

# Justice Delayed: The Right to Effective Remedy for Victims of Coercive Sterilization in the Czech Republic

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## Abstract

Tens of thousands of women were coercively sterilized in Czechoslovakia and its successor states. Romani women were particularly targeted for these measures. These practices stopped only in 2004, as a result of international pressure. Although some measures have been taken to ensure that these practices are not repeated, to date neither the Czech Republic nor Slovakia have completed the work of providing effective remedy to victims, as is their right. This article focusses on efforts in the Czech Republic. It concludes that, *inter alia*, an administrative mechanism is needed to provide financial compensation to victims, since the road to remedy via courts is effectively blocked.

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## Introduction

In addition to having been a practice of Nazi Germany, the coercive sterilization of women from pariah, marginalized, or stigmatized groups was a feature of a number of systems of social control in Europe that began as a result of the eugenics movement in the 1920s.<sup>1</sup> We still do not have a full account of all practices, but target groups appear to have included, in particular, women with disabilities (especially mental or intellectual disabilities), older women, and transsexuals. For example, between 1935 and 1975, around 63,000 people were sterilized in Sweden, of whom 93% were women and around 40% of whom were sterilized without any form of consent.<sup>2</sup> Very particularly targeted, however, have been persons—especially women—deemed degenerate or inferior, including Roma and minorities regarded as “Gypsies.” Countries with strong social systems—the Nordic countries and those of central continental Europe—were particularly prone to adopting coercive sterilization as a mode of social control of Roma and related groups.<sup>3</sup>

Following World War II, in Western Europe, coercive sterilization practices—seen as “hard” and associated with Nazi Germany—were generally replaced (at least with regard to Roma and others deemed vagrant or antisocial) with measures such as the forced removal of children from families. These practices, which had also been ongoing since the 1920s, now became the primary mode of invasive social control of these persons and groups. By the mid-1970s, they appear to have ended as policy in key countries such as Switzerland, Norway, and Sweden.

For reasons that are unclear, precisely at the time that these practices were ending in Western Europe, both coercive sterilization and the forced removal of children from their families were reinvigorated as policy in communist Czechoslovakia. From the late 1960s until the end of communism, authorities in Czechoslovakia strongly pressured Romani women to undergo sterilization in exchange for monetary compensation and also used explicit and actionable threats to place their children into state care. These efforts became particularly intensive and frenetic toward the end of communism. The first post-communist

government in Czechoslovakia explicitly ended these policies in 1990. However, doctors and social workers in Czechoslovakia and its successor states (the Czech Republic and Slovakia) continued these practices covertly, extensively, and systematically until the early 2000s, until a series of international advocacy efforts brought them generally to a halt. The late Czech ombudsman Otakar Motejl stated publicly in 2009 that he believed there were as many as 90,000 victims in the countries of the former Czechoslovakia.

Remedies for coercive sterilization tend to include three categories. The first involves acknowledging the practices, describing their general scope and details, and expressing regret or apologizing officially. This first category also frequently involves a competent setting out of the historical record. The second category involves ensuring that the practices are not repeated, which usually means designing and implementing measures and procedures to secure the genuine free and informed consent of the person concerned. Education measures for health care professionals and social workers is also a part of this category. Finally, the third category involves specific reparations for the victims—usually in the form of restorative surgery or other health measures, measures to address the psychological consequences of the actions, and monetary compensation reflective of the nature and gravity of the harms concerned. This last category is also deemed to require the punishment of perpetrators.

In recent years, Norway, Sweden, and Switzerland have undertaken efforts to provide remedies to victims of these practices. All three countries have delivered—between 1986 and 2017—significant segments of the remedies summarized above.<sup>4</sup> This has not happened all at once but rather in successive waves of efforts to rectify these abuses.

Meanwhile, the Czech Republic and Slovakia have begun efforts to provide remedies but have not yet had the success of the three countries named above. Attempts to provide both full acknowledgment and compensation to victims have faced great difficulties, in particular because of the widespread public view that Roma do not constitute “deserving victims.” Even basic recognition that Roma have

been particularly targeted has sometimes been challenged, despite overwhelming evidence.<sup>5</sup>

This essay focusses on the Czech Republic, where, despite an official government “expression of regret” in 2009, very few victims have received any form of individual compensation or other reparations. Repeated obstacles—notably a hardened definition of the statute of limitations for court-ordered remedies that sets out a three-year limit for claims—have stood in the way of the provision of such remedies. This paper argues that without an *ex gratia* mechanism similar to the one adopted by Norway, Sweden, and Switzerland—one with lightened evidentiary burdens, recognition of a historical context of harm, minimal or no usage costs, and other specifications—the vast majority of victims in the Czech Republic effectively have no hope of securing justice.

