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Re: Involuntary sterilisation of Romani women in Europe

Dear Mr Grover, Ms Manjoo and Mr Méndez:

The European Roma Rights Centre (ERRC) submits this letter regarding ongoing concerns about the forced and coerced sterilisation (hereafter “involuntary sterilisation”) of Romani women in three European countries – the Czech Republic, Hungary, and Slovakia. Given the relevancy of this ongoing issue to your respective mandates, we are sending this request for intervention to each of your offices simultaneously.

The information in this letter and included in the attached documents is based on our long-term work with our partner organisations in the countries concerned (the Group of Women Harmed by Forced Sterilization, the League of Human Rights, and Life Together in the Czech Republic; and the Legal Defense Bureau for National and Ethnic Minorities in Hungary),¹ as well as with the U.S.-based Center for Reproductive Rights and the Peacework Development Fund. Our legal advocacy on this issue has included letters to Council of Europe Human Rights Commissioner Thomas Hammarberg,² advocacy submissions to Committee on the Elimination of Discrimination against Women (CEDAW),³ a successful complaint under CEDAW’s Optional Protocol concerning a case in Hungary,⁴ reporting to the U.S. Commission on Security and Cooperation in Europe⁵ and legal representation of victims of this practice in all three countries. We also produced a brochure entitled “Coerced Sterilisation of Romani Women” in the context of a campaign for compensation for coercively sterilised Romani women that summarised the situation of forced and coerced sterilisation in these three countries as of 2008.⁶

¹ The Counseling Center for Civil and Human Rights in Slovakia has also undertaken extensive work on this issue.

² See <http://www.errc.org/cms/upload/media/03/A9/m000003A9.pdf>.

³ Reporting on the Czech Republic in 2006 available at: <http://www.errc.org/cms/upload/media/03/7F/m0000037F.pdf>; and 2010 available at: <http://www.errc.org/cms/upload/file/cz-cedaw-sterilisations-errc-czech-republic.pdf>. Reporting on Hungary in 2007 available at: <http://www.errc.org/cms/upload/media/03/7A/m0000037A.pdf>.

⁴ See: <http://www.errc.org/cikk.php?cikk=2681>.

⁵ See: <http://www.errc.org/cms/upload/media/03/7A/m0000037A.pdf>.

⁶ Also available online at <http://www.errc.org/cms/upload/media/03/4F/m0000034F.pdf>.

About Involuntary Sterilisation

Sterilisation by tubal ligation has been chosen voluntarily by women worldwide as a permanent birth control method. Our concerns here are for Romani women who have been either coerced or forced by doctors or other authority figures in some European countries into undergoing tubal ligation against their will. The concept of “involuntary sterilisation” includes both coerced and forced sterilisation. Many women worldwide have experienced *coerced* sterilisation, where financial or other incentives, intimidation, or misinformation tactics are used to compel women to undergo tubal ligation. In some of these cases, women are told that sterilisation is required as a condition to receive social services or under threat to have their children taken into state care. *Forced* sterilisation occurs when doctors sterilise women without giving them the opportunity to freely choose and consent to sterilisation, often during caesarian section deliveries or other obstetrical services. Informed choice, consent and decision-making are imperative when medical procedures that have irreversible, permanent outcomes are performed. In many of the cases documented in Europe, “consent” (i.e. a signature on a form) was obtained by health care workers from the women concerned when they were under duress, for example, when they were labor and in the absence of adequate information to inform their choice.

Involuntary Sterilisation of Romani Women in the Czech Republic, Hungary and Slovakia

Czech Republic

In November 2009, the Czech Government acknowledged individual failures in the execution of sterilisation procedures affecting a large number of Romani women from the 1970s in Communist Czechoslovakia) and continuing after the transition to democracy in the 1990s. This acknowledgment came three decades after the first reports of these practices were published by dissidents in Communist Czechoslovakia. In 2005, the Czech Ombudsman criticised the Czech Health Ministry’s failure to grasp the illegal nature of these human rights violations.⁷ This report motivated recommendations of urgent action by CEDAW (in 2006 and 2010), the Committee on the Elimination of All Forms of Racial Discrimination (2007), the Human Rights Committee (2007), the United Nations under the Universal Periodic Review (2008) and the European Commission against Racism and Intolerance (2009).⁸ The issue has also been raised at the European Economic and Social Committee, referenced in the 2010 Parliamentary Assembly of the Council of Europe (PACE) report on the Roma, and highlighted at the European Parliament by MEP Jároká, the European Parliament’s only Roma member, in 2010.⁹

Verdicts to date in the civil lawsuits filed in these cases have rarely resulted in compensation awards due to statutes of limitations, and several of these lawsuits are pending or are now on their way to the European Court of Human Rights. Criminal investigations into these matters have been shelved and none of the perpetrators have ever been subjected to civil, criminal or professional sanction.

