

PARALLEL REPORT

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING THE CZECH REPUBLIC

For Consideration by the Committee on the Elimination of Discrimination
Against Women at the 63th Pre-sessional Working Group
(27 - 31 July 2015)



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

TABLE OF CONTENTS

| | |
|--|----------|
| Executive Summary | 3 |
| Background Information on Coercive Sterilisation | 3 |
| Comments on Informed Consent Procedure | 5 |
| Comments on Available Paths for Seeking Remedies | 6 |
| Comments on Development of Compensatory Mechanism | 7 |
| Comments on Recognizing Sterilisation of Romani Women as an Intersectional Discrimination | 9 |
| Recommendations for Government Action | 9 |

EXECUTIVE SUMMARY

The European Roma Rights Centre (ERRC)¹ submits this parallel report to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) for the attention of the Pre-Sessional Working Group, commenting on the Combined Fourth and Fifth Periodic Report of the Czech Republic, submitted under Article 18 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (Convention).

The present parallel report describes the current situation regarding one of the most serious human rights abuses of women – the practice of coercive sterilisation among Romani women – and the legal, policy and other obstacles in seeking an effective remedy for the victims. The submission focuses only on issues directly related to the practice of coercive sterilisation; i.e. Articles 10 (equal access to education), 12 (equal access to health care services) and 16 (freedom from discrimination in all matters relating to marriage and family relations) of the Convention. This report aims to provide an update on the situation since 2010 when CEDAW last reviewed the Czech Republic.² It includes an update on the legislative changes, compensation mechanism proposals, updates on court cases, comments on the information provided by the Czech government and recommendations for government action.

BACKGROUND INFORMATION ON COERCIVE STERILISATION

In the former Czechoslovakia,³ a Public Decree on Sterilisation⁴ from 1971, in force from January 1972, enabled public authorities to take programmatic steps to encourage the sterilisation of Romani women and women with disabilities placed in mental institutions in order to control their birth-rate.⁵ This legal provision resulted in giving public authorities more or less free reign to systematically sterilise Romani women and women with disabilities without their full and informed consent. In 1979, Czechoslovakia also initiated a programme providing financial incentives to Romani women for undergoing sterilisations motivated by the need “to control the highly unhealthy Roma population through family planning and contraception”.⁶

Sterilisations were a recognised state policy encouraged by the Czechoslovak government until 1993 when the specific legal provisions were abolished.⁷ However, the practice of sterilising Romani women and women with disabilities against their will did not end with the fall of Communism, when the specific Decree was formally abolished, rather it continued throughout the 1990s and 2000s, with the last known case occurring as recently as 2007.⁸

Between 2002-2004, the ERRC conducted pivotal comparative research into the state-supported practice of involuntary sterilization of Romani women in the Czech Republic, Slovakia and Hungary.⁹ The research pointed

1 The ERRC is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. Since its establishment in 1996, the ERRC has endeavoured to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations. The ERRC has been regularly reporting to the United Nations Committee on the Elimination of Discrimination Against Women (UN CEDAW) on the situation of Romani women in various countries of Europe and submitted several Parallel reports to the CEDAW Committee. The ERRC has also been litigating with the CEDAW Committee under the individual complaints mechanism of the Optional Protocol.

2 UN CEDAW, Concluding Observation, the Czech Republic, available: <http://www2.ohchr.org/english/bodies/cedaw/cedaws47.htm>.

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

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

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

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

7 Směrnice Ministerstva zdravotnictví ČSR ze dne 17. prosince 1971 o provádění sterilizace [*Decree on Sterilisation No. 01/1972* passed on 17 December 1971, valid from 1 January 1972. Number 252. 3-19. 11. 71].

8 ERRC, Coercive sterilization of Romani women, available at: <http://www.errc.org/article/coercive-sterilisation-of-romani-women/3843>.

