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Romani Women's Rights

"It appears that that thing called dignity is contagious and it is women who are more likely to become infected with this uncomfortable malaise..."

EZLN communiqué: 12 Women in the Twelfth Year Subcomandante Insurgente Marcos, 1996

THIS CURRENT ROMA RIGHTS issue looks at the responses of Romani women to some of the human rights violations Romani women face. Our past issue on women's rights, published in 2000, caused controversy as some view Romani women's rights activism as a fracture or rupture of the Roma rights movement. The Romani women's movement has evolved organically through the wider pursuit of Roma rights by Romani women and men over the years in response to the initial (and mostly continuing) lack of attention to women's issues on the part of the predominantly male "leaders", some of whom viewed patriarchal traditions as integral components of Romani identity and culture. Romani women's first steps to speak out about their rights as women and to challenge the idea that certain practices are a part of Romani culture have often been met with criticism, rejection or have been simply ignored. The fact is that women's rights in all contexts tend to be a cause of controversy, but particularly when in juxtaposition with other characteristics such as race or ethnicity, disability, sexual orientation, etc.

This issue of Roma Rights dedicated to the Romani women's rights movement will probably be no exception to this rule, as even its title, 'Romani women's rights *movement*', could already be the cause of controversy. Is the struggle in which many Romani women activists are currently engaging to defend their rights a "movement"? What do we refer to when we say movement in the context of Romani women? Is this movement part of the Roma rights movement? Part of the feminist movement? Of both? None? This issue of Roma Rights by no means pretends to provide an answer to all these questions. Instead, what we try to do is to give a few current examples of current Romani women's actions and reflections. Movements have often been perceived as collective mobilisations with an organisational structure. Looking from this narrow perspective at the Romani women's rights movement, we could conclude that there are only a few dozen, or a few hundred at most, Romani women activists, because we would only be seeing the few relatively well educated and relatively privileged Romani women who continue to emerge as the primary actors of the movement. What I propose is to look beyond the organised Romani women's movement.

We must consider that a Romani woman who has not joined a women's organisation does not lack feminist ideals. She might face barriers that do not allow her to become a full- or part-time activist. For example, she might not fulfil the formal requirements to be part of an NGO (in terms of education, language or other factors); she might not have the time because she has to look after her family; she may be prevented by her husband or family; she might not even know that there is a movement or might even refuse to identify herself as an activist. However, despite these barriers and sometimes taking great risks to her physical security, often being isolated and without the support of other people, in her everyday life she can challenge discriminatory practises precisely in the only arena where real and tangible changes can happen: the domestic

and immediate environment. Those acts of defiance are a manifestation of non-conformism, of a growing consciousness that there is something wrong with the present state of inequality between Romani women and Romani men and the majority society. It is in such situations that consciousness becomes and, indeed, fuels activism. If we don't take all these everyday acts into account then it would seem that only those of us who are working formally in organisations fighting women's rights comprise the Romani women's movement. This perspective weakens the movement and belittles actions by Romani women who are not formal activists. A narrow perspective would lead us to only see the tip of the iceberg, but the fact is that the formal activists are just the most privileged ones because we have had opportunities that others have not.

I am by no means trying to undermine the work of Romani women activists or say that is easy at all. As Truman Capote says, "More tears are shed for answered prayers than for unanswered ones." This seems particularly enlightened within the current context wherein we see that activists that decide to overcome fears and speak about human rights violations are often crushed by their governments, police, media, public opinion, etc. It is also important to point out that in many cases there is no clear line between formal activists and other Romani women making acts of activism/defiance, seeing that very often these two categories overlap. The main difference in the situation of a formal and non-formal female Romani activist is in terms of the support received from her peers and colleagues that non-formal activists rarely have and that helps her to persevere in fighting discrimination.

The Romani women's movement is often criticised for the fact that real tangible change in the situation of Romani women has not yet happened. However, the fact that the ERRC has changed in such a short period of time from lacking a gender perspective to having a number of activities in this area is a victory of the efforts of the Romani women's movement. This is an important victory because the ERRC, not a specific Romani women's rights organisation, has the ability to broaden the base of the Romani women's movement and increase the limited resources available. The ERRC and other organisations may also be able to contribute to the development of the holistic perspective of Romani women's rights, with expertise in other areas such as housing rights, employment, etc., which are necessary for addressing Romani women's issues.

The Romani women's movement is probably much bigger than conferences and reports allow us see, and the fact that there is something that we could start calling a movement is already an extremely positive thing. Female Romani activists (and hopefully men, too) might work collectively or individually, in accordance with their opportunities, as women's rights advocates, as Roma rights advocates, as teachers, as home workers, as lawyers, as mothers, or in any other capacity, against the illusion of male superiority and against racism. The Romani women's movement is as much about personal change and self-empowerment as it is about collective and social change.

Romani Women's Rights at the European Level

Lívia Járóka[1]

THE 2004 EU accession occurred without the presence of a solid EU-level policy on minorities. In many cases anti-discrimination directives were not transposed into national legislation or were not fully implemented in practice unless concrete steps were taken by EU bodies. Before 2003, very few Roma-related topics and reports were discussed in the European Parliament, despite widespread knowledge of the gravity of the situation. This lack of attention has had an impact on the Romani community. This is especially important if we take into account that the number of European Roma is equal to that of the population of Austria or of Sweden. During the first period of my work in the European Parliament in 2004, my first aim was to raise awareness and provide understanding about the Romani issue. The goal was to properly inform the European Parliament about the situation of the Romani people, and the main focus of our work was to replace the old paternalistic view with a professional sociological and economic discourse, which, previously, had only provided by a few European-level Roma-related NGOs. This period can be characterised by the process of mainstreaming Roma issues within the European Parliament in all fields and at all levels.

This issue is quickly gaining momentum, and several important resolutions and reports have been passed on this subject that lend themselves to substantive policy creation to ensure equality for Roma throughout Europe. In April 2005, the European Parliament adopted a Resolution on Roma in the EU, denouncing widespread discrimination and calling for concrete action to be taken to improve the situation of this community.[2] The Resolution proposed the recognition of Roma as a European minority, and encouraged a further integrated approach on the part of the European Commission to enhance the position of Roma. This approach will be achieved through the demystification of preconceptions regarding Roma, by highlighting the destructive phenomenon of Anti-Gypsyism, and by encouraging the adoption of human rights and anti-discrimination policies directed towards Roma, especially in the fields of education, employment and living conditions.

Several MEPs from all EU parties have devoted themselves to issues concerning minorities, including Roma. The European People's Party (EPP) officially made the Roma issue a high priority at the Congress of Rome in March 2006.[3] The EPP urges the abolition of the sub-standard and segregated education of Roma and the prevention of Romani children from dropping out of school. It calls for the inclusion of Romani culture and history within national school curricula. The central ambition of the programme is to increase the employment of Roma both in the private and public sector. The EPP holds that more Roma should be involved at all levels of local, regional and national governing and executive bodies, predominantly in countries with a large Romani constituency.

[1] *Lívia Járóka has been an MEP for Hungary since 2004. She is a member of the EPP-ED party. She serves on the FEMM and LIBE Committees in the European Parliament. Ms Járóka is also the first woman of Romani origin to be elected to the European Parliament.*

[2] *European Parliament, Resolution on the Situation of the Roma in the European Union, 2005 at:* ***http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0151+0+DOC+XML+V0//EN&language=EN***.

[3] *2006 Roma resolution, as passed at the Congress of Rome, at:* ***http://www.epp-ed.eu/Press/peve06/eve003/default_en.asp***.

The Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) and the Committee on Women's Rights and Gender Equality (FEMM Committee) within the European Parliament are the two Committees that take the lead on Roma-related issues. The FEMM Committee has several responsibilities: it defines, promotes and protects women's rights in the EU, including the implementation of international agreements and conventions involving the rights of women, while promoting the issue in third countries. It also works to promote equal opportunities for men and women, particularly in the labour market; it works to eradicate all discrimination based on gender; and it works to develop gender mainstreaming in all policy sectors. The FEMM Committee has also been influential in combating the trafficking of women and children, domestic violence, and gender-related health problems. These policy emphases easily lend themselves to promoting the well-being of Romani women in Europe, as these issues are exacerbated by the multiple forms of discrimination towards this group on the basis of gender and ethnicity.

Lívia Járóka Member of European Parliament for Hungary

The FEMM Committee strengthened its resolve to improve the situation of Romani women last year in several ways. A Committee-initiated background study to the Romani women report entitled *Economic Aspects of the Condition of Roma Women*[4] discussed the social and economic condition of Roma and particularly Romani women in fifteen states, including: Czech Republic, Germany, Spain, Ireland, Italy, Hungary, Austria, Poland, Portugal, Slovenia, Slovakia, Sweden, Bulgaria, Romania, and Turkey. The goal of the study was to provide an analysis of the factors that contribute to the marginalisation of Romani women in society. The study emphasised the difficulty in acquiring data on Roma women; which means that there is insufficient information available to create policies for Romani women.

The FEMM Committee called a public hearing in 2005, which involved several distinguished Roma women activists and representatives of the European Commission in order to discuss education and employment for Romani women, and it examined cases of "best practice" throughout Europe. At the public hearing on the extremely difficult situation of Romani women in Europe, members of the FEMM Committee agreed that new policies and more tangible results were required in order to overcome the obstacles faced by Roma. There was a consensus within the group that Romani women were the most discriminated against, but also the most forgotten and invisible, minority; and that action must be taken at European-level without delay.

Following the hearing, my own initiative report on the situation of Romani women in the EU[5] was completed in conjunction with the Open Society Institute, the European Roma Rights Centre, and several Romani women civil experts. The report highlights discrimination in health care, education, housing and employment faced by Romani women, and emphasises action at the national level of government through a series of policy recommendations.

The report urges Member States to quickly investigate and prosecute perpetrators of human rights abuses, including coercive sterilisation, in compliance with the "Follow-up to the Fourth World Conference on Women – Platform for Action (Beijing+10)" European Parliament Resolution.[6] Full access to unbiased health care

[4] *Berliner Institut für Vergleichende Sozialforschung, Economic Aspects of the Condition of Roma Women. Project number IP/C/FEMM/2005-09, 2006, at:* ***http://www.ipolnet.ep.parl.union.eu/ipolnet/cms/pid/1403***.

[5] *European Parliament, Resolution on the Situation of Roma Women in the European Union, 2006, at:* ***http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0244+0+DOC+XML+V0//EN&language=EN***.

[6] *European Parliament, Resolution on the follow-up to the Fourth World Conference on Women – Platform for Action (Beijing +10),at:* ***http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0073+0+DOC+XML+V0//EN&language=EN***.

for Roma in all Member States is emphasised. In the education sector, Member States are urged to use the framework of the open method of coordination to create legislation providing equal education for Roma and leading to the desegregation of schools. Work must be undertaken to improve the physical situation of Romani communities by creating necessary infrastructure: including waste removal and the provision of electricity. In the case of non-sedentary Roma, satisfactorily clean and hygienic sites are called for. In employment, equal opportunity and social inclusion policies aimed at alleviating the high unemployment rates of Romani women should be implemented, including non-discrimination training for employers. The report recommends social economic studies; for example, financing for female Romani entrepreneurs, including microcredit, and the establishment of programmes to assist self-employed Romani women. To ensure compliance with legislation, data collecting and analysis disaggregated by gender and ethnicity will be created, and penalties will be levied on those that do not comply.

The Romani women report makes special mention of the patriarchal traditions of Roma society, incorporating the view of experts that suggests that, while it is important to maintain traditions to the fullest extent possible, the inequity between men and women in Romani society can be traced back to women's traditional social roles within the community. Society must work to ensure that females in Romani society have the same opportunities as their male counterparts. To this end, a new generation of women leaders among our society are working in order to break down the social barriers within our own community so that Romani women can fully participate in mainstream society.