### Coercive sterilization of Romani women in the Czech Republic

Starting in the late 1960s, under the influence of resurgent eugenics, doctors in Czechoslovakia systematically coercively sterilized Romani women with the support of policy makers, official state organs, and social workers. Immediately following the fall of communism, the new democratic government endeavored to end these practices, but they endured throughout post-communism in both the Czech Republic and Slovakia.

Non-Romani women, including women with disabilities and older women, have also evidently been victims of these practices. However, coercive sterilization in the Czech Republic and Slovakia has had very clear racist underpinnings, with Romani women being explicitly targeted for invasive, degrading measures to end their ability to bear children.

Contraceptive sterilization was governed, as a result of Ministry of Health directives adopted in the early 1970s, as a matter requiring the consent of the person concerned (evidenced by their signature), as well as the approval of a three-doctor panel. The sterilization of Romani women was actively promoted in Czechoslovakia via a number of measures, including a series of social benefits.<sup>6</sup>

Financial incentives were coupled with strong pressure whereby social workers threatened to take the woman’s children into state care if she did not agree. Pressure was also exerted on women to undergo abortion. Particularly striking is the fact that these measures were implemented in the context of pro-natalist birth policies that sought to avoid a declining general birth rate, which was seen as a threat to development.<sup>7</sup> One group, however, was to be stopped from having so many children. In the confines of political correctness prevailing under late communism, Roma were not named explicitly as a target of these policies.<sup>8</sup> Generally, references were made to those with “high, unhealthy” birth rates.<sup>9</sup> However, official reporting makes clear that the Roma were the target. Thus, reports such as this one—a 1979 report from the District National Committee in Tábor to the South Bohemian Regional National Committee—were typical:

*Fifteen Gypsy children were born in our territory in 1978, of which three were with a low birth weight; all the children are alive. In 12 cases abortion was performed and sterilizations were performed on four Gypsy women.*<sup>10</sup>

In 1978, the Czech dissident group Charter 77 issued “Document 23” concerning the “situation of the Gypsies in Czechoslovakia,” which, *inter alia*, protested the use of coercive sterilization as a tool in the service of “the solution of the Gypsy ‘problem’ in the elimination of this minority and its integration with the majority.” The group argued that the government’s approach was based on the idea that “[b]y eliminating the minority, one eliminates the minority problem.”<sup>11</sup>

Despite Charter 77’s efforts to protest these practices, they remained policy until the end of communism—and even appear to have become more frantic and intensive in the run-up to the collapse of communism. In 1989, dissidents Ruben Pellar and Zbyněk Andrš launched a field study among Czech and Slovak Romani women to map sterilization practices between 1967 and 1989. As a result of their research, they published a document entitled *Report on the Examination in the Issue of Sexual Sterilization of Romanies in Czechoslovakia*.

The authors concluded, among other things, that there had been a steady increase in sterilizations during this period, with a peak in 1988 and 1989: 38% of the women surveyed had been sterilized in those two years.<sup>12</sup>

The first post-communist Czechoslovak government, composed of many individuals who had taken part in the Charter 77 effort, acted quickly in 1990 to strike down a number of the laws and policies targeting Romani women for sterilization.

Also, the Czechoslovak General Prosecutor's Office used its powers to open an *ex officio* investigation into the coercive sterilization of Romani women. The federal prosecutor then forwarded the complaints to republic-level prosecutors in the Czech Republic and Slovakia so they could conduct inquiries. The prosecutors' inquiries followed two general strands: on the one hand, investigation into the impact of social benefits offered as incentives for sterilization and, on the other, non-compliance with binding law. Concerning their inquiry into compliance with binding law, the republic-level prosecutors requested that the district-level prosecutors investigate. In the Czech Republic, district-level prosecutors revealed that either no consent whatsoever had been obtained or that the procedure for obtaining consent had been extremely deficient or even in some cases entirely lacking; this latter scenario was the case in localities such as České Budějovice, Cheb, Kladno, and Ostrava. For example, in Kladno, "In the case of J.G., the intervention was performed for health reasons on her third delivery, which was like the previous two by caesarean section ... This woman however had not consented to the sterilization and as her testimony shows, the consent had not even been requested."<sup>13</sup>

The Czech General Prosecutor's Office concluded its investigation by requesting that Czech district prosecutors advise all medical authorities in areas where breaches of law had taken place that such breaches had occurred, and to retain sterilization as an area requiring the monitoring of legal compliance. In its response to the complainants, the prosecutor stated, "The findings of the General

Prosecutor's Office of the Czech Republic suggest that the Commission of the Chief Expert for Gynaecology and Obstetrics in Prague is preparing draft amendments to the legal regulations on sterilization."<sup>14</sup> However, no such changes to law were made pursuant to this request. Such reforms would ultimately not be made for close to two decades.