9 ERRC, *Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe*, Budapest, 2006, pp. 44-49.

to cases of involuntary sterilization, providing an analysis of the role of public authorities in implementing eugenic policies specifically targeting Romani women and women with disabilities.

Undeniable violations of CEDAW were uncovered from the cases gathered for this research including: (1) an absolute lack of consent in either oral or written form prior to the intervention; (2) consent was sought during delivery or shortly before delivery, during advanced stages of labour in circumstances where the mother was in great pain or intense stress; (3) consent was given in error with respect to the intervention, its effects, or upon the provision of manipulative information on sterilisation; and lastly (4) consent was given under duress or pressure from public authorities for women to undergo sterilisation under the threat of withholding social benefits or under the promise of financial rewards.¹⁰ It further showed that Romani women continued to be involuntarily sterilised despite the commitments of the new democratic government to respect and safeguard individual human rights set forth in the Constitution as well as in international human rights treaties duly ratified by the Czech Republic. The ERRC reported some of these cases in its previous CEDAW submission in 2010.¹¹

The Czech Public Defender of Rights (Ombudsperson) launched its own investigation and in 2005 published a report on the practice of sterilisation of Romani women pre and post 1989. This report included preliminary data on the scope of the problem and recommendations on how to address the issue and compensate victims of coercive sterilisation.¹² The report documented and filed the criminal complaints to the General Prosecutor in 50 cases of unlawful sterilizations (out of 87 requests which came to the Ombudsman).¹³ All of these cases were dismissed for procedural reasons - (doctors complied with objective indication, signed consent forms, lost documentation, etc.) or due to the statute of limitation (victims could claim compensation within a three year period from when they realised they had been sterilised). The Ombudsperson's report concluded that the state policy and practice of involuntary sterilisation, up to 1991, was directly motivated by eugenics.

In November 2009, Czech authorities acknowledged individual failures of medical personnel and expressed regret for forced or coerced sterilisations.¹⁴ However, despite the Ombudsperson's conclusion that involuntary sterilisations were encouraged by state policy, the government denied any systemic practice of sterilisation. In light of the lack of official acknowledgment no compensatory mechanism has been put in place since their emergence. Neither has an official investigation been carried out by the government to ascertain the extent of forced or coerced sterilisations. recommended that the Czech government take urgent action to investigate the extent of the practice of involuntary sterilisation and to establish a compensatory mechanism: the UN Committee on the Elimination of Discrimination against Women (CEDAW) in 2006 and 2010, the UN Committee on Elimination of Racial Discrimination (CERD) in 2007 and 2011, the UN Human Rights Committee in 2007 and 2013, the UN Human Rights Council under the Universal Periodic Review in 2008 and 2012, the European Commission against Racism and Intolerance (ECRI) in 2009, the Commissioner for Human Rights of the Council of Europe in 2010, the UN Committee against Torture (CAT) in 2012 and the UN Committee on the Rights of Persons with Disabilities (CRPD) in 2015.¹⁵

The UN High Commissioner for Human Rights, Navanethem Pillay, has been attentive to the issue of involuntary sterilisations also, writing officially to the Czech government in May 2014 in which she asked the government to report on the established safeguards and compensatory measures regarding the victims of involuntary sterilisation.¹⁶ Moreover, during the Universal Periodic Review in April 2012, a number of States raised concerns

10 ERRC, *Ambulance Not on the Way. The Disgrace of Health Care for Roma in Europe*, 2006, p. 47.

11 ERRC, *Parallel Submission to the Committee on the Elimination of All Forms of Discrimination Against Women for the Czech Republic*, October 2010, available at: <http://www.errc.org/cms/upload/file/cz-cedaw-sterilisations-errc-czech-republic.pdf>.

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

13 *Ibid.* Between 2005 and 2010, 101 sterilised women requested the Ombudsman office to launch investigation in the unlawful nature of their sterilisation act.