In its most recent recommendations to the Czech Government, CEDAW suggested that the State: adopt legislation that defines the requirements of consensual sterilisation, including a waiting period of at least seven days; review the three-year time limit in the statute of limitations for bringing compensation claims in cases of involuntary sterilisations, consider establishing an *ex-gratia* compensation procedure; provide all victims with assistance to access their medical records; and investigate and punish illegal past practices of coercive or non-consensual

⁷ Czech Ombudsman, *Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures* (29 December 2005), available at http://www.ochrance.cz/fileadmin/user_upload/ENGLISH/Sterilisation.pdf.

⁸ Concluding Comments of the Committee on the Elimination of Discrimination against Women: Czech Republic, 25 August 2006, CEDAW/CZE/CO/3, pg. 5 at 23. Concluding Comments of the Committee on the Elimination of Racial Discrimination: Czech Republic, 11 April 2007, CERD/C/CZE/CO/7, pg.4 at 14, available at: <http://www2.ohchr.org/english/bodies/cehd/cerds70.htm>. Concluding Observations of the Human Rights Committee: Czech Republic, 9 August 2007, CCPR/C/CZ/CO/2, pg. 3 at 10. Report of the Working Group on the Universal Periodic Review: Czech Republic, 23 May 2008, A/HRC/8/33, pg. 13 at 5, pg. 14 at 27. ECRI Report on the Czech Republic, fourth monitoring cycle, adopted 2 April 2009, pg. 39 at 140, pg. 40 at 141, 142, available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf.

⁹ Personal communication from Madi Sharma, UK Member, Group 1, European Economic and Social Committee, 15 January 2009, email on file with Gwendolyn Albert, Peacework Development Fund. József Berényi, *The situation of Roma in Europe and relevant activities of the Council of Europe* (Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, 26 February 2010), pg. 4 at 19.3, available at <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12174.pdf>. “We have to stand up against coercive sterilization”, 17 March 2010, press release of MEP Livia Járóká, available at <http://romove.radio.cz/en/article/23135>.

sterilisation.¹⁰ The Committee also required the Czech Government report back on this issue within two years instead of the customary five.

Hungary

In 2004, A.S., a Romani woman sterilised without her consent during emergency obstetrical services, filed a complaint with CEDAW under the Optional Protocol. Domestic courts had previously acknowledged the absence of informed consent but did not decide in her favour finding that the sterilisation was reversible and that she had not permanently lost her reproductive capacity. On 29 August 2006, in the case of A.S. v. Hungary the CEDAW Committee found Hungary in breach of the Convention. In 2009, the State finally compensated her on the basis of the Committee's findings and extensive pressure by the ERRC and NEKI.¹¹ The Hungarian Government also amended the law in 2008 providing that special information should be provided to the patients to ensure their informed consent even in cases when sterilisation is performed for medical indication.¹² However, the Hungarian Public Health Act still mandates sterilisation on the basis of a medical indication. The ERRC and other rights groups advocate for the removal of any distinction between sterilisation for medical indication and sterilisation for family planning reasons: sterilisation has the purpose of preventing another, future pregnancy therefore there is no emergency situation when sterilisation should be performed. Hungarian legislation also requires the provision of relevant information to patients on the "chances of reversibility" which suggests that the law and practitioners approach sterilisation as a non-permanent procedure and relevant patient counselling is therefore conducted based on that premise. No informed consent can be alleged without informing the patient about the permanent consequences of sterilisation: further amendments of Hungarian law are required to ensure that patients are informed about the permanent nature of sterilisation procedures.