While minority protection is always proclaimed as a very important EU principle, anti-discrimination directives are the only legal tools provided at European-level in order to influence the minority policies of Member States. There have been signs of a more proactive approach from the new European Commission. Also, after joining the EU, Member States are no longer required to follow the Copenhagen criteria, which means that states no longer have to maintain specific criteria relating to the treatment of minorities after accession. Even so, I believe that the European Commission can create an environment where minority protection gains more visibility and where Member States are forced to act according to a European-level principle. As a result of the European Parliament approach, the high involvement of the European Parliament in Romani issues has contributed to better understanding and a more progressive approach, which can be already perceived in two communications: the Roadmap 2006-2010 for Equality Between Women and Men, which cites the fight against multiple discrimination as one of the six priority areas for the European Commission,[7] and the strategy paper of May 2006 from the European Commission, "Towards an EU Strategy on the Rights of the Child",[8] which highlights the high risks that poverty represents for children, including Romani children, who are among the poorest and most vulnerable groups. School desegregation and the mainstreaming of Romani children will be discussed in depth during the spring 2007 period in the LIBE and FEMM Committees as a follow up to "Towards and EU strategy on the Rights of the Child" and as part of an initiative report.

The improvement and visibility of the mainstreaming approach, where Romani issues are integrated into all fields of policy-making, has slowly been replacing earlier paternalistic policies. However, there is an urgent need for further emphasis of the current and foreseeable economic pitfalls that the countries will experience if Roma integration is further delayed. National governments must then act urgently and serious commitment is required from the European Commission in order to initiate and monitor action.

[7] *European Commission, Roadmap for Equality Between Women and Men, 2006, at:* ***http://ec.europa.eu/employment_social/news/2006/mar/com06092_roadmap_en.pdf***.

[8] *European Parliament, Towards an EU Strategy on the Rights of the Child, 2006, at:* ***http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0367en01.pdf.***

The Romani Women's Movement in Montenegro: Chapter One

Tatjana Perić[1]

Introduction: The Situation of Romani Women in Montenegro

The Montenegrin Romani community is one of the smallest in Southeast Europe. The latest population census from 2003 registered 2,826 Roma and Egyptians, or 0.46 percent of the total population of Montenegro.[2] As is usually the case with official data on Roma in Europe, these numbers are thought to be much higher in reality, and some Romani NGOs estimate the number to be between 20,000 and 27,000. Over 90 percent of Montenegrin Roma are Muslim; many have been forcibly displaced from Kosovo. The average Romani household lives in very difficult social and economic circumstances, with high rates of poverty.[3] The situation of women, however, is made more complex by their multiple levels of discrimination: as Roma by the majority society, and as women within the Romani community. Socio-economic indicators applicable to Romani women rank lower than indicators for Romani men and much lower than those for non-Roma. According to the UNDP study on social vulnerability of Montenegrin Roma conducted in 2004, 44 percent of Romani women interviewed could not read and write. As much as 51 percent of Romani women have not had a single year of formal education. Twenty percent of women were unemployed, and another 30 percent were housekeepers; 54 percent of women in these two categories have never been employed. Only 15 percent of women earned their own income, and on the average they earned 78 EUR per month, compared to 169 EUR per month earned by Romani men and 220 EUR by non-Romani women.[4]

Montenegrin society as a whole is considered to be very traditional and patriarchal, and in the Romani community these features are even more strongly pronounced. Romani women in Montenegro largely do not participate in political processes. The only exception is the recent case of Nedžmije Beriša, the only Romani medical doctor in Montenegro, who was elected as a member of the assembly of the capital Podgorica by the ruling coalition of the Democratic Party of Socialists, led by the Prime Minister Milo Đukanović, and the Social Democratic Party.[5] According to human rights activists, domestic violence against Romani women is rife. Yet, when survivors seek assistance from state institutions, the latter do not properly address their concerns, and police and social centres rarely intervene, believing that

[1] *Tatjana Perić is an International Policy Fellow of the Open Society Institute (OSI) in Budapest. This article is based on the information gathered in her fellowship research project,* A Gendered View of the Decade of Roma Inclusion, *carried out in Croatia, Montenegro and Serbia. She is also the editor of the United Nations Development Program (UNDP) report on social vulnerability of Roma, refugees and displaced persons in Montenegro.*

[2] *MONSTAT – Statistical Office of the Republic of Montenegro, Census of Population, Households and Dwellings in the Republic of Montenegro in 2003, available at:* ***http://www.monstat.cg.yu/engPopis.htm***.

[3] *For more socio-economic data on Montenegrin Roma, see United Nations Development Program (UNDP),* At Risk: Roma and the Displaced in Southeast Europe*, UNDP, Bratislava, June 2006, and Christian Bodewig and Ashkay Sethi,* Poverty, Social Exclusion and Ethnicity in Serbia and Montenegro: The Case of the Roma, *World Bank, October 2005.*

[4] *UNDP Vulnerable Groups Dataset, available at:* ***http://vulnerability.undp.sk***.

[5] *Democratic Party of Socialists, List of Candidates for the City Assembly of Podgorica, available at:* ***http:// www.dpscg.org***.

these are "Roma issues".[6] Although the local NGO Legal Aid Centre (Centar za pravnu pomoć) offers *pro bono* legal advice to Roma in their two offices in Nikšić and Podgorica, where many cases are related to domestic violence,[7] there is unfortunately no systematic monitoring of human rights violations in Montenegro, including of discrimination against Roma and Romani women in particular.[8]

Current Roma- and Romani Women-related Policies in Montenegro

The Government of Montenegro is participating in the Decade of Roma Inclusion 2005-2015, and accordingly, the relevant Action Plan was adopted in January 2005. Only one Romani activist, Veselj Beganaj, took part in drafting the Action Plan, although he represented the views of a network of Romani NGOs. It is unfortunate, however, that the Montenegrin authorities did not make provision for higher participation of Roma, and especially Romani women activists, in this process. Consequently, the Action Plan mentions gender issues in a very marginal manner, and only within the areas of health and education.[9] Despite the existence of the Action Plan, as of December 2006 the Government of Montenegro had not earmarked any funds or launched any projects related to the implementation of their Roma Decade commitments. In practice, any achievements to date must be credited to Romani NGOs and to international organisations.[10]

In another development relevant to Montenegrin Roma, the new Law on National Minorities was adopted on 10 May 2006, which envisaged the creation of minority councils and set criteria for the guaranteed representation of minorities in the national parliament.[11] However, in June 2006, a Constitutional Court decision blocked this law, with regard to two articles that guaranteed seats to ethnic minority parties, alleging that the law contravened the principle of equality for all citizens.[12] Blocking the law on minorities also created obstacles to the creation of the Government Strategy for Roma in Montenegro, drafted within the framework of a project from the US-based *Project on Ethnic Relations* in cooperation with the Ministry for the Protection of Minority Rights. It is planned that the strategy will address those areas not covered by the Action Plan, especially political participation.[13] A public review of the first draft of the Strategy is planned for January 2007.[14]

[6] *In one instance, a Romani woman reported her husband's violence to the local police station in Podgorica numerous times. However the police never intervened as she called from Konik, a predominantly Roma inhabited area, and it is believed by many police officers that these are "typical Roma family affairs" that are not worth intervening in. When she sought assistance from the local social work centre, she was sent to the NGO shelter for domestic violence without her story even being heard (Anima, Analiza za novembar 2005, Kotor, Montenegro, November 2005, available at:* ***http://www.zinecanima.cg.yu****). Similar examples were recounted by other women's rights activists indicating that there is a pattern of both gender and racial discrimination.*

[7] *Interview with Mr Aleksandar Zeković, Executive Director of the Roma Scholarship Foundation, 4 September 2006, Podgorica.*

[8] *Interview with Ms Tamara Srzentić, Program Coordinator, Foundation Open Society Institute – Representative Office Montenegro, 4 September 2006, Podgorica.*

[9] *The Action Plan is available at:* ***http://www.romadecade.org/action.htm****.*

[10] *Interview with Mr Aleksandar Zeković, see note 7.*

[11] *Project on Ethnic Relations, "Developing a Minority Policy in Montenegro," Kolašin, Montenegro, 2-3 June 2006. Available at:* ***http://www.per-usa.org****.*

[12] *Nedjeljko Rudović, Montenegro: Minorities Accuse Djukanović of Betrayal, Balkan Insight, Podgorica, 20 July 2006. Available at:* ***http://www.birn.eu****. The official statistical figures for Roma in Montenegro, however, do not meet the required one percent threshold for national representation.*

[13] *Project on Ethnic Relations, PER Holds Second Roundtable Discussion on Drafting Montenegro's Government Roma (RAE) Strategy, Podgorica, 21 February 2006. Available at:* ***http://www.per-usa.org****.*

[14] *Interview with Ms Tamara Srzentić, see note 8.*

Husnija Hajrušaj (left), Fana Delija (center) and Fatima Naza (right), staff of the Nikšić-based Center for Roma Initiatives.

Photo: Tatjana Perić/OSI International Policy Fellowships

At the same time, the National Action Plan on Romani Women is also being drafted, under the auspices of the Gender Equality Office of the Republic of Montenegro.[15] This process is a part of an international project "Roma Women Can Do It" and the second phase of the project in Montenegro. This action plan should be integrated into the forthcoming Strategy for Roma, and the amended Action Plan.[16] However it is not clear how the envisaged integration will be carried out. At the same time, the National Action Plan for Achieving Gender Equality in Montenegro is also still waiting to be adopted.

Romani Women Activists and Romani Women Organisations: Nikšić

There are currently very few Romani women's organisations in Montenegro, and most of my interlocutors could not name more than three, based in Podgorica and Nikšić.[17] Additionally, several other Romani NGOs run projects on Romani women.[18] The *Centre for Roma Initiatives* in Nikšić is by far the most important, not only for the Romani women's movement in Montenegro, but the Montenegrin Romani scene as a whole. This organisation grew out of the Nikšić-based NGO *SOS Hotline for Women and Children Victims of Violence*. Founded in 1998, the *SOS Hotline*'s work included programmes for women and children from marginalised groups, and they launched their first programmes in the Nikšić Romani community in early 2000, under the name of the "Roma Centre". They had to work hard to gain the trust of the Romani community to enable women and girls to take part in their activities without hindrance. No other organisation was working with Romani women at the time, and in the words of Nada Koprivica of the *SOS Hotline* this was "a revolution".[19] Initially beneficiaries of services, some Romani women soon became workshop leaders and took on a more active role in the project. In time, *SOS Hotline* activists realised that Romani women were sufficiently empowered to take ownership

[15] *The Gender Equality Office of the Republic of Montenegro was established in March 2003, following the establishment of the Committee on Gender Equality in 2001. The draft Gender Equality Law and the draft National Action Plan on Gender Equality are currently awaiting adoption by the Montenegrin Government.*

[16] *Gender Equality Office of the Republic of Montenegro, Projekat 'Romkinje to mogu', Podgorica, 11 July 2006. Available at:* ***http://www.gender.vlada.cg.yu***.

[17] *Interview with Mr Veselj Beganaj, President of the NGO Početak, 4 September 2006. Podgorica.*

[18] *Interview with Mr Veselj Beganaj, see note 17.*

[19] *Information on the work of the Centre is based on the interviews conducted with its staff members Fana Delija, Fatima Naza and Husnija Hajrušaj, and also Nada Koprivica and Dijana Pištalo of the SOS Hotline, 5 September 2006. Nikšić.*

of the project, and thus in September 2004 the *Centre for Roma Initiatives* was registered as an independent NGO, although they continued working with the *SOS Hotline* and sharing office space. Since this time, the Centre has acquired three full-time staff members who had all been active in the *SOS Hotline* workshops long before the Centre was formed.