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

15 The recommendations of the UN bodies to the Czech Government concerning involuntary sterilisation can be accessed here: <http://www.ohchr.org/EN/countries/ENACARRegion/Pages/CZIndex.aspx>; the ECRI Report on the Czech Republic is available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf; the report of the Human Rights Commissioner of the Council of Europe is available here: http://www.coe.int/en/web/commissioner/country-report/czech-republic/-/asset_publisher/McxMQ9JIN8n9/content/report-on-visit-to-czech-republic-2010-?redirect=%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fczech-republic&inheritRedirect=true.

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

about the involuntary sterilisation of Romani women during the session on the Czech Republic. Greece recommended that the government review the three year statute of limitation for seeking redress for claims of coercive sterilisation. South Africa suggested that the government establish a roadmap with clear timelines for ensuring reparations are granted to victims. Spain recommended that reparations should be guaranteed.

Despite the robust and persistent international criticism, the Czech government continues to neglect taking decisive action to establish a compensatory mechanism through which justice could be served to women subjected to involuntary sterilisation. Despite the official apology of individual incidents pronounced by the Prime Minister in 2009, the government has maintained that the state did not support the systemic practice against Romani women and women with disabilities.

In October 2014, the Czech Government approved an interim report for CEDAW on its progress in tackling the issues of involuntary sterilisation.¹⁷ Regarding CEDAW's recommendation from August 2010 on introducing a compensation mechanism for involuntarily sterilised women,¹⁸ the Government informed CEDAW of the national Council of Human Rights' recommendation, adopted in February 2012, to compensate

all the women who were sterilized in conflict with the law" [...] "between 1972 and 1991 and under the provisions of the law that was effective at that time were entitled to a cash contribution[para 181].

The government also reported on the establishment of a new interdepartmental group in July 2014 tasked with preparing "a legislative proposal on compensation of wrongfully sterilized persons", to "be submitted to the government by the end of 2014" [para 182]. According to the government, the new proposal will satisfy the claims of the victims of coercive sterilisation and they will "no longer need to bring to court civil action against a health care facility where the coercive sterilization took place" [para. 182]. If however, any affected woman decides to go to the court, the government pointed out, that they can seek free legal aid and be awarded free representation in civil and criminal proceedings. Furthermore, they can also request exemption from court fees [para. 183].¹⁹ The government emphasized the changes legislated by the Act on Specific Health (2011), addressing CEDAW's recommendation of the procedures regarding informed consent.²⁰ Arguing the government stated that this Act

greatly enhances the rights of patients and, among other things, emphasizes the protection of the rights of underage patients, patients deprived of legal capacity and patients with limited legal capacity so that they are not qualified to assess the provision of health services or their consequences and grant consent to their provision" [para. 183].

The practical shortcomings of this Act are outlined in depth below for the Committee's attention.

COMMENTS ON INFORMED CONSENT PROCEDURE

The Healthcare Act adopted in 2004, which entered into force in 2005, repealed the older regulations authorizing sterilisations. In November 2011, the Act on Specific Health Services was adopted and came into force in April 2012, which for the first time defines sterilisation.²¹ In Part 2, the legislation stipulates instructions for medical personnel on how to undertake consultations with patients on the consequences of sterilisation; the risks and nature of sterilisation including the prerequisite of informed consent from the patient. An independent witness

17 Government of the Czech Republic, Sixth periodic report of States parties due in 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCE%2f6&Lang=en.

18 The Committee recommended to "consider establishing an ex gratia compensation procedure for victims of coercive or non-consensual sterilizations whose claims have lapsed; provide all victims with assistance to access their medical records; and investigate and punish illegal past practices of coercive or non-consensual sterilizations" [para. 35].

19 The Committee recommended to "review the three-year time limit in the statute of limitations for bringing compensation claims in cases of coercive or non-consensual sterilizations in order to extend it and, as a minimum, ensure that such time limit starts from the time of discovery of the real significance and all consequences of the sterilization by the victim rather than the time of injury" [para. 35].