The ERRC is currently litigating another case of a woman perceived to be Roma who was involuntarily sterilised in a public hospital in Hungary in 2008.¹³

Slovakia

A 2003 report entitled "Body and Soul"¹⁴ alleged that Romani women were being sterilised without their informed consent even after the fall of Communism in Slovakia. The Slovak Government responded by opening an investigation into the crime of genocide but found no evidence of genocide with respect to the allegations. International observers, including the U.S.

Committee on Security and Cooperation in Europe, critiqued the Government's investigation as flawed because, among other reasons, human rights activists and possible victims were threatened with criminal charges for speaking out.¹⁵ Later that year, following a visit to Slovakia, the Council of Europe's Commissioner for Human Rights, Mr Alvaro Gil-Robles, said "it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent." He also recommended that the Government should "accept clearly its objective responsibility for failing to ensure that no sterilizations were performed without free and informed consent, as required by international human rights instruments," and that it should "offer a speedy, fair, efficient, and just redress."¹⁶ The Slovak Government has not yet acted upon these recommendations.

In 2006, the Slovak Constitutional Court ruled that the Government's original investigation into the forced sterilisation of Romani women had been ineffective and had not adequately clarified

¹⁰ Concluding observations of the Committee on the Elimination of Discrimination against Women: Czech Republic, 4-22 October 2010, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CZE-CO-5.pdf>

¹¹ See: <http://www.rhrealitycheck.org/blog/2009/06/11/coercively-sterilized-romani-woman-will-receive-compensation>.

¹² See <http://www.rhrealitycheck.org/blog/2009/06/11/coercively-sterilized-romani-woman-will-receive-compensation>.

¹³ "Factsheet: Summit-to-Summit Roma Rights Record", European Roma Rights Center, 20 April 2010, Available at <http://www.errc.org/cms/upload/file/factsheet-4october2010.pdf>.

¹⁴ Body and Soul : Forced Sterilization and Other Assaults on Reproductive Freedom in Slovakia, Center for Reproductive Rights and Poradňa pre ľudské práva, in consultation with Ina Zoon, 2003.

¹⁵ See: http://www.romea.cz/english/index.php?id=servis/z_en_2003_0092.

¹⁶ Recommendation of the Commissioner for Human Rights Concerning Certain Aspects of Law and Practice Relating to Sterilization of Women in the Slovak Republic, CommDH 2003 (12), 17 October 2003, at 53.4, available at <https://wcd.coe.int/ViewDoc.jsp?id=979625&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

the facts. The Slovak Prosecutor was ordered by the court to re-open the investigation.¹⁷ In 2007, the police reinstated the criminal investigation that had been shelved in 2003, interrogated the victims and the alleged perpetrators, and discontinued the proceedings that same year with the finding that no crime had been committed and the plaintiffs' rights had not been infringed.¹⁸

In September 2009, the European Court of Human Rights declared the case of *I.G., M.K. and R.H. v. Slovakia* admissible on all grounds; a judgment on the merits is pending.¹⁹ In November 2009, the UN Committee against Torture expressed deep concern about allegations of continued involuntary sterilisations of Romani women and called on Slovakia to take "urgent measures" to investigate the allegations, punish the perpetrators and compensate the victims, as well as to effectively enforce the Healthcare Act of 2004 by issuing guidelines on how to obtain "free, full and informed consent" from women undergoing sterilisation.²⁰

In March 2011, the UN Human Rights Committee expressed concern at the "narrow focus" of the Slovak Government's previous investigations and "the lack of information on concrete measures to eliminate forced sterilisation, which, allegedly, continues to take place." The Committee also recommended the Government raise awareness among health workers of the "harmful effects of forced sterilization."²¹

Impact of Involuntary Sterilization

Involuntary sterilisation is devastating for the women concerned. It affects their mental and physical health, their relationships with their families and partners, and their general trust in the medical profession and/or social workers. Possible repercussions include women being abandoned by their partners and exposed to economic hardship, extreme social isolation by members of their community who perceive them as "barren", family discord, fear and mistrust of doctors and a lifelong sense of violation. Fear of further discrimination and mistreatment in the aftermath of such an experience may dissuade women from seeking health care services at all. This rejection of the medical profession has the potential to undermine reproductive and other public health initiatives.