The first project implemented by the Centre was to produce a unique report on the situation of Romani women in the city of Nikšić.[20] The five Romani activists involved in the research all came from different settlements, and undertook to visit all the Romani households, one by one, and to interview all girls and women over the age of fourteen.[21] In the beginning there were difficulties; husbands, in many cases, insisted on staying to hear the interview. It was of tremendous assistance, however, that all the young activists were locals, and that they spoke openly and honestly about their projects. Initially they did have to speak with the men of the family first, but only to persuade them to allow girls and women to be interviewed, and then the interviews were held with the women alone. In this way, they were able to win the complete trust of the community.

Following the excellent experience of the first publication, they were engaged by the United Nations Children's Fund (UNICEF) to conduct *Research on Inclusion of Roma Children in the Educational System*.[22] This project was coordinated by the *SOS Hotline*, whereas the research was conducted in four Montenegrin towns – Podgorica, Nikšić, Berane and Rožaje – by the Centre, the Podgorica-based NGO *Woman's Heart* and NGO *Enfants* from Rožaje. The researchers interviewed 415 parents, mainly mothers, on various issues relating to the education of their children, and eventually published a very detailed report on over 90 percent of the Romani families in these areas with children of school age.[23]

It was the most recent project, however, that brought the greatest challenge. When they decided to join the regional project *Virgin – Yes or No* supported by the Open Society Institute (OSI), polling Roma on issues related to virginity, the Centre's activists themselves doubted whether they would indeed succeed with a poll on such a sensitive topic in an extremely patriarchal country.[24] Not wishing to show any disrespect to the main cultural patterns, they engaged male pollsters to conduct interviews with the men. In total, 288 persons were interviewed in seven towns in the country. In their experience, the young women they spoke to were honest about their experiences and attitudes, but often ended up requesting confidentiality.[25] In Podgorica, some mothers asked them not to interview their daughters. Some male leaders of the community told them clearly that they would have "chased them away, had they not known their fathers."[26] The Centre's activists were belittled by male leaders on other occasions too, where the latter not only ignored or criticised their work, but sometimes also appropriated the Centre's successes as their own. Generally, these women had to confront numerous prejudices in their environment. "In the beginning, people were sceptical," says Fana Delija, the Centre's

[20] *Centre for Roma Initiatives, Research on the Position of Roma Women in Nikšić. CRI, Nikšić, 2005, available at:* ***http://www.osim.cg.yu/fosi_rom_en/download/research_roma_nk.pdf****.*

[21] *According to the Centre, the total Romani population in Nikšić numbers around 850 persons.*

[22] *UNICEF, Research on Inclusion of Roma Children in the Educational System, Podgorica, Niksic, Montenegro, 2006, available at:* ***http://www.sosnk.org/site_files/1157281246.pdf****.*

[23] *The mere number of members of the families interviewed in the UNICEF research exceeds the official number of Roma in Montenegro, proving that it is unrealistic; on the other hand, the estimates of researcher NGOs prove the initial alternative figures likely inaccurate as well: their own estimates are that the Romani population of Montenegro numbers 10-15,000 persons.*

[24] *Centre for Roma Initiatives, Virginity Does Not Determine Whether a Roma Girl is Worthy or Not. Nikšić, 2006.*

[25] *Interview with Ms Fana Delija, see note 19.*

[26] *Interview with Ms Fana Delija, see note 19.*

coordinator, "but then we formally established the Centre, and also produced our first report. Many people did not believe at first that we would succeed, but when we did everyone was pleased." According to Husnija Hajrušaj, some forecast that the activists would get married and therefore never finish their projects; Fana's parents, for instance, had to put up with comments from friends and neighbours who incessantly asked why they were allowing their daughter to do this kind of work. Their popularity is, nevertheless, indisputable among Nikšić Romani women: 90 percent of them have taken part in the Centre's programmes.[27] Thanks to their work, 90 percent of Romani women in Nikšić now have personal documents; the national average for Romani women in this respect is estimated at 60 to 75 percent. Less than 5 percent of Nikšić Romani women now give birth at home, compared to 60 percent prior to Centre's activities.[28] The Centre also took part in the process of creating the National Action Plan on Gender Equality, and in drafting of the National Action Plan on Romani Women.

The Centre's activists attended numerous regional events for Romani women, and when making comparisons between the Romani women's movement in the neighbouring states and Montenegro, they regretfully admitted that Montenegrin Romani women are in the most difficult position. According to Fatima Naza, this is due to the fact that Romani women's activism in Montenegro is just beginning, and the fact that there are very few educated Romani women, and also very few Romani women who are university students. Still, one victory has already been won: they requested, and succeeded, in having a woman – Vera Nakić – become the new president of the *Roma Circle,* a network of Romani NGOs in Montenegro.

Activists, Journalists, Students: Podgorica

The *Woman's Heart – Association of Roma and Kovači Women*[29] is formally the oldest Romani women's NGO in Montenegro, formed in Podgorica in 2002. To date they have implemented numerous projects, mostly targeting women and children. Behija Ramović, their coordinator, facilitated numerous workshops on "taboo topics", as she calls them: issues such as trafficking in the Romani community, or sex education.[30] The latter was carried out in partnership which the *Youth Cultural Centre Juventas,* from January 2005 to April 2006. The target population was the mainly displaced Roma living in the Konik I and II settlements of Podgorica. The Montenegrin partner NGO initially envisaged joint workshops, yet, in the end, these were held separately for men and women, since, in Behija's opinion, the project would have otherwise have failed since parents would not have allowed girls to attend. The men's workshops were attended by around 200 participants; while the workshops for women and girls reached a total of only 90 women.[31]

This was a common issue for any health workshops held by the NGOs and is a consequence of patriarchal attitudes in the community where "the mere mention of sex creates a lot of commotion," and as soon as they heard there would be any discussion about sex, some older women took the girls away. Patriarchal concerns make the work of Romani women's NGOs in Montenegro very difficult: in order to find participants for her workshops, Behija had to make individual visits to families and explain the purpose of the workshops to each of them. It was a successful strategy, mainly because most families knew her and were familiar with her work. Behija considers the

[27] *SOS Hotline for Women and Children Victims of Violence, Roma Centre 2000-2005. Nikšić, 2005.*

[28] *Interview with Ms Nada Koprivica, see note 19.*

[29] *Kovači (blacksmiths) denotes a group that is mainly perceived as a sub-group of Montenegrin Roma that mainly engaged in blacksmithing, however some members of this group deny being Romani.*

[30] *Information on the work of the Woman's Heart is based on the interview conducted with Ms Behija Ramović, 4 September 2006. Podgorica.*

[31] *OKC Juventas, Izvještaj sa 40 radionica, available at:* ***http://www.sexedukacija.cg.yu***.

Roma traditional gender relations one of the main problems of Romani women today. She is herself a single mother who decided to work on gender issues upon realising that "life is difficult for all women, but especially so for Romani women."

Behija Ramović, Coordinator of the Women's Heart – Association of Roma and Kovači Women and Deputy Director of the Roma Scholarship Foundation.

Photo: Tatjana Perić/OSI International Policy Fellowships

In addition to working with her NGO, Behija has also served as a Romani assistant at a local primary school in Podgorica for three years. This school has the largest percentage of Romani children: 350 Roma out of around 1000 pupils. Behija studied education at the University of Nikšić. However her studies were interrupted for personal reasons, as she was exposed to gender-based violence. "I know I need to go back to my studies," she said. Together with *Centre for Roma Initiatives,* the *Woman's Heart* conducted the research mentioned above on the education of Roma children. Since April 2006, Behija has also been employed as an Assistant Director of the Podgorica-based *Roma Scholarship Foundation (RSF).* According to Behija, Romani women activists have a lot of work to do. While working for her organisation, she met women on a daily basis coming to complain of domestic violence, or seek advice on obtaining personal documents, enrolling their children in school, or registering with unemployment offices. "There are so few Romani women with formal education, so those of us who are here and who are active have our hands full!" said Behija.

Montenegrin Romani women activists will perhaps receive some support from the activism of Romani women students. Currently, there are only two Romani women students at Montenegrin universities.[32] One is Anita Zećiri, who is unique in many ways. She is the only Romani student at the University of Podgorica, and she is also the only Romani law student in the country.[33] Coming from Herceg Novi, where she attended Roma-related seminars and was engaged in an NGO, she knew from the start that she would go to university.[34] Anita confessed that she was initially slightly disappointed with law school, but she said she would never give up and betray her parents confidence in her and their pride in her accomplishments. "Now that I can see how law is applied in practice it is much more interesting," she said: since August 2006, Anita has been an intern at the law office of Dragan Prelević, a prominent human rights lawyer.[35] The *Open Society Institute Montenegro* and later the *Roma Scholarship Foundation* have supported her through scholarships since high school; now the *RSF* has offered her a living expenses scholarship but are not able to provide assistance to pay the extremely high tuition fees. After her university refused to waive the tuition fees, the Gender

[32] *Data from the Roma Scholarship Foundation, available at:* ***http://www.fsr.cg.yu****.*

[33] *The other Romani woman student is Kumrija Beganaj, who studies at the Faculty of Philosophy in Nikšić.*

[34] *Information presented here is based on the interview conducted with Ms Anita Zećiri, 6 September 2006. Podgorica.*

[35] *Dragan Prelević represented a group of 65 Romani men, women and children from the town of Danilovgrad, Montenegro, in relation to an incident from 1995 when their settlement was completely destroyed a vigilante act by local non-Roma. Prelević, the European Roma Rights Centre (ERRC) and the Humanitarian Law Centre filed a joint application with the UN Committee against Torture, and in 2003 the Committee found the then Serbian and Montenegrin authorities in violation of several provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See ERRC, UN Committee against Torture Finds Montenegrin Authorities in Flagrant Breach of Human Rights Standards, January 2003, available at:* ***http://www.errc.org****.*

Equality Office offered to cover them.[36] Currently she is in her second year of study, and most of her friends first found out that she was Romani from the press; in Montenegro, non-Roma usually only encounter Roma as beggars in the street. She regrets that many Romani girls whom she knows would not be allowed to study even if they wanted to, as their mothers keep telling them that marriage is the most important thing for a woman. On the other hand, many young women accept this belief, too, and do not consider education as a lifestyle choice.

Anita Zećiri from Herceg Novi is the only Romani law student in Montenegro.

Photo: Tatjana Perić/OSI International Policy Fellowships

Furthermore, those activists who were displaced from Kosovo must cope with an additional layer of vulnerability: that of forced migration. The local branch of *Forum Syd*, a Swedish umbrella NGO working on global justice issues, has been actively working with predominantly displaced Romani youth in Podgorica since 2003. Their activities take place in the Multicool-T Club for youth in the Konik neighbourhood.[37] One of the youngsters who goes there is Dijana Mehmeti, originally from Kosovo. Back home she was finishing the seventh grade of primary school, and when she fled to Montenegro in 1999, with thousands of other displaced Roma, she initially went back to school but not for long.[38] Now she lives with her mother

Dijana Mehmeti organised numerous reproductive health workshops for youth in the Konik Roma settlement of Podgorica.

Photo: Tatjana Perić/OSI International Policy Fellowships

and siblings in the Konik camp, in a small flat without running water. In addition to *Forum Syd* workshops, she also worked for the *Montenegrin Association Against AIDS (CAZAS)* for a year. Initially she attended their workshops, but soon became one of the trainers herself. Together with a friend, she organised workshops for small groups of five to six women, and spoke to them about reproductive health issues. This was not easy, and her friend was once threatened with violence by local Roma who were very upset that such issues were being discussed. Now she works with teenage girls and finds it much easier than working with women from the older generation; nevertheless, many young women attending her workshops are fully illiterate. Dijana is happy working in the youth club and attending seminars; her mother trusts her and allows her to travel on her own, although she is only eighteen. Her plans for the future are clear, but she does not know how to make them come about; Dijana's number one problem is finding a proper job. The effects of displacement and uncertainty that it brings are unavoidable: when asked whether she considered continuing school, Dijana replies that she will "think about it when it becomes clear where [she] will live."