20 The Committee recommended "to adopt legislative changes clearly defining the requirements of free, prior and informed consent with regard to sterilizations, in accordance with relevant international standards, including a period of at least seven days between informing the patient about the nature of the sterilization, its permanent consequences, potential risks and available alternatives and the patient's expression of her free, prior and informed consent" [para. 35].

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

(medical person) is now required to attend the consultation with the patient and one more witness can be present on the request of the patient also. The minutes from the consultation, signed by all participants, are archived in personal medical files. Between the consultation and the surgery, seven days are required for medical necessity and a fourteen day wait for other reasons to undergo sterilisation. The Act incorporates some of the provisions from the International Federation of Gynaecology and Obstetrics (FIGO) Guidelines;²² and puts in place more robust safeguards in regards of legally incapacitated people and minors. It also forbids sterilisations performed in prisons and performed on people with mental disabilities for other than medical reasons. Regarding the sterilisation of minors and legally incapacitated people, additional decisions of the expert commission and the court are required.

There are however prevailing shortcomings with provisions relating to the informed consent necessary for a sterilisation to be undertaken. The Act does not define the concepts of informed consent and informed choices. It also does not oblige the medical personnel to inform the patient that sterilisation is only one of many methods of contraception. In this regard, the law omits reference to when it is appropriate for doctors to initiate a discussion on sterilization with patients. It equally does not prohibit doctors from discussing the option of sterilisation with patients who are in a vulnerable state, such as during labour or when emotionally unstable.

Section 12 of the Act defines sterilisation and describes the medical and other situations under which it can be performed.²³ It however not once indicate that sterilisation is not a solution to a medical emergency nor a life-saving intervention.²⁴ Arguments of medical necessity were used by medical personnel to either pressure Romani women to agree to the procedure, or it served as the retrospective justification for “emergency sterilizations” performed entirely without the patient’s consent.

Although the Act prescribes the periods between the consultation and the performance of the sterilisation, section 15(2) of the said Act undermines this and allows for immediate sterilization after signing the consent form. This provision raises further concerns regarding the performance of sterilisations on women in vulnerable states and under the pretext of medical emergencies, for example during Caesarean section when many Romani women have reported to be pressured into signing the consent form.

COMMENTS ON AVAILABLE PATHS FOR SEEKING REMEDIES

Significant barriers to access justice persist for the victims of coercive sterilisation, mostly Romani women and women with disabilities. The primary obstacle in obtaining an effective remedy is the limitation of the three year period under the statute of limitation for initiating civil claims, commencing from the date sterilisation is acknowledged by the victim, preventing the majority of victims from bringing civil claims for damages.

To date there have been three court cases where involuntarily sterilised women have been financially compensated. Two cases were considered by the European Court of Human Rights and one by the domestic courts. The women, sterilised in 1997, 2001 and 2003 were eventually compensated either as a result of the court’s decision or in an extrajudicial settlement. Their cases were initiated within the three year period in the statute of limitation.²⁵ These cases however are an exception to the rule, considering the estimates of women that were involuntarily subject to

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

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

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

25 European Court of Human Rights, *Ferenčíková v the Czech Republic* (Application no. 21826/10), *Červeňáková v the Czech Republic* (Application no. 26852/09); and *R.K. v the Czech Republic* (Application no. 7883/08). All three applicants were represented by the Czech NGO League of Human Rights. The case *Ferenčíková v. the Czech Republic* brought before the European Court of Human Rights (further referred as ‘ECtHR’) was closed with a friendly settlement between the applicant and the Czech Republic in August 2011. In 2005 the District court in Ostrava decided that the applicant was sterilised without voluntary consent and ordered the hospital to offer an official apology. The financial redress was however barred by the statute of limitation. The Supreme and the Constitutional Courts rejected the appeal for financial compensation. Consequently the applicant launched the ECtHR proceedings in response to which the government awarded her with 10,000 EUR in a friendly settlement. The most recent ECtHR case *R.K. v the Czech Republic* also ended with a friendly settlement between the applicant and the Czech Republic in November 2012. The settlement followed four years of the case pending before the ECtHR and previous positive decisions of the District and Regional Courts which had established the rights violation and ordered financial compensation. The parties agreed to the financial award of 10,000 EUR. The government admitted this was an exceptional failure by the state and denied any systemic practice.

sterilisations. This reflects the ineffectiveness of domestic remedies as well as the inadequacy of compensation available to women, as victims of forced sterilization, if initially successful in their civil claim.