Despite the cancellation in the early 1990s of explicit policies supporting the coercive sterilization of Romani women, these practices continued. In the absence of explicit policy, doctors and social workers appear to have colluded extensively to stop Romani women from conceiving or giving birth. Although cases varied extensively, a frequent scenario involved the application of a particular type of Caesarean section for Romani women pregnant with their second child, in which uterine rupture poses a significant risk in the case of a third pregnancy. Thereafter, during the second such birth, doctors would, with limited or no consent, sterilize the woman via tubal ligation while she was still on the operating table for the Caesarean section.

In aggregate, there were various profiles of (il) legality in the cases arising after 1989: (1) cases in which consent was reportedly not provided at all, whether in oral or written form, prior to sterilization; (2) cases in which consent was secured during or shortly before delivery, stages when the mother is in great pain or under intense stress; (3) cases in which consent appears to have been provided (a) on a mistaken understanding of terminology used, (b) after the provision of apparently manipulative information, or (c) absent explanations of consequences or possible side effects of sterilization, or adequate information on alternative methods of contraception; and (4) cases in which officials pressured Romani women to undergo sterilization, including through the use of financial incentives or threats to withhold social benefits. In some cases, racial animus was written explicitly into the file.

In 2004, on the basis of new documentation, the European Roma Rights Centre sent a communication to the United Nations Committee against Torture summarizing 31 individual cases of alleged coercive sterilization of Romani women between

1987 and 2003, plus a further three cases in which Romani women had been improperly pressured to undergo sterilization but had successfully refused. The cases provided by the European Roma Rights Centre triggered a chain of events leading to international and national pressure in the Czech Republic to end the practices. As a result, in 2004 the Czech Public Defender of Rights (Ombuds person's Office) opened a new investigation into the issue. The following year, the office issued a report summarizing its research into coercive sterilization. The report notes that the Ombudsperson's Office received more than 80 complaints during 2005 but that the report is based on the office's review of the first 50 such cases. A central conclusion of the report was that "the problem of sexual sterilization carried out in the Czech Republic, either with improper motivation or illegally, exists, and Czech society has to come to terms with this."<sup>15</sup> In 2009, the ombudsman stated publicly that he believed there had been as many as 90,000 victims of these practices in the former Czechoslovakia.

## International law

### *Coercive sterilization as human rights harm*

In Council of Europe jurisdictions, the international law of informed consent in any intervention in the health field is extensively elaborated as a result of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, also known as the Oviedo Convention.<sup>16</sup> Article 5 of the Oviedo Convention establishes the "general rule", which is as follows:

*An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.*

*This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as its consequences and risks.*

*The person concerned may freely withdraw consent at any time.*

The norm of free and informed consent in matters related to family planning—and by implication, sterilization—explicitly enters international human rights treaty law via the article 10(h) guarantee in the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which sets out that states parties have an obligation to take "all appropriate measures" to ensure "the health and well-being of families, including information and advice on family planning."<sup>17</sup>

In recent years, a number of international bodies have rendered ever more explicit normative guidance on the right to free and informed consent as a core principle of the rights of the patient. In 1994, the World Health Organization's (WHO) European Consultation on the Rights of Patients endorsed a document entitled *Principles of the Rights of Patients in Europe*. With regard to information, the document notes:

*Patients have the right to be fully informed about their health status, including the medical facts about their condition; about the proposed medical procedures, together with the potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment; and about the diagnosis, prognosis and progress of treatment ... Information must be communicated to the patient in a way appropriate to the latter's capacity for understanding, minimizing the use of unfamiliar technical terminology.*<sup>18</sup>

In addition, with regard to consent, the document states, "The informed consent of the patient is a prerequisite for any medical intervention."<sup>19</sup>

In 2011, the International Federation of Gynecology and Obstetrics issued new ethical guidelines on female contraceptive sterilization. In terms of context, these guidelines recognize "a long history of forced and otherwise non-consensual sterilizations of women, including Roma women in Europe and women with disabilities."<