Violation of Human Rights

Involuntary sterilisation violates medical ethics and is an abuse of medical expertise. The United Nations Human Rights Committee recognises forced sterilisation as a violation of the right to be free from torture, and cruel, inhuman, or degrading treatment or punishment and has requested that countries report on specific measures they have taken to combat this practice.²² Similarly, the CEDAW Committee has stated that "States parties should not permit forms of coercion, such as non-consensual sterilization [...] that violate women's rights to informed consent and dignity," affirming that coercive sterilisation infringes on the rights to human dignity and physical and mental integrity.²³

Sterilisation by tubal ligation is an elective procedure of no therapeutic value. Specifically as a result of the violations committed against Romani women in Europe during the past decade, the ethics board of the International Federation of Obstetricians and Gynecologists (FIGO) drafted amendments to its guidelines on the performance of tubal ligation to emphasise the purely elective nature of this procedure, explicitly ruling out its justification as necessary on "emergency, life-saving" grounds (pending adoption in 2011). As a method of birth control sterilisation is considered irreversible and must be described to those interested in it as such.

¹⁷ 25 January 2007 press release of Poradňa pre občianske a ľudské práva, available for download at <http://www.poradna-prava.sk/go.php?p=5>, Accessed 10 May 2011

¹⁸ ECtHR, *I.G., M.K. and R.H. v. Slovakia*, Application No 15966/04, Admissibility Decision of 22 September 2009, Available at

<http://www.unhcr.org/refworld/docid/4adecb6c2.html>.

¹⁹ Ibid

²⁰ Concluding observations of the Committee against Torture: Slovakia, CAT/C/SVK/CO/2, 17 December 2009, pg.4 at 10, available at: <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

²¹ See: http://www2.ohchr.org/tbr/ccpr/CCPR.C.SVK.CO.3_en.pdf.

²² Human Rights Committee. General Comment No. 28: Equality of rights between men and women (article 3): CCPR/C/21/Rev.1/Add.10. 2000. See paras 11 and 20,

²³ CEDAW Committee. General Recommendation 19: Violence Against Women, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

Describing tubal ligation as potentially reversible, as is the practice in Hungary, does not reflect the fact that is a difficult process with limited chances of success.

Moving Forward

The ERRC respectfully asks you to consider this information and to recommend that the Governments of the Czech Republic, Hungary, and Slovakia take urgent action to halt the involuntary sterilisation of women, particularly Romani women, to request that the Governments implement safeguards to prevent such violations from being committed in the future and to compensate all women affected by such practices until now. The specific steps that should be taken by the Governments concerned include the following:

- Provide guidelines and training for healthcare providers and social workers that are in line with FIGO guidelines on sterilisation and informed consent so they understand that Romani women have the same rights as all other women to access family planning services, to be sexually active, and to bear children, and to receive the counseling required to make informed, voluntary family-planning decisions absent any coercion to adopt a particular contraceptive method;
- Raise awareness among health care providers that “informed consent” is a process of communication with women seeking their services, and train them to determine whether a woman is seeking tubal ligation of her own free will, absent any coercion.
- Conduct in-depth mandatory training of all practicing gynecologists and obstetricians on the revised FIGO ethical guidelines on the performance of tubal ligation, with a particular emphasis on the fact that such surgeries are elective in nature only and may not be performed as “emergency” interventions.
- Institute a mandatory 24 hours waiting period between the time that a woman freely requests tubal ligation and the performance of the surgery.
- Conduct public awareness campaigns to educate patients about their rights and ensure that information on patients’ rights is immediately accessible within health care facilities; ensure that Romani women are particularly involved in the campaigns.
- Establish clear procedural guidelines for following up on complaints of rights violations and strengthen administrative accountability mechanisms at hospitals.
- Create a monitoring and evaluation system to ensure the full implementation of laws and policies regarding the performance of tubal ligations.
- Ensure that their laws and regulations are in full compliance with FIGO guidelines and internationally accepted standards concerning informed consent.
- In Hungary the Hungarian Public Health Act needs to be amended eliminate the reference to “medically indicated” sterilization.

The ERRC greatly appreciates your attention in this matter and would be happy to furnish any additional information you might find useful.

Sincerely,

Robert Kushen
Executive Director