In June 2012, the Czech Constitutional Court rejected an appeal for a higher level of compensation for a woman who was sterilised without her consent following a delivery by Caesarean section. Revising the District Court's decision, the Supreme Court upheld the award of financial compensation, of 150,000 CZK. The claimant argued that the compensation awarded was inadequate given that she cannot bear any more children and her husband had divorced her. She sought compensation of 1 million CZK (approximately EUR 40,000) however; the Constitutional Court ruled that the District Courts' decision on the amount of compensation did not violate the woman's fundamental rights.²⁶

Up to 2013 the Czech Civil Code differentiated between so-called claims for material and immaterial damages. The statute of limitation applied to claims for material damages only, which sought financial or other material compensation. In theory it was possible for the victims of involuntary sterilisation to seek an official apology from the state through the Courts outside of the statute timeframe. However the Supreme Court decision from 2008 established that whenever financial compensation is sought for immaterial damages, the statute of limitation should apply.²⁷ Moreover, a new Civil Code,²⁸ which came into force in January 2014, abolishes this distinction, equally applying the statute of limitation to all claims for damages, now even claims against the state to legally recognise forced sterilisation as an injustice against women is bound by the statute of limitation .

Furthermore, the Act on Equal Treatment and on Legal Means of Protection against Discrimination (the Anti-discrimination Act), which is enforce since September 2009 does not allow for *actio popularis*, which would have permitted lodging complaints of larger numbers of victims or with unknown victims of involuntary sterilisation.²⁹

The current legal system has denied the majority of victims of involuntary sterilisation justice and any right to seek compensation through domestic civil remedies. The ERRC is concerned that the Czech state is not being held to account for their past systemic human rights violations against Roma women, blatantly based on discrimination and within the present context also in direct breach of the Convention.

COMMENTS ON DEVELOPMENT OF COMPENSATORY MECHANISM

In 2009 and 2012, the Czech Government's Human Rights Council passed resolutions recommending that the Government introduce a mechanism for adequate financial redress for victims of involuntary sterilisation.³⁰ The Council advised establishing a systematic and transparent compensatory mechanism for women subjected to involuntary sterilisations. In this regard, the resolutions suggested creating a compensation committee that would review cases of sterilisation and propose appropriate remedies.³¹ The Council estimates as few as 50 (the cases previously documented by the Czech Ombudsman), and as many as thousands (an estimate based on the Swedish experience) women could be entitled to compensation.

The Council's recommendation proposes compensation of between 300,000-400,000 CZK depending on the degree of harm caused and the degree to which existing regulations were violated. The Council's recommendations also included the provision of free legal assistance for sterilised women as well as the preservation of medical documents on sterilisation, currently the law allows hospitals to dispose of documents after retaining them for 40 years. This already has significant consequences for women sterilised in the early 1970s.

26 League of Human Rights, *Constitutional court rejected the claim of a sterilized woman who sought higher financial compensation*, available at (in Czech): <http://lp.cz/2012/06/us-odmitl-stiznost-zeny-jez-chtela-vyssi-nahradu-za-sterilizaci>.

27 Supreme Court Judgment no. 31 Cdo 3161/2008 from 12 November 2008.

28 Government of the Czech Republic, *New Civil Code of the Czech Republic*, available at: <http://obcanskyzakonik.justice.cz/>.

