions would have challenged the arguments of medical necessity used by medical personnel to either pressure Romani women to agree with the procedure, or used in retrospective to justify "emergency sterilizations" performed entirely without the patient's consent.

6. Although the Act prescribes the period between the consultation and the performance of the sterilisation, Section 15(2) disregards this time period if the consent form has been signed, thereby allowing sterilisations to be performed immediately. This provision raises further concerns regarding the performance of sterilisations on women in vulnerable states and under the pretext of medical emergencies, for example during Caesarean section when many Romani women have reported to be pressured to sign the consent form.⁶⁵
7. Another problematic aspect of the law is that it allows for the sterilisation of people with disabilities who are under guardianship after receiving approval from legal guardians, an expert commission and a court, and without the person's consent being required. The Special Rapporteur on Violence against Women called forced sterilisation of women with disabilities a form of violence and classified it as a "global problem."⁶⁶ The UN Committee on the Rights of Persons with Disabilities considers forced sterilisation as a violation of the rights to bodily integrity, family and fertility, health and legal capacity.⁶⁷ The UN Committee against Torture and the Special Rapporteur on Torture condemned the practice of forced sterilisations of persons with intellectual or mental disabilities as potentially amounting to torture or cruel, inhuman or degrading treatment.⁶⁸ Therefore international human rights law prohibits forced sterilisations of all people equally including those deprived of legal capacity.
8. In November 2009, Czech authorities acknowledged individual failures of medical personnel and expressed regret for forced and coerced sterilisations.⁶⁹ However, despite a previous Ombudsperson's conclusion that involuntary sterilisations were encouraged

⁶⁵ VOP report, 2005.

⁶⁶ Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences*, para. 28, U.N. Doc. A/67/227 (Aug. 3, 2012).

⁶⁷ CRPD Committee, *Concluding Observations: Spain*, paras. 37-38, U.N. Doc. CRPD/C/ESP/CO/1 (2011); para. 34, U.N. Doc. CRPD/C/CHN/CO/1 (2012); *Argentina*, paras.31-32, U.N. Doc. CRPD/C/ARG/CO/1 (2012); *Peru*, para.35, U.N. Doc. CRPD/C/PER/CO/1 (2012).

⁶⁸ CAT Committee, *Concluding Observations: Peru*, para. 19, U.N. Doc. CAT/C/PER/CO/6, (2012) and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, paras 48, 88, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan E. Méndez).

⁶⁹ The Government of the Czech Republic, *Resolution of the Government of the Czech Republic 1424*, November 23, 2009, available at: [http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/\\$FILE/1424%20u091123.1424.pdf](http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/$FILE/1424%20u091123.1424.pdf).

by state policy,⁷⁰ the Government denied the existence, at any point, of a systemic practice of sterilisations.

9. Meanwhile a significant number of UN and Council of Europe bodies recommended the Czech Government to take urgent action to investigate the extent of involuntary sterilisation practice and to establish a compensation mechanism.⁷¹ The UN High Commissioner for Human Rights, Navanethem Pillay, also wrote to the Czech Government in May 2014, asking them to report on the established safeguards and compensatory measures regarding victims of involuntary sterilisation.⁷²
10. Despite the robust and persistent international criticism, the Czech Government continues to neglect taking decisive action to establish a compensatory mechanism through which justice could be served to women subjected to involuntary sterilisations. Despite the official apology of the individual incidents pronounced by the Prime Minister in 2009, the Government has maintained that the state did not support the systemic practice against Romani women and women with disabilities. Romani women and women with disabilities continue to face barriers in accessing justice for their coercive sterilisations. The three-year statute of limitation, dating from the moment of acknowledging the sterilisation occurred, prevents the majority of victims from bringing civil claims for damages nowadays. To date there have been only three court cases where involuntarily sterilised women have been financially compensated, all of them only after having reached the European Court of Human Rights.⁷³
11. Moreover, Romani women with disabilities are likely to encounter greater obstacles in accessing the courts due to being placed under guardianship and being denied their legal standing, accessible information on their rights, and due to the lack of adequate support to initiate the necessary legal processes and the general limitations of being institutionalised.

⁷⁰Public Defender of Rights, *Final Statement of the Public Defender of Rights in the Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures*, Brno 2005: available at: http://www.upr-info.org/IMG/pdf/PDR_CZE_UPR_S1_2008anx_MatterofSterilisation.pdf.

⁷¹UN Committee on the Elimination of Discrimination against Women (CEDAW) in 2006 and 2010, the UN Committee on Elimination of Racial Discrimination (CERD) in 2007 and 2011, 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 (ECRI) in 2009 (report available at http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf); the Commissioner for Human Rights of the Council of Europe in 2010, the UN Committee against Torture (CAT) in 2012, available at: http://www.coe.int/en/web/commissioner/country-report/czech-republic/-/asset_publisher/McxMQ9JIN8n9/content/report-on-visit-to-czech-republic-2010-?redirect=%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fczech-republic&inheritRedirect=true) and the UN Committee on the Rights of Persons with Disabilities (CRPD) in 2015.

⁷²Letter from the UN Human Rights Commissioner Navanethem Pillay to the Minister of Foreign Affairs of the Czech Republic, Mr Lubomír Zaorálek, 30 March, 2014.

⁷³European Court of Human Rights, *Ferenčíková v the Czech Republic* (Application no. 21826/10), *Červeňáková v the Czech Republic* (Application no. 26852/09); and *R.K. v the Czech Republic* (Application no. 7883/08).

12. In the past six years there have been several legislative proposals on the compensation of victims of coercive sterilisations.⁷⁴ The most recent one was adopted by an interdepartmental group of the Czech Government in February 2015.⁷⁵ This draft legislation proposes that the Ministry of Health will establish an independent expert Committee which would review the individual claims of involuntarily sterilised persons and advise the Ministry on compensation. Those eligible for compensation will be women involuntarily sterilised between July 1966, when the Public Health Act was adopted, and March 2012, when a new Special Health Services Act annulled the previous legal provision. They will have 3 years to submit a complaint. The draft legislation has been put forward for debate in the Czech Parliament, and the outcome is still pending. This law does not adequately address the specific support needs of women with disabilities, including Romani women with disabilities, in order to access effective remedies and justice (reasonable accommodations, accessible information, etc.)
13. Despite the recent positive developments, the ERRC and the MDAC remain concerned about the Czech Government's lack of willingness to implement effective measures providing victims with adequate compensation. The ERRC and the MDAC are therefore concerned that the Czech Government is not being held to account for its past systemic human rights violations against Romani women and women with disabilities.
14. The Ministry of Health, which to date has not acknowledged the injustice of involuntary sterilisations, will be appointed under the legislation to decide on compensation claims. The expert committee will only have an advisory role. Therefore the ERRC remains concerned about the configuration of responsible bodies for the administration of compensations claims and in effect justice for the victims of forced and coerced sterilisations.

Recommendations:

The ERRC and the MDAC recommend the Government of the Czech Republic to undertake the following:

Access to Justice

1. Grant compensation to all victims of coercive sterilisation in the Czech Republic irrespective of the date of sterilisation, ethnicity, nationality, disability or age;
2. Ensure that the three-year statute of limitation, dating from the moment of sterilisation, will not prevent victims from bringing civil claims for damages;

⁷⁴ ERRC, *Submission to UN CEDAW on the Czech Republic*, June 2015, available at: <http://www.errc.org/reports-and-advocacy-submissions/errc-submission-to-un-cedaw-on-the-czech-republic-june-2015/4370>.

⁷⁵ Human Rights Council of the Government of the Czech Republic, *Draft Law of the Compensation for Illegally Sterilised Persons*, February 2015.

3. Ensure that all victims of involuntary sterilisation are provided with free legal aid and all potential litigation costs are covered; and
4. Amend/abolish problematic provisions of Specific Medical Services Act concerning informed consent to sterilisation, particularly those allowing the sterilization of women with disabilities without their full and informed consent.

Transparency

1. Make sure that any Commission for compensation contains independent experts and representatives from the Roma community and the disability community along with representatives of ministries and health services;
2. Appoint an independent committee to conduct research into the full extent of harm caused by the practice of involuntary sterilisation, and support ongoing outreach to all potential applicants for compensation; and
3. Establish clear procedural guidelines for following up on complaints of rights violations and strengthen administrative accountability mechanisms at hospitals.

Compensation

1. Secure access to non-monetary forms of compensation such as artificial fertilisation, rehabilitation, etc.

Accountability

1. Assign the Czech Foreign Ministry to undertake negotiations with the Slovak Government to provide redress for women sterilised in Slovakia prior to 1991; and
2. Secure access, when necessary, to decision-making support to dispose of financial compensation and avail fully of other forms of redress for all Roma women, and particularly for Roma women with disabilities.

Discrimination & Access to Information

1. Collect disaggregated data based on ethnicity, gender, disability and impairment type in healthcare;
2. Consider the cumulative effects of multiple discrimination (ethnicity/gender/disability) suffered by Romani women in accessing healthcare, education and other areas;
3. Recognise and react to intersectionality between vulnerability factors including gender, ethnicity and other status of women such as “rural” or “migrant”;

4. Allocate budgets specifically to improve the situation of Romani girls and women, especially Romani girls and women with disabilities, in accessing healthcare and education; and
5. Develop information and educational materials for persons with intellectual disabilities, particularly for Roma with disabilities, on their sexual and reproductive rights.