[36] *Interview with Mr Aleksandar Zeković, see note 7.*

[37] *Interview with Mr Marko Gazivoda, Youth Work Manager, Forum Syd Balkan – Project Montenegro, 6 September 2006. Podgorica.*

[38] *Information presented here is based on the interview conducted with Ms Dijana Mehmeti, 6 September 2006. Podgorica.*

The Next Steps

In conclusion, this is by no means an exhaustive review of Romani women's movement in Montenegro. Activists from Nikšić mentioned several other young women who are also involved in Romani organisations, primarily in Rožaje and in Berane. There are also young female journalists who underwent extensive OSCE/RSF journalism training, Biljana Alković from Ulcinj and Jasmina Ivanović from Nikšić. "There are some really smart girls out there, but how to keep them in the movement is the key question", said Fatima Naza. The Romani women's movement in Montenegro is in its nascent stage, and these brave and intelligent young women are facing very complex challenges, having to carefully balance being Romani and being women. Hopefully new legal and policy developments will eventually support their activism by creating frameworks that will take the multi-facetted nature of discrimination against Romani women into consideration.

Shifting from Terminology to Substance

Azbija Memedova[1]

AS SOMEONE who sees herself as a feminist and human rights activist, and who was privileged to be a pioneer in the process of building the so-called "Romani women's movement" (I personally prefer the word "activism" to "movement"), I feel more obliged than happy when I am invited by various stakeholders to share my "expertise on Roma and Romani women's issues".

Without any intention of repeating my views (accessible to the public)[2] on what Romani women's issues are and how they should be approached both from (and in) mainstream women's and Romani human rights movements, in this article I would like focus on several debatable terms that are important to future strategies for Roma and for Romani women. Furthermore, I will present a few lessons learned from recent advocacy action for Romani women in Macedonia.

The demystification of some of the "Roma-related" terms that we all (men and women activists of Romani ethnic background) use in our everyday work, is urgently needed, especially at a time when Roma and Romani women's issues are high on international agendas.[3]

"Roma" Terminology

I feel quite comfortable when I am seen as someone who has specific experience and some expertise in the field of the human rights of women, especially minority women, since I have the appropriate educational background and have been learning and practicing my knowledge in this field for eight years. However, when I am perceived as or called a "Roma expert", both by Roma and non-Roma, I feel very uncomfortable.

Recently, I had to explain to a non-Romani audience what it means to be a "Roma expert". I was provoked by a statement commenting on a Romani social worker, employed by a state institution, who did not want to visit a Romani settlement to do research on Romani family issues. The conclusion was that "he was a terrible Romani person" rather than "a terrible or unprofessional social worker".

To be Romani is only a small part of one's own identity. To be a social worker describes a person's profession (a person who presumably has certification showing recognition of his/her education and training). Titles such as "Roma expert" or "Roma women's expert" should describe someone who has the proper education and relevant expertise on Roma (including women). So, is "Roma expert" indeed a profession? If this is the case, where can one be trained and obtain certification? I can already hear the sceptics shouting: "you don't need certification to work for Roma".

I am not questioning the motivation or the activism involved in fighting for those who are voiceless or those who are in need. The issue here is whether we are using the proper terminology to describe ourselves, our work, or the roots of the problems that the people we work for are facing.

[1] *Azbija Memedova, a sociologist, has been Coordinator/Manager of the Roma Centre of Skopje since 1998. Ms Memedova is a board member of the European Roma Rights Centre.*

[2] ***http://www.romawomensinitiatives.org/decade.asp, http://www.errc.org/cikk.php?cikk=1850&archiv=1***.

[3] *See, for example, European Parliament resolution on the situation of Romani women in the European Union – 2005 / 2164 / INI.*

It is possible to be an expert on Romani language, or culture or history and be of Romani or non-Romani origin. A person can also be an expert on human rights and be of Afro-American, Indian, Romani or any other ethnic origin.

Our ethnic and/or national identity cannot and should not be affiliated with our own professional orientation. Thus, when I am called "Romani women's expert", I do not feel that I am being correctly described. This title does not award me any honour; instead I find it disturbing. My personal identity (like that of anyone else) is broader and it is composed of diverse elements and roles in my life. In different stages in life, we give priority to different elements of our identity. The demystification of such terminology, very widely used not only by the majority and international community but also by us, Romani men and women activists, needs our urgent attention in order to determine the approaches that we select in our fight for the human rights of the Romani population.

The problems faced by the majority of Roma, the problems faced by Romani women, should be approached from the viewpoint of both social and human rights. To do so, we need to understand the terms we use in defining the problems. Take, for example, terms like "Romani education", or "Romani health", which we all more or less use (look at your documents, projects, national documents for Roma in your countries). Once, when I reacted to such terms, I was told that "it is only a language thing," But is it? Have you ever seen a term like "Hungarian education" (in case of Romania) or "Albanian education" (in case of Macedonia)? Language experts can argue that this is really a language issue, however, my concern is more related to the approaches and strategies designed to solve problems. In other words, I believe that when we use the term "Romani education", our focus is directed on "Roma" not on "education".

Looking at projects (strategies and approaches) related to "Romani education", one can confirm that the issue is dealt with mainly from the social point of view and standards, as prescribed by the majority. When analysing the main barriers that Romani children face in education, the focus of most of the educational projects is on 1) poverty, (social category), 2) specific cultural or traditional elements, like early marriages (very often used by the institutions as excuse for the absence of any state action), 3) lack of language and socialisation skills, perceived again from the social point of view and by the standards of the majority: "Romani children have to know the majority language and behave as prescribed" or 4) lack of motivation on the part of parents to send their children to school because: "Romani parents do not give priority to the education of their children". If we shift focus from "Roma" to "education", then we will have more chance of seeing the education of Romani children from another perspective, that is, from the human rights perspective; this would mean the right to education in their mother tongue, the right to learn about their own history and culture, or, to summarise, the right to education as a basic human right. Instead of dealing with education as such, many local projects deal with social issues that prevent the majority of Romani children from achieving better school results.

The word "Roma" describes a national/ethnic category or belonging, it is not social category. As a national and minority group, Roma have their rights guaranteed by each state that they live in and by international treaties, including education rights (in the human rights field). Education is a field determined by domestic and international human rights standards (again the human rights field). If both categories have a common element, which is human rights, why is it that human rights-based educational projects for Roma (like those that advocate for their right to learn in their mother tongue) are so hard to find? Equally hard to find are projects/programmes that call on the state to fulfil their constitutional obligations in the provision of equal opportunity for all children, using the necessary means.

Therefore, we should challenge our professional skills when dealing with issues such as education, health, and human rights. Again, for the sake of clarity, this does not mean that we should call our activism or our wish to help those in need (in this case Roma) into question, but should look at our actual knowledge of domestic and international standards and laws, methodology, management, strategies and other knowledge and skills that one

can acquire at college and during professional training sessions.

Moreover, we, men and women activists of Romani ethnic origin, have to define our personal identity (being Romani is not all we are), to prove ourselves firstly as professionals in different spheres of society. We have to take our destiny into our hands: to aim for better education for ourselves and our children, to achieve better results and to show who we are and what we can do (being Romani is not a skill). Our fight for equality will be meaningless if we are not able to create opportunities solely because of the lack of education or other skills.

If we are honest with ourselves, even for a moment, and look around, then we have no reason to be proud of the number of professionals of Romani origin. This fact has its own roots in a long tradition of discrimination and segregation. We can be satisfied with the latest developments – the number of educated young people who declare themselves to be Romani is growing – but we cannot stop developing our personal capacities no matter where we are now and how much education we have attained. The world is changing and we have to keep up with these fast changes.

In the case of women's issues and our efforts to mainstream these in all policies and programmes for women and Roma, we also have to be very careful with our use of terminology and consequently with the approaches we use.

Women of Romani origin face many problems that are common to majority women as well as for women from other minorities. What is specific to this group is the intersectional/multiple discrimination that they face: firstly, as women and then as members of a minority group, or as members of other disadvantaged groups (handicapped, single mothers, homosexuals, refugees, etc.). This is and should be the general point of departure for all our programmes and recommendations for improving the current situation. Only by acknowledging the multiple barriers and their roots, can we achieve our goals. On the contrary, or if we continue, as some do, to present certain "women's problems" only as "Romani women's problems", then we are at risk of making the situation even worse. Take, for example, the problem of domestic violence: this is a common problem faced by women in general. When analyses present this problem as a "Romani women's issue" without any intention or effort made to find existing links between intersectional discrimination and violence, then we could actually strengthen the stereotypes of the majority such as: "Romani men beat their wives more often that others (from other groups)". The call for a sensitive and intersectional approach to Romani women's issues means looking for all the connections, both in the community and in society, that prevent this group from exercising their basic human rights.

The main objective of the pilot project implemented in 2005 was to document the existence of intersectional discrimination faced by the majority of Romani women in Macedonia. It was carried out in partnership with ERRC, UNIFEM, a local team of young women researchers of Romani ethnicity, and the Roma Centre of Skopje, a local organisation based in Skopje.

The modest efforts to prepare the shadow report and the testimony before the UN Committee for Elimination of All Forms of Discrimination Against Women (CEDAW), presents a significant moment for women's activism in Macedonia.

- Firstly, the report confirms the existence of multiple discrimination against women of Romani origin in the field of education, health care, employment and access to the public services available for female victims of violence in Macedonia;
- The UN CEDAW recommended to the Macedonian Government to "implement effective measures to eliminate discrimination against Romani women, and to enhance their enjoyment of human rights through all available means, including temporarily special measures … (in the above mentioned fields). …"

And finally,

- Pressured by the lack of concrete official data and the Committee's questions about Romani women during the session in the

UN, the Macedonian Minister of Social Work and Labour of the time, who led the Macedonian delegation, stated in his final speech that, "the Macedonian Government needs to pay special attention to the multiple forms of discrimination faced by Romani Women in Macedonia."

I believe that the words we use have unusual power. Therefore, I advocate that we review the meaning of the Roma-related terms that we use and then I propose some changes: instead of "Romani education" one option would be the "education of Romani children, girls, women, and men"; instead of "Romani housing", "housing of families of Romani ethnic origin"; instead of "Romani women's education", "education of women and girls of Romani ethnic origin".

The accurate use of terminology can help those working at local level to understand the human rights angle in their work and prevent them from being preoccupied only with its social aspects. It is only in this way that all current advocacy and lobbying successes achieved on the international level can show their value. The issue of the human rights of people, who are men and women of Romani origin, has to be the focus. The very first step is to change the way we understand our approaches … and our terminology.

Coping with Coercive Sterilisation

Lucie Fremlová[1]

Romani women's struggle in the Czech Republic during July and August 2006.

Introduction

The concept of Romani women's rights is relatively new in the history of Roma rights in the Czech Republic, and as such, it can appear vague and hard to define. The issue of the access of Romani women – traditionally embedded within their traditional social position in the Romani community – to the Czech education and social service systems, is the subject of the latest ERRC/Númena research study, which assesses the impact of the Czech National Action Plan on Social Inclusion 2004-2006 on Romani access to social services in the Czech Republic. This article, however, does not have as its goal the examination of the outcomes and possible implications of this research.

As suggested above, Romani women's rights (along with their projection into the field of the social service system, education and/or other systems) could be said to be influenced by their position in society to a considerable extent (i.e., their traditional social status in the Romani community combined with their position within the mainstream population). This could result from their inability to take full advantage of the aforementioned systems due to the understanding and application of the Romani concept that closely links womanhood, motherhood and wifehood both at a younger and/or older age. Some people might claim that this is a predetermined "quality" in most Romani women and that the issue of discrimination is therefore not at issue: for these people, it would appear pointless to discuss this subject at all. Public debate would simply end at this stage. Ultimately, then, real discrimination against Romani women by members of the mainstream population would continue to be hidden in and justified by the maze of "traditional mechanisms functioning in Romani communities."

However, a change occurred approximately two-and-a-half years ago. It began in the northern Moravian city of Ostrava. The local Romani community sent out signals to the mainstream population, suggesting that public debate should not end at this stage: the issue of coercive sterilisation had been voiced for the first time in the history of the Czech Roma rights movement and entered the debate as perhaps the most manifest of all of the expressions of discrimination against Romani women.