29 European Roma Rights Centre, *Czech Republic: Country Profile 2011-2012*, p. 12.

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

31 More details can be found in an ERRC/partner letter of concern, *NGOs Welcome Czech Republic Recommendation on Forced Sterilisation*, available at: <http://www.errc.org/article/ngos-welcome-czech-republic-recommendation-on-forced-sterilisations/3971>.

Under the Council's compensation proposal, only women subjected to involuntary sterilisation between 1972 and 1991 would have been directly eligible for compensation. The proposal referred to the findings from the Czech Ombudsman which declared that there was direct involvement from the State's social sector in practicing sterilisation during the Socialist period, as the State provided financial and material incentives to women who underwent this procedure. Women sterilised after 1991 were to seek their claims through the courts and were thus effectively excluded from seeking compensation as outlined in the previous section. Women sterilised after 1991 were viewed, in this proposal, as victims of individual doctors and hospitals rather than of State bodies. Moreover, the proposal would not apply to women sterilised in Slovakia who then resided in the Czech Republic after the decline of the Czechoslovakia state.³²

Relevant Czech Ministries did not endorse the Human Rights Council's recommendations. The Ministry of Health, which was assigned a leading role, denied that any problem with sterilisation existed and refused to review the period for archiving documentation in hospitals. In addition, the Ministry of Justice rejected the consideration of introducing free legal aid for vulnerable applicants with inadequate finances. The repeated inter-ministerial review concluded that new legislative measures for redress will not be introduced—without a legislative footing it is more likely that a budget will not be earmarked for such a scheme. This was confirmed by the Ministry of Finance whom officially stated that no money would be made available by the government for compensation. The Council's recommendations were in fact never scrutinized by the Czech Parliament.³³

Almost three years after the Czech Government's Human Rights Council issued its second resolution urging the Government to develop a compensation scheme and no progress has been achieved. The Czech Helsinki Committee (CHC) designed a new legislative proposal detailing an alternative compensation scheme for victims of involuntary sterilization, which tackles the shortcomings of the previous resolution.³⁴ Among the most significant changes is that this draft legislation abolishes the distinction between women sterilised before and after 1991. The CHC submitted this proposal to the Ministry of Justice in January 2014.³⁵ Meanwhile, Anna Šabatová, the former President of the CHC, was elected as the new Czech Ombudsperson, making a public commitment that she will prioritise the compensatory mechanism for victims of involuntary sterilisations. The newly appointed Minister of Human Rights has made similar statements and has established a new inter-ministerial working group entrusted with preparing legislation on a compensatory mechanism.³⁶

In February 2015 this working group adopted a draft legislation in the form of the Compensation Act.³⁷ This draft legislation proposes that the Ministry of Health will establish an independent expert committee which would review the individual claims of involuntarily sterilised persons and advise the Ministry on compensation. The committee of nine members should have at least one practising lawyer, practising gynaecologists and social worker nominated by the ministries (one member should be nominated by the Ombudsperson). The compensation should include an official apology, compensation and free-of-charge rehabilitation or artificial fertilisation treatment. The compensation is set at 300.000 CZK (app.12.000 USD) and the compensation law should be valid for three years, during which time the affected women can make their claim. Persons involuntarily sterilised between July 1966, when the Public Health Act was adopted, and March 2012, when a new Special Health Services Act annulled the previous legal provision, should be eligible for compensation. The draft legislation has been put forward for debate in the Czech Parliament, no date has been finalised yet.

This pending Act, if adopted expands the category of eligible involuntarily sterilised women and provides a relatively transparent path to seek compensation. The ERRC believes that if adopted this legislation would be a decisive moment in the long history of this human rights abuse. The Czech government has the opportunity to

32 ERRC, *Submission to the UN UPR on the Czech Republic*, April 2012, available at: <http://www.errc.org/article/errc-submission-to-un-upr-on-the-czech-republic-april-2012/3978>.