Since the emergence of the Ostrava-based Group of Women Harmed by Sterilisation towards the end of 2004, the fight for Czech Romani women's rights has acquired a new dimension. At present, the Group is a unique identity group, possibly the only one of its kind in the Czech Republic, which brings together Romani victims of coercive sterilisation practices carried out both before and after the 1989 Velvet Revolution. At regular monthly meetings, their legal representative informs the members of the Group of the latest developments in the cause; the women support each another by sharing their stories, talking about the personal or health problems caused by unwanted surgery, as well as sharing any good news, which unfortunately tends to be rare. Needless to say, like

[1] *Lucie Fremlová, member of the Human Rights Team of Life Together, has worked in the field of human rights and Roma rights in the Czech Republic for the past eight years. She has cooperated with the Association of Roma in Moravia, as well as other domestic and international NGOs, including the European Roma Rights Centre.*

other Romani-related issues, the issue of coercive sterilisation is still seen as unpopular and is very much ignored by most members of the mainstream population in the Czech Republic, not to mention by high-level Czech authorities.

However, negative responses by members of the mainstream population are something civil society or awareness-raising organisations must be ready to face: it is a permanent condition of their work and as such, it ought not to become an obstacle hindering their mission. Instead of succumbing to the supposed weaknesses that the general public tends to associate with Roma at large, in their strategic fight for justice, these women have decided to focus on their strengths and assets: the final report by the Ombudsman and the 2005 decision by the court in Ostrava, ordering the Vítkovice hospital to apologise to Ms Helena Ferenčíková, who had been coercively sterilised (both the plaintiff and the respondent appealed against the decision).

Possibly the only groundbreaking report published up to the present day by a Czech authority in favour of the victims of coercive sterilisation, which has condemned sterilisation practices as unlawful is the Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures, issued in December 2005. In this report, the Public Defender of Rights concludes, on the basis of almost a year of research into the matter, that "(…) the problem of sexual sterilisations carried out in the Czech Republic, either with improper motivation or illegally, exists, and Czech society has to come to terms with this."[2]

Even though the 2005 report makes numerous legislative, methodological and compensational recommendations to the Czech Government, so far there has been no follow-up action taken by the Czech authorities, and especially not by the Ministry of Healthcare, which has remained silent. In the course of the first six months of 2006, the Ombudsman's report began to slowly lose its urgency. Once again, the issue of forced sterilisation disappeared from the Czech media: Czech society started to simply ignore it again.

Preparations for Changes in the Strategy

In order to revive public interest in the issue, several strategic meetings were held towards the end of June 2006 and during July and August 2006 in order to discuss the direction of the Group's future work.[3] It was generally agreed that it was necessary to continue with the Group's work in order to put an end to Czech authorities' reluctance to acknowledge the unlawful nature of sterilisation practices, as well as to emphasise the significance of the Ombudsman's report and hopefully attain legislative changes. However, it became clear that there was a need for a slight adjustment in the long-term strategy. It was high time for the victims to come to the foreground and start being more visible to the public. In order to do so, their personal testimonies would have to become more "tangible" and easier for members of the general public to access. In the short term, the goal was to be attained by:

- Holding an exhibition:

  With the help of the Human Rights Team at *Life Together*, several disposable Kodak cameras were distributed among the members of the Group. The photographs taken by the women were to become the cornerstone of a major photographic exhibition, offering an insight into the lives of the victims of coercive sterilisation.

[2] *Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures.* ***http://www.ochrance.cz/en/dokumenty/dokument.php?doc=400***.

[3] *One of them took place on 30th June in the northern Moravian town of Frýdlant nad Ostravicí and was attended by some of the women from the Group, their legal representative Michaela Kopalová, as well as representatives of the ERRC (Claude Cahn and Ostalinda Maya), the League of Human Rights (Gwendolyn Albert, Jiří Kopal) and Life Together (Kumar Vishwanathan, Jana Kabeláčová, Elena Gorolová, Lucie DiAndrea, and Lucie Fremlová).*

Coercive sterilisation victim Nataša Botošová, with her grandchild.

Photo: Nataša Botošová

- Organising a peaceful meeting:

  With the help of the Human Rights Team at Life Together, a meeting of the women who had been sterilised was to take place in front of one of the hospitals in Ostrava that had sterilised Romani women in the past without obtaining their fully informed consent.

- Publishing a brochure on the topic of coercive sterilisation:

  Books, brochures and leaflets represent a useful tool for raising awareness among various groups of stakeholders, including regional and local governments, state institutions, health facilities, as well as secondary schools, universities and other NGOs. As no such material had ever been made available in the Czech Republic, there was clearly a need for such a publication as it would focus on the issue of coercive sterilisation in an unbiased, balanced and objective manner. Not only would it introduce the work of the Group and describe the personal lives of some of the victims after surgery, it would also attempt to depict the problem of forced sterilisation within the broader context of two major areas that tend to be somewhat ignored by the Czech healthcare system: informed consent and patients' rights.

- Creating a website:

  Today's world of personal computers, the Internet and advanced technology determined the need for another way of addressing the general public: a website presenting the work of the Group and featuring the victims' personal testimonies on the consequences of surgery.

- Participating at international seminars and conferences:[4]

  The aforementioned efforts were to symbolically culminate at the 36th session of UN Committee on the Elimination of All Forms of Discrimination against Women; Elena Gorolová,

[4] *Ms Vlasta Holubová and Ms Nataša Botošová who come to the monthly meetings of the Club on a regular basis, attended a three-day seminar entitled Minority Communities in Action in Northern Ireland. It was organised in the scope of the INCORE project (International Conflict Research carried out by the United Nations University and the University of Ulster). They had been invited to the seminar to give a presentation on the work of the Group of Women Harmed by Sterilisation, as well as to meet the local Traveller communities.*

one of the coercively sterilised Romani women, the spokesperson for the Group and one of the three delegates for Czech NGOs, presented her testimony to the members of the Committee.

Involuntary sterilisations: *Your life too, can be changed by a medical intervention*

After a series of consultations with the members of the Group of Women Harmed by Sterilisation, the Human Rights Team of *Life Together* published the first brochure of its kind. The original version is in Czech and the Romani version is about to be published.

This brochure contains a body of texts that outline the history of the case, cites the most important parts of the Ombudsman's final report, quotes testimonies by some of the women damaged by sterilisation, compares the situation in the Czech Republic to that in Sweden and places emphasis on the importance of informed consent, as well as that of patients' rights.

Demonstration by coercively sterilised women, Ostrava, Czech Republic, 17 August 2006. The banner reads, "We want to be useful in our society".

The brochure is meant for lay-readers both Romani and non-Romani, Romani advisors and co-ordinators in local and regional governments, state officials, Romani and non-Romani civil society organisations, domestic and international NGOs, as well as professional readers such as students of medicine, physicians, GPs, gynaecologists, etc.

Events

Elena Gorolová, a member of the Group of Women Harmed by Sterilisation, participated in the 36th session of the UN Committee on the Elimination of All Forms of Discrimination against Women on 14th and 17th August 2006. She presented her testimony to the members of the Committee in the framework of the presentation of the Shadow Report on the Discrimination of Women in the Czech Republic by the *ERRC*, the *League of Human Rights* and *Gender Studies* in response to the Czech Government's Third Periodic Report. The Shadow Report concludes that legal protection from discrimination is insufficient in the Czech Republic, given the fact that to the present day, the Czech Government has not ratified the anti-discrimination law and the relevant state authorities have not taken into consideration the issue of coercive sterilisation.

On the occasion of Elena Gorolová's presentation in the UN Committee on 17th August, the Human Rights Team at *Life Together* organised

two significant events: a peaceful meeting in Ostrava and an opening ceremony at the Brno-based Museum of Romani Culture.

Before the official beginning of the meeting at 9AM, approximately fifty people convened in front of the Fifejdy City Hospital in Ostrava. The event, which received a lot of media attention, was launched by Ms Nataša Botošová, a member of the Group of Women Harmed by Sterilisation. She spoke to the public about the overall goals of the Group, as well as the painful impact of the surgery on her personal life. Ms Michaela Kopalová, the legal representative, then pointed out the goal of the meeting: the Czech government should, at the very least, issue a public apology to the victims whose physical and mental integrity was unlawfully violated by the surgery. Mr Karel Holomek, the chairman of the Brno-based *Association of Roma in Moravia*, emphasised the fact that the issue of coercive sterilisations is one of the reflections of mainstream, prejudiced Czechs' deep-rooted, conservative attitude to members of the Romani community. Claude Cahn, the *ERRC* programmes director, highlighted the Romani dimension of sterilisation practices before 1991, as well as the absurdity of the fact that Elena Gorolová had had to travel across the ocean to the UN headquarters to remind the international public of past wrongs, as well as to comment on the present injustice to which coercively sterilised women are systemically subjected.

Immediately after the end of the meeting, all the participants travelled to Brno in a hired bus to take part in the opening ceremony at the Museum of Romani Culture. Jana Horváthová, the director of the Museum, opened the exhibition and welcomed all the guests, including Czeslaw Walek, the director of the Office of the Government Council for the Roma Community Affairs and Helena Krištofová, the Romani advisor working for the Brno City Council. She also emphasised the fact the Museum of Romani Culture was proud to host the exhibition in the newly opened premises of the museum café. Michaela Kopalová, Claude Cahn, Lucie Fremlová and two members of the Group, Nataša Botošová and Vlasta Holubová, also addressed the visitors. As soon as the formal opening was over, everyone present had the opportunity to view the exhibition, as well as the permanent exhibition of the museum.

The atmosphere of the opening ceremony, accompanied by traditional Romani food and the sound of a traditional Romani dulcimer music band, was very cheerful and friendly, even though the photographs in the exhibition had been taken in order to raise awareness of an important issue: coercive sterilisation.

The World Seen by the Victims of Coercive Sterilisation

The goal of the exhibition, which consists of twenty-one photographs, is not artistic. Instead, the individual photographs should be understood as "photographic probes" or insights that capture the immediate surroundings of the victims of coercive sterilisation as they perceive it themselves. Its mission is to make the members of the Group of Women Harmed by Sterilisation visible, to portray them as human beings whose lives were permanently changed by medical surgery carried out without the physicians' having obtained the fully informed consent of the women. Its objective is to remind the public that the creators of the photographs are not only women who are suing Czech hospitals, but are, first and foremost, people whose lives resemble those of ordinary people with one important distinction: their physical and mental integrity has been breached by unwanted surgery. The collection of the twenty-one photographs represents just a fraction of what their creators captured through the lens of their disposable cameras. As a result, they may not portray every single emotion that the women have experienced since the day they were sterilised.

Last but not least, the exhibition can be understood of as the bearer of a social message to Czech institutions, authorities and politicians to remind them of their failure to publicly acknowledge the unlawful nature of sterilisations carried out before and after the year 1991, and to remind them of the need to take legislative, methodological and compensational measures to ensure justice for each and every single victim of these practices.[5]

[5] *The exhibition was on display at the Museum of Romani Culture until 15th September 2006 and then was moved on to the Library of the City of Ostrava.*

The Aftermath

The immediate reaction by the members of the Group was more or less very positive since the two events attracted a large number people (approximately 150 people in total). However, they were all waiting to hear the outcome of the UN Committee's session in New York.

After Elena Gorolová's return, the atmosphere grew rather sombre. This was due to the information published by the Czech media that focused predominantly on the Czech Government's report (the government delegation was led by Mr Čestmír Sajda). The report argued that the Shadow Report was extremely unreliable and the information on coercive sterilisation could not be trusted. Elena Gorolová herself was very disappointed by the fact that the delegation of the Czech Government did not attend their presentation: as a result, Mr Sajda allegedly claimed no Romani woman had attended the session. According to Elena Gorolová, the delegation of the Czech Government was very unrepresentative as its members were there to represent the former government of Jiří Paroubek. When describing the situation of the Czech Roma, Mr Sajda reportedly said that the social welfare system in the Czech Republic was very generous towards the Roma and that there was no segregation of Romani pupils in the Czech school system. This was, understandably, not good news for the Group.

About ten days after Elena Gorolová's return from the USA, the UN Committee issued a series of recommendations to the Czech Government. On 25th August 2006, the UN Committee urged the Czech government to "take urgent action to implement the recommendations of the Ombudsman/Public Defender with regard to involuntary or coercive sterilisation, and adopt without delay legislative changes with regard to sterilisation." The Committee further told the Czech government that it should, "elaborate measures of compensation to victims of involuntary or coercive sterilisation" and "provide redress to Roma women victims of involuntary or coercive sterilisation and prevent further involuntary or coercive sterilisations."

Response of the Czech Media

Both the meeting in Ostrava and the opening of the exhibition in Brno received a lot of attention from the Czech media. The serious press, Romani newspapers and radio stations provided very good, unbiased and well-balanced media coverage of the two events, whereas Czech commercial TV channels attempted to cast a shadow of doubt on the unlawful nature of coercive sterilisations.[6]

After about a week, one of the local newspapers, the daily *Moravskoslezský deník* (published by the Vltava-Labe Press which also publishes a tabloid called *Šíp* [Arrow]), launched a ruthless campaign against one of the most outspoken members of the Group, Ms Nataša Botošová. Two reporters working for the paper managed to find a number of her former neighbours who claimed that she neglected and maltreated her children, was a gambler, got divorced from her husband in order to receive higher social security benefits, threatened to kill her neighbours' children and told her neighbours she was happy that she had been sterilised because she would then not have any more children.[7]

In another article published on 29th August, the same newspaper quoted the owner of a dogs' home. She had been allegedly cheated out of a considerable sum of money by Mrs Helena Bandyová whom she allegedly saw at the meeting in front of the Fifejdy hospital on 17th August. The fact that Mrs Bandyová did not attend the meeting (and therefore could not possibly have been seen there) only serves to highlight the fact that the newspaper was reporting nonsense and trying to whip up mass hysteria. This view is also supported by the fact that the reporters concerned intentionally omitted

[6] *Life Together are currently drafting a letter to the Czech Television, expressing concern at the fact that the US-based reporters for Czech Television failed to cover the aforementioned 36th session of the UN Committee on the Elimination of All Forms of Discrimination Against Women.*

[7] *Moravskoslezský deník, "Is the Advocate for Romani Women Rights Lying?", 25th August 2006, pp. 1-2.*

the Ombudsman's final report; moreover, they did not refrain from using some very racist slogans and suggestions, such as: "A Romani woman fights for justice; a white woman with a similar story said to the doctors: No sterilisation!"[8] By means of lies, manipulated and unsubstantiated information and hypotheses, the newspaper attempted to publicly discredit and ridicule the members of the Group in order to damage their reputations and discourage them from further action.

Since the release of the articles, the Group has been offended and hurt by the cruelty of this tabloid gossip. Some of the women have become more stubborn in their fight for justice but the majority of them have been intimidated by the content of these articles.

For this reason, the *League of Human Rights* immediately contacted Mrs Anna Šabatová, the deputy of the Ombudsman. *Life Together* and other NGOs intend to negotiate a long-term strategy with her. However, legal action on behalf on the Ombudsman is currently hindered by the uncertain and unstable political situation in the Czech Republic, which has continued since the general election in June.

Ms Botošová has also written to the chief-in-editor of the newspaper, asking him for a public apology. The newspaper has not as yet published any apology. Ms Nataša Botošová is considering filing a complaint.

Also, on 18th August, *Life Together*, the *ERRC* and the *League of Human Rights* sent a joint letter of concern to the newly appointed Prime minister, Mr Mirek Topolánek. However, none of the organisations has as yet received an answer: probably due to the current, highly unstable, political situation. The letter included the following statement:

> We believe the inaction of the Czech government with regard to these matters – and in particular the failure to date by any high-level Czech authority publicly to issue an apology to the victims for these practices – has fostered an atmosphere in which the reputations of the persons concerned are vulnerable to defamation by various members of the general public, including the media. The continued silence of high-level officials in the Czech Republic on this matter sends a signal to the Czech public at large that the claims of victims of coercive sterilisation are legitimate targets for public ridicule.
>
> We urge you, without delay, as a matter of the highest priority, early in your term of office to exercise any and all powers available to your office to undertake the following measures:
>
> - Implement the recommendations of the Czech Public Defender of Rights and the UN Committee on the Elimination of Discrimination Against Women in the matter of coercive sterilisation issues in the Czech Republic;
> - Issue, as a decision of government, public apology to all victims of coercive sterilisation in the Czech Republic;
> - Speak out to condemn further public humiliation of the victims for their acts and to challenge the injustices that the victims have been subjected to.

What Should Happen Next?

The members of the Group of Women Harmed by Sterilisation have "stepped out of the closet of anonymity" for the first time. They have told their story in public and, as a result, have been fiercely attacked and viciously ridiculed by the Czech media. Apparently, further victimisation of the victims of coercive sterilisation by the mainstream population is permissible in the absence of a complex anti-discrimination law. The current social climate allows this to happen without any severe repercussions for those persons resolved to undermine the victims of coercive sterilisation.

[8] *Moravskoslezský deník, "A Romani Woman Fights for Justice; A White Woman with a Similar Story said to the Doctors: No Sterilisation," 26 August 2006, p. 1.*

The current situation in the Group is very critical, comparable to a disaster in each of the women's personal lives. Some of the members are thinking of giving up their struggle.

Catastrophes, in the true sense of the word, can have a powerful effect: while they last, every single individual involved in the process is obliged to gather all their strengths, to exert an incredible amount of energy, personal courage and stamina, and to make incredible efforts in order to keep on fighting. However, as soon as the worst is over, catastrophes have the capacity of purifying the atmosphere and, ultimately, can bring about change. Let us hope we can achieve this together.

Coercive Sterilisation in Czech Republic: Civil and Criminal Law Aspects

Michaela Kopalová[1]

IN SEPTEMBER 2004, ten Romani women filed complaints with the Public Defender of Rights ("The Ombudsman"), claiming that they had been sterilised without their free and informed consent, in hospitals throughout the Czech territory. Besides the Ombudsman's investigation, an effort which ultimately led to a report published in December 2005 recognising this practice and bringing a number of recommendations for changes to law and policy to end it (**www.ochrance.cz**), some of the women concerned filed civil complaints with the Czech courts. In March 2005, the Public Defender of Rights passed eight cases to the Chief Public Prosecutor and approximately twenty other cases throughout 2005. Ultimately, around eighty women – all or most of them Romani – have brought complaints to the Ombudsman concerning sterilisation, and the Ombudsman has in turn reportedly filed fifty-four criminal complaints in relation to these matters. The aim of this article is to describe the developments in the sterilisation cases as well as the problematic issues that the women and their lawyer are dealing with.

1. Legal Conditions for Performing Sterilisations

Czech law sets out rather strict requirements for performing sterilisation. General requirements are set out by the Civil Code: consent is a legal act that must be made freely, seriously, certainly and intelligibly in order to be valid. Any form of threat or pressure may result in invalidity of such act. Further requirements are involved in the Health Care Act and Sterilisation Directive:[2]

- Before any intervention into the reproductive capacity of an individual, it is obligatory that a special commission approves this intervention,
- If the medical intervention does not pursue an immediate health interest of an individual, it can only be performed after the person concerned has provided written consent,
- A (medical) indication for sterilisation must exist (the list of indications is attached to the Sterilisation Act),
- Before the sterilisation is performed, the woman concerned must sign a statement to show she has understood to what extent sterilisation is reversible and that she approves the sterilisation being performed.

In all or most of the cases reported to the Public Defender of Rights, either one or all of the conditions were not met. The recent cases from 1990s or 2000s all have in common that the sterilisations were performed within the context of a caesarean section delivery without the approval of a commission, and without leaving the woman concerned enough physical, temporal and/or psychological space to consider the nature and consequences of sterilisation, and to discuss the matter with her partner or with another doctor.

2. Civil Cases

In March 2005, I lodged the first civil complaint on behalf of Helena Ferenčíková.[3] Helena was

[1] *Michaela Kopalová is a lawyer working at the League of Human Rights, Czech Republic, and legal representative of a number of the sterilised women.*

[2] *Ministry of Health Directive No. LP-252-3-19.11.71.*

[3] *This and subsequent cases have been brought as part of a multi-partner action involving the European Roma Rights Centre (ERRC), the League of Human Rights and Life Together. At the time that the initial*

sterilised at the age of nineteen while giving birth to her second child by caesarean delivery. She claims that a few minutes before the operation she was informed that sterilisation would be necessary because another caesarean section delivery would be too risky for her life. Neither was she asked whether or not she was planning another pregnancy or informed about the nature, consequences and risks of sterilisation so that she could give her informed consent. She was not informed at all about alternatives. In Ms Ferenčíková's health records there was a typewritten request for sterilisation: "The patient requests sterilisation". This request was signed by Ms Ferenčíková. There was also a general form of informed consent also signed by Ms Ferenčíková, but without precise information as to the type of treatment for which the patient had provided her consent, and when the treatment would take place. This particular case has been one of the first in which a patient in the Czech Republic sued a hospital on the ground that the signature in the health records does not constitute free and informed consent. The Ostrava Regional Court in its judgement of November 11, 2005 expressed an opinion that the facts of the case reveal that free and informed consent had not been provided: "It can be concluded that an operation, which interfered with the plaintiff's physical integrity, was performed without a proper (qualified) consent. This operation constitutes an illegal act, and violates the plaintiff's personality rights – not only the right to physical integrity but also the right to privacy, and this interference has been particularly serious.[4]

However, the Regional Court dismissed the claim for monetary compensation on grounds that it was time-barred. In Czech Republic, the case law on this issue is currently ambiguous. For thirty years, however, the Supreme Court has ruled that the general period of limitation applies also to the right to seek compensation for breach of personality rights, including physical integrity, mental integrity, dignity, etc. In December 2005, both the Vítkovice hospital and Ms Ferenčíková lodged an appeal. The case will be further judged by the High Court in Olomouc.

Since November 2005 two other civil complaints have been lodged before Czech courts. The facts of these cases are similar to those in Ms Ferenčíková's case. The case *Ms Holubova v. City Ostrava hospital* was lodged in November 2005 with the Regional Court in Ostrava. Ms Holubova was sterilised in 1997 when giving birth to her second daughter in City Ostrava hospital. She was asked to sign some documents a few minutes before the caesarean section without even knowing the content of the documents. In her health records there is a handwritten request for sterilisation (written by hospital staff) with the signature of Ms Holubova, without any reference to the date and time of this request. The sterilisation was not approved by the commission, and when Ms Holubova signed, she was not aware that sterilisation is not reversible. Another case was filed with the Regional Court in Ústí nad Labem. The plaintiff, Ms Kešelyová, was sterilised in the Most hospital in 2003 when giving birth to her fourth child. She asserts that the request for sterilisation was given to her after the sterilisation was performed. In this particular case it is important that no medical indication for sterilisation existed. This case was lodged in June 2006.

3. Criminal Proceedings

The cases reported by the Public Defender of Rights were set aside after several months on the grounds that a crime had not occurred. This fact highlights the need for further clarification

Ferenčíková case was filed, the Brno-based IQ Roma Service was also involved. Legal action on behalf of Ms. Ferenčíková has been supported by several donors including the Sigrid Rausing Trust.

4 *"It therefore follows that the act of the accused, in which he violated the bodily integrity of the plaintiff, was carried out without the accused having secured the qualified consent of the plaintiff. At issue therefore is an illegal act on the part of the accused. With this act, the personal rights of the plaintiff were violated, not only her right to bodily integrity, but also her right to privacy, and as such at issue is a very serious intrusion." ("Lze tedy uzavřít, že výkon žalovaného, jímž bylo zasáhnuto do tělesné integrity žalobkyně, byl proveden, aniž k tomu žalovaný měl kvalifikovaný souhlas žalobkyně. Jednalo se ze strany žalovaného o neoprávněné jednání (jednání non lege artis). Tímto zásahem bylo zasaženo do osobnostních práv žalobkyně, a to nejen do práva na tělesnou integritu, ale i práva na soukromí, přičemž se jednalo o závažný zásah.")*

Michaela Kopalová speaking at a demonstration by Romani women victims of coercive sterilisation, August 2006, Ostrava, Czech Republic.

of Czech criminal law in relation to acts such as sterilisation undertaken without free and informed consent. The Chief Public Prosecutor issued a guideline for prosecuting crimes committed in regard to medical practice in 1998, in which it holds that a medical intervention performed without consent of the person concerned is not a crime as long as it is performed *lege artis*. A medical intervention pursuing a health aim cannot be a crime according to the Chief Public Prosecutor.

However the sterilisation cases go beyond this interpretation because sterilisation is performed purely for contraceptive purposes. The intervention damages the patient's body and is not undertaken for any curative end. In Czech Republic there is no case law on this issue. By dismissing these cases, the police prevent the courts from ruling on this controversial issue. The question of whether or not the patient provided free and informed consent and the criminal consequences of this fact are therefore decided by the police and public prosecutor rather than by the judge.

Another problem arises from the fact that there are not enough witnesses on the patient's side. If the patient claims that he/she was not duly informed, but hospital staff claim that he/she was, it is highly unlikely that the doctors will be punished. In a situation such as this, indirect evidence must be taken into account. For example, if an obligation to obtain the written consent of the patient exists and there is no written consent for the sterilisation, then the patient's assertion is highly credible. Certain guidelines as to how to investigate the non-existence of consent are provided by the European Court of Human Right's case law. In the case *M.C. v. Bulgaria (Application no. 39272/98, judgement of 4.12.04.)* the Court focused on the question of whether the investigation of rape had met the requirements set forth in Articles 3 and 8 of the European Convention of Human Rights. The Court held that in the circumstances of no direct evidence of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all surrounding circumstances. The investigation and its conclusions must be centred on the issue of non-consent (*M.C. v. Bulgaria,* § 181).

An Example of Faulty Practice: The Case of Ms K.

Ms K. delivered twins on 12 April 1998 in the M. hospital. The delivery of the first child was spontaneous, the second delivery was by caesarean section. At the time of the second delivery, the doctors performed sterilisation. The woman concerned was informed about the sterilisation the day after delivery. On 8 November 2005, the Public Defender of Rights reported the case to the Chief Public Prosecutor and thereby initiated criminal investigation. On 26 May 2006, an expert was appointed, who, in her opinion, stated the following:

> "Sterilisation was performed in order to prevent future health problems which could be associated with a potential further pregnancy and the doctor acted in compliance with the Health Care Act and Sterilisation Directive as the Caesarean section was urgent and the indication for sterilisation arose during the operation so that it was not possible to gain the patient's consent."

The reasoning of this opinion is so deeply flawed that it hardly bears comment. As noted above, sterilisation is not carried out for medical reasons. There is no plausible circumstance in

which an indication for sterilisation might arise during an operation, caesarean section birth or otherwise. Insofar as the caesarean section birth was her first caesarean delivery, there were in any case no future potential health risks that could have resulted from failing to undertake the sterilisation. On the contrary, the sterilisation may cause future health problems.

Police dismissed this case without hearing the victim or the doctors, and relying solely on the basis of this expert opinion. In this example another problem is obvious – dependency on false "expert opinions".

Conclusion

Cases for legal remedy brought by advocates to judicial and quasi-judicial remedy concerning sterilisation without free and informed consent have to date been successful in terms of the assessment of the facts. The case of Ms Ferenčíková highlights the need for monetary compensation, as well as the need to clarify statute of limitations issues in these cases. The Regional Court in Ostrava did not award compensation to Ms Ferenčíková because of its distinctive interpretation of the time bar, not because the interference was not of such gravity as to engage civil damage. The Public Defender of Rights also found numerous violations and suggested redress. However, during criminal proceedings in cases involving lack of informed consent in the matter of sterilisation, authorities have not reasoned logically, and as such have not prosecuted doctors for crimes committed in the course of these practices. The autonomy of patient to decide on matters concerning his/her bodily integrity has not yet been adequately acknowledged as a matter of criminal law in Czech Republic. At present, doctors can be brought to justice in a criminal context solely for infringing *lex artis*, that is, for the faulty performance of an operation or another medical intervention, but not for failing to secure a patient's consent in invasive procedures. I believe that this issue should be further examined by the courts, rather than by the police or public prosecutors. The Court is the most appropriate to develop an authoritative interpretation of failure to obtain informed consent. Neither police nor the public prosecutor has the competence to assess such a complex and complicated question.

In the Name of Reproductive Rights; Litigating before the UN Committee on the Elimination of Discrimination against Women

Anita Danka[1]

IN THE FIELD OF reproductive rights there have been documented cases of discrimination against Romani women. In the medical sphere, Romani women often face situations where they are not given adequate information related to their medical condition, where they are not involved in the decision-making process concerning their treatment, or where they are treated as objects instead of clients and are approached with the attitude of "the doctor knows the best".

Reproductive rights are incorporated into basic international human rights principles, such as the right to life, the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment, the right to liberty and security of the person, the right to private and family life, the right to freedom of expression, the right to receive and impart information, the right to marry and found a family, right to be free from discrimination, the right to education, etc. According to the Center for Reproductive Rights, "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[2] provides the strongest international legal support for women's reproductive rights by explicitly outlining the right to health and family planning."[3] The Committee on the Elimination of Discrimination against Women (CEDAW Committee) monitors the compliance with CEDAW. Although the CEDAW Committee, like the other UN treaty monitoring bodies, is not a judicial body, it can accept individual complaints against a state that has ratified the Optional Protocol to CEDAW. Moreover, the Committee can initiate inquires into grave and systematic violations of women's rights.[4]

Although litigation is not the only tool for enforcing reproductive rights, the individual complaints procedure – provided for example by the Optional Protocol to CEDAW[5] – has the potential to serve as a "whip" to bring about the realisation of these rights.[6] The complaints procedure is a formal process by which an individual (or group of individuals) makes a complaint to the treaty body overseeing the implementation of the specific treaty that a state party has violated his/her individual rights under.[7] Although the decisions and recommendations of the treaty monitoring bodies expressed in their "views" at the end of the procedure are not binding and there is no enforcement mechanism for the decisions, the treaty bodies expect State parties to implement their decisions and to provide the victim with an appropriate remedy.

The Optional Protocol to CEDAW was adopted by the General Assembly on 6 October 1999 and it entered into force on 22

1 *Anita Danka is a Staff Attorney at the European Roma Rights Centre and has been responsible for the litigation of A.S. v. Hungary before the CEDAW Committee on behalf of the ERRC since January 2005.*

2 ***http://www.un.org/womenwatch/daw/cedaw/cedaw.htm***.

3 *Center for Reproductive Rights,* Bringing Rights to Bear; An Advocate's Guide to the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights, p. 12.

4 *The inquiry procedure is not discussed in this article.*

5 ***http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm***.

6 *In addition to CEDAW, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment have individual complaints procedures.*

7 ***http://www.bayefsky.com/tree.php/area/complain***.

December 2000. By becoming a State Party to the Optional Protocol, a State recognises the competence of the CEDAW Committee to receive and consider written communications from individuals or groups of individuals who claim to be victims of a violation by that State Party of any rights set forth in the Convention.[8]

So far there have been two instances in which the CEDAW Committee established a breach of the Convention, and in both occasions the violator was Hungary. The first case, *A.T. v. Hungary*,[9] involves domestic violence and the second, *A.S. v. Hungary*, concerns the issue of reproductive rights.

The Case of Ms A.T.[10]

Ms A.T. was subjected to regular severe domestic violence and serious threats by her common-law husband, who threatened to kill her and rape their children. One of the petitioner's daughters is fully disabled and shelters in Hungary at that time were not equipped to accommodate a fully disabled child together with her mother and sister. No protection or restraining orders were available at the time. The threats and instances of battery continued. Ms A.T. had ten medical certificates proving the continuous severe physical violence she suffered. Since it was impossible for her to move into a shelter away from her common-law husband, to avoid further violence she initiated civil proceedings to bar him from access to the family residence. On 4 September 2003, the Capital Court authorised the return and use of the apartment based on two grounds: lack of substantiation of the claim that the husband regularly beat Ms A.T. and the common-law husband's right to property. Since the verbal threats continued, which put Ms A.T.'s physical integrity, physical and mental health and life at serious risk, criminal complaints were filed against the common-law husband. The complaints resulted in two criminal procedures. However, her husband was not detained at any time, and no actions were taken by the Hungarian authorities to protect her. She also did not receive any effective assistance from the local child protection authorities.

On 10 October 2003, Ms A.T. submitted an application to the CEDAW Committee claiming that by Hungary's failure to provide effective protection from her common-law husband, the State neglected its positive obligations under the Convention and supported the continuation of a situation of domestic violence against her, which constitutes the violation of Articles 2 (a), (b), (e), 5(a) and 16 of the Convention.[11] Having become aware that Hungary lacked a system capable of providing immediate protection from domestic violence, the State adopted a resolution on the national strategy for the prevention and effective treatment of violence within the family in April 2003. The strategy included the introduction of restraining orders into the legislation, ensuring that domestic violence cases have priority before the courts, protocols for the police on domestic violence, the

[8] *Articles 2 and 3 of CEDAW.*

[9] *Communication No. 2/2003, Ms A.T. v. Hungary.*

[10] *A.T .v. Hungary 2/2003.*

[11] *Based on Articles 2 (a), (b) and (e), State Parties undertakes to embody the principle of equality of men and women in their national constitutions or other appropriate legislation as well as to ensure the practical realisation of this principle; and adopt appropriate legislative and other measures prohibiting all forms of discrimination against women; take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.*

Article 5 (a) obliges State Parties "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

Based on Article 16, State Parties have to take 'all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations..."

extension and modernisation of the network of shelters, the provision of free legal aid, the training of judges, etc. However, no effective protection was given to victims of domestic violence, as even after a new protocol of the police has entered into force under the Decree of the Parliament on the Prevention of, and Response to, Domestic Violence, batterers are generally not taken into custody, the law on restraining orders has not been adopted, and domestic violence cases as such do not enjoy high priority in court proceedings.

On 26 January 2005, the Committee established the violation of Articles 2 (a), (b) and (e) of the Convention stating that "the obligation of the State party extends to the prevention of, and protection from violence against women and, in this case, remain unfulfilled and constitutive a violation of the author's human rights and fundamental freedoms, particularly her right to security of the person." The Committee also found a violation of Articles 5 and 16 and called attention to its General Recommendation 19 (*Violence against women*) and 21 (*Equality in marriage and family relations*). In these, the Committee states that the definition of discrimination includes gender-based violence, and that violence against women has great significance for women's abilities to enjoy rights and freedoms on an equal basis with men.

As an individual measure, the State was requested to undertake immediate and effective measures to guarantee physical and mental integrity, to provide a safe home and child support to Ms A.T. and to ensure separation from her common-law husband. In addition, all victims of domestic violence must be assured the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women. Hungary has to ensure that the national strategy for the prevention and effective treatment of violence within the family is implemented, that all allegations of domestic violence are thoroughly and promptly investigated, that there are rehabilitation programmes available for the victims and that regular training sessions are held on the CEDAW Convention.

The Case of Ms A.S.[12]

Ms A.S. is a Hungarian citizen of Romani origin. On 30 May 2000, a medical examination confirmed that she was pregnant. On 2 January 2001, she felt pains and she lost her amniotic fluid; this was accompanied by heavy bleeding. She was taken to hospital, where she was examined. It was diagnosed that her foetus had died in the womb, that her womb had contracted and that the placenta had broken off. She was told that a caesarean section had to be immediately performed in order to remove the dead foetus. While on the operating table, she was asked to consent to the caesarean section and she also signed a hand-written statement written by the doctor on the same page: "Having knowledge of the death of the foetus inside my womb I firmly request 'my sterilisation'. I do not intend to give birth again, nor do I wish to become pregnant." After this, the sterilisation was performed.

However, Ms A.S. did not know the meaning of the word "sterilisation".[13] She was given no information about the nature of sterilisation, its risks and consequences or about other forms of contraception. This was revealed from her testimony and the lack of any related documentation in this regard. She had lost a great deal of blood by the time she reached the hospital and was in a state of shock after learning that her foetus had died in her womb. The hospital records reveal that seventeen minutes passed between the ambulance arriving at the hospital and the completion of both operations. She only learnt that she would not be able to give birth again upon leaving the hospital when she asked the doctor when she could try to have another baby.

[12] *Communication No. 4/2004.*

[13] *The commonly used word for sterilisation by tying the fallopian tubes in Hungarian is* lekötés *and the Health Care Act uses the terminology of* művi meddővé tétel *for sterilisation.*

On 15 October 2001, Ms A.S. and her attorney filed a civil claim for damages against the hospital. They requested that the hospital be found in violation of the plaintiff's civil rights and that the hospital be found to have acted negligently in its professional duty of care with regard to the sterilisation of Ms A.S. in the absence of her full and informed consent. The claim was turned down on 22 November 2002. On appeal, the Szabolcs-Szatmar-Bereg County Court held that the hospital doctors had indeed acted negligently in failing to provide Ms A.S. with the relevant information about the sterilisation and stressed that "the information given to the plaintiff concerning her sterilisation was not detailed ... [and that she] ... was not informed of the exact method of the operation, of the risks of its performance, and of the possible alternative procedures and methods." Nevertheless, the same Court concluded that sterilisations as such are fully reversible operations and that since Ms A.S. had provided no proof that she had suffered lasting detriment, she was therefore not entitled to any compensation. The decision of the second-instance court was final.

Having exhausted all available domestic remedies, it was then possible to file a complaint at the regional (European) or international level. Since reproductive rights, as discussed above, are embedded in all the basic human rights instruments, there were more forums available where the violations suffered by Ms A.S. could be addressed. Since CEDAW specifically outlines the right to appropriate health care services and family planning, and the legal position of the CEDAW Committee is clear in these matters as revealed by its General Recommendations, on 12 February 2004, the European Roma Rights Centre (ERRC) and the Legal Defence Bureau for National and Ethnic Minorities (NEKI) jointly filed a complaint against Hungary with CEDAW relating to the illegal sterilisation.

The complaint asserted that Hungary had violated Article 10(h) (no adequate information on contraceptive measures and family planning), Article 12 (the lack of informed consent on the part of the victim as a violation of her right to appropriate health care services), and Article 16.1(e) (the State's interference with the victims ability to decide freely on the number and spacing of her children).

During the preparation of the communication, admissibility concerns arose as the incident occurred on 2 January 2001, two months before Hungary ratified the Optional Protocol on 22 March 2001. We argued that Hungary ratified the Convention in 1981 and had therefore been legally bound by its provisions for twenty years at the time the violation occurred. Also, the Optional Protocol is a jurisdictional mechanism that results in the recognition by the State concerned of a further way in which the Committee can attain competence.[14] Therefore, the Convention has to be respected by the State Party from the moment of its ratification and the Optional Protocol results merely in the opportunity for victims to file individual complaints. Moreover, the aim of sterilisation is to end the patient's ability to reproduce and from the legal as well as medical perspective it is intended to be irreversible, therefore the violation had and still has a continuing effect.

In the substantiation of violation claims, we relied on previous concluding observations of the CEDAW Committee in interpreting the Convention, other sources of international law, national law arguments, and international and domestic jurisprudence concerning reproductive rights. Although UN Committees do not formally accept third-party submissions, an *amicus brief* was prepared by the New York-based Center for Reproductive Rights on informed consent standards, which was very well received by the Committee.

Based on Article 10(h) of the Convention, the State has to provide access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. General Recommendation 21 of the Committee states, "in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services as provided in

[14] *See Nowak, Manfred, CCPR-Commentary, Kehl, 1993, pp. 679-680.*

Article 10(h) of the Convention."[15] Correspondingly, the Hungarian Health Care Act states that the doctor performing the operation must inform the person requesting the intervention and her/his spouse/partner about further options of birth control, nature, possible risks and consequences of the intervention prior "in a way that is comprehensible to her/him with due regard to her/his age, education, knowledge, state of mind, and her/his expressed wish on the matter."[16]

In connection with Article 12 the Convention standards regulate that, "State parties shall take all appropriate measures … in the field of health care in order to ensure access to health care services, including those related to family planning." States also have to "...ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period." According to the Committee's General Recommendation 24, "women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available information". Furthermore, the Committee states that "acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilization."[17]

Based on the standards of the World Health Organization (WHO), informed consent is a prerequisite for any medical intervention.[18] This principle was also confirmed by the European Convention on Human Rights and Biomedicine. The International Conference on Population and Development held in Cairo in 1994 also declared that informed choice is a fundamental principle of quality health care services and is recognised as a human right by the international community.[19] General Comment 28 of the UN Human Rights Committee states, "non-consensual sterilization constitutes torture or cruel, inhuman or degrading treatment."[20] The Hungarian Health Care Act, in line with the above-mentioned standards, states, "the performance of any health care procedure shall be subject to the patient's consent granted on the basis of appropriate information, free from deceit, threats and pressure."[21] Based on the fact that only seventeen minutes passed between the arrival of Ms A.S. at the hospital and the end of the sterilisation operation, and considering Ms A.S.'s mental and physical condition before the intervention, it is impossible that she could have made an informed decision concerning her sterilisation.

The CEDAW Committee has also emphasised that "compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of a woman to decide on the number and spacing of their children."[22] In its General Recommendation 19, the Committee clearly states that "States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction."[23] In *Y.F. v. Turkey*, the European Court of Human Rights declared that any compulsory, forced or coerced medical intervention, even if it is of minor importance, constitutes an interference with a person's right to private life under Article 8.[24]

[15] *CEDAW General Recommendation 21, paragraph 22.*

[16] *Hungarian Act on Healthcare 1997: CLIV, Article 13.8.*

[17] *CEDAW General Recommendation 24, paragraph 22.*

[18] *WHO Declaration on Patient's Rights.*

[19] *Programme of Action of the United Nations International Conference on Population & Development,* ***http://www.iisd.ca/Cairo/program/p00000.html***.

[20] *General Comment 28: Equality of Rights Between Men and Women. Article 3.*

[21] *Article 15.3.*

[22] *CEDAW General Recommendation 19, paragraph 22.*

[23] *CEDAW General Recommendation 19, paragraph 24.*

[24] *Application No. 24209/94.*

When the submission was communicated, preliminary objections as to its admissibility were raised by the State. The non-exhaustion of judicial review as an effective domestic remedy and *ratione temporis* concerns were raised as the sterilisation occurred before Hungary ratified the Optional Protocol. Concerning the substantive claims, the State party expressed its view that since Ms A.S. has three other children she must have been familiar with the nature of pregnancy and childbirth even without having completed further education. She was given all information appropriate under the circumstances before the operation, which was inevitable due to the medical indications. Moreover, the State party emphasised that "the Hungarian Public Health Care Act allows the physician to deliver sterilisation without any special procedure when it seems to be appropriate in given circumstances."

Since both the CEDAW as well as other international standards summarised in the original submission refute the substantive claims of the State party, the focus of the procedure turned to the admissibility considerations. That boiled down to two questions: whether judicial review should have been exhausted by Ms A.S., and whether sterilisation constitutes an irreversible operation resulting in a continuing violation.

For the purposes of the Convention (and for that of other international treaty-monitoring bodies as well as of the European Court of Human Rights) only effective remedies must be exhausted. For a remedy to be effective, it has to be binding, available, and sufficient to decide upon the core elements of the claim and to give redress. We argued that judicial review is not only an extraordinary remedy that cannot be brought into connection with the constitutionally guaranteed right to appeal[25] and therefore must not be exhausted for the purposes of admissibility, but also in the present case it was not accessible for the petitioner. Between 1 January 2002 and 9 November 2004, at the time of this case, judicial review had very strict admissibility requirements.[26] Moreover, the conditions were later declared unconstitutional by the Constitutional Court based on legal certainty grounds required by the rule of law provisions of the Constitution,[27] so this remedy was not sufficiently certain for the purposes of effectiveness.

Sterilisation is a method of birth control aiming at ending one's capacity to reproduce. According to WHO standards as reflected in the Medical Eligibility Criteria for Contraceptive Use, sterilisation is considered irreversible and permanent. The reversal operation is a complex one with a low chance of success.[28] When it comes to reversal operations, one can only talk about a medical probability. This means that only by carrying out a reversal operation on Ms A.S. one could prove whether she could regain her fertility. However, no one can be asked to undergo an operation for a purpose of proof or in an attempt to "reduce harm induced". Her physical integrity and human dignity was violated by the non-consensual sterilisation irrespective of any medial chance of success of a reversal operation.

At its meeting of 14 August 2006, the Committee concluded that Hungary violated the Convention because of the illegal sterilisation of Ms A.S. In its decision, the Committee was convinced by the ERRC/NEKI arguments that sterilisation is intended to be irreversible, that the success rate of surgery to reverse sterilisation is low and depends on many factors and that the reversal surgery entails risks. With respect to the claim that Hungary violated the Convention by failing to provide information and advice on family planning, the Committee stated that the applicant "has a right protected by Article

[25] *1/1994. (I.7.) Constitutional Court decree.*

[26] *Namely, based on Articles 270-275 of the Code of Civil Procedure (1952:III), the judgment to be reviewed must infringe legal provisions which vitally influenced the merits of the case, the case differs from the binding decisions of the Supreme Court on uniformity of interpretation of law, or when judicial review is necessary for the development of the uniform interpretation of the law in a point of law of general importance.*

[27] *42/2004 Constitutional Court decree.*

[28] ***http://www.reproline.jhu.edu/video/provider_perspective/who_elig_crit/rhr_00_02_ster.html***.

10(h) of the Convention to specific information on sterilization and alternative procedures for family planning in order to guard against such an intervention being carried out without her having made a fully informed choice."

In connection with sterilisation surgery performed without informed consent, the Committee reiterated that according to Article 12 of the Convention, State parties shall "ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period." The Committee found that the sterilisation surgery was performed on Ms A.S. "*without her full and informed consent and must be considered to have permanently deprived her of her natural reproductive capacity",* therefore her right to decide freely and responsibly on the number and spacing of her children was also violated.

In conclusion, the Committee recommended that appropriate compensation should be paid to Ms A.S., commensurate with the gravity of the violation of her rights. Hungary should ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's General Recommendations in relation to women's reproductive health and rights are known and adhered to by all relevant personnel in public and private health centres, including hospitals and clinics. The State party should review domestic legislation on the principle of informed consent in cases of sterilisation and ensure its conformity with international human rights and medical standards. Public and private health centres, including hospitals and clinics that perform sterilisation procedures, should be monitored so as to ensure that fully informed consent is given by the patient before any sterilisation procedure is carried out, with appropriate sanctions in place in the event of any breach of the requirement for informed consent.

This is the second time that the Committee has found Hungary in breach of the Convention on the Elimination of All Forms of Discrimination against Women; with this decision, the country sets a troubling record. The communications from the Government in both cases revealed that the Convention standards, although clearly articulated in the General Recommendations of the Committee, are not known by the State Party and that in the areas of domestic violence and reproductive rights the legal and institutional system in Hungary is not yet able to ensure comprehensive and effective protection from potential violations.