33 ERRC, *Submission to the UN HRC on the Czech Republic*, June 2013, available at: <http://www.errc.org/article/errc-submission-to-un-hrc-on-the-czech-republic-june-2013/4152>.

34 Romea, *Czech Helsinki Committee designs law to compensate illegally sterilized people*, January 2014.

35 Czech TV, *A Compensation for Illegal Sterilisations*, January 2014, available at: <http://www.ceskatelevize.cz/ivysilani/1097181328-udalostij/214411000100113/obsah/302100-odskodneni-za-protipravni-sterilizaci>. Along the law proposal, the CHC collected details of forty Romani women sterilised in the past.

36 Romea, *Czech Human Rights Minister drafting law to compensate*, available at: <http://www.romea.cz/en/news/czech/czech-human-rights-minister-drafting-law-to-compensate-illegally-sterilized-women>.

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

fully rehabilitate those Romani women and women with disabilities whose rights have been violated. In so doing, the Czech Republic would also comply with the UN Committees recommendations under the Covenant (2010).

Despite the recent positive developments, the ERRC remains concerned about the Czech government's willingness to implement effective measures providing victims with adequate compensation. The Ministry of Health, which has not acknowledged the injustice of involuntary sterilisations, has been appointed to decide on compensation claims. The expert committee will only have an advisory role. Therefore the ERRC remains concerned due to the configuration of responsible bodies for the administration of compensations claims and in effect justice for the victims of forced or coerced sterilisations.

COMMENTS ON RECOGNIZING STERILISATION OF ROMANI WOMEN AS AN INTERSECTIONAL DISCRIMINATION

In its General Recommendation No.28 the Committee has already recognized that discrimination experienced by women as a result of their sex/gender is

inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.

The systemic involuntary sterilisation of Romani women due to their gender and ethnicity in the Czech Republic is a clear violation of the Convention.

RECOMMENDATIONS FOR GOVERNMENT ACTION

THE ERRC RESPECTFULLY REQUESTS THAT THE WORKING GROUP ASK THE STATE PARTY THE FOLLOWING QUESTIONS:

What legislative steps, if any, has the State party taken to address the shortcomings in the current legal provisions on informed consent and the law on statutory limitations currently preventing sterilised Romani women in accessing effective legal remedies?

What steps, if any, has the state taken to investigate recent practices of coercive sterilisation and to prevent such violations from occurring in the future?

THE ERRC RECOMMENDS THE GOVERNMENT OF THE CZECH REPUBLIC TO UNDERTAKE THE FOLLOWING:

Access to Justice

1. Grant compensation to all victims of coercive sterilisation in the Czech Republic irrespective of the date of sterilisation, ethnicity, nationality or age;
2. Ensure that the three-year statute of limitation, dating from the moment of sterilisation, will not prevent victims from bringing civil claims for damages;
3. Ensure that all victims of involuntary sterilisation are provided with free legal aid and all potential litigation costs are covered;
4. Amend/abolish problematic provisions of Specific Medical Services Act concerning informed consent to sterilisation
5. Secure access to non-monetary forms of compensation such as artificial fertilisation, rehabilitation, etc.;

Transparency

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

Accountability

1. Assign the Czech Foreign Ministry to undertake negotiations with the Slovak Government to provide redress for women sterilised in Slovakia prior to 1991;

Anti-Discrimination & Access to Information

1. Collect disaggregated data based on ethnicity and gender in health care;
2. Consider cumulative effects of multiple discrimination (ethnicity/gender) suffered by Romani women in accessing health care, education and other areas
3. Recognize and react to intersectionality between vulnerability factors including gender, ethnicity and other status of women such as “rural” or “migrant”;
4. Acknowledge that ethnic discrimination can prevent Romani children, including Romani girls from accessing equal education and health care;
5. Adopt comprehensive policies that address the situation of Romani women in general and in terms of access to health care, education, and other services
6. Allocate budgets specifically to improve the situation of Romani girls and women in access to health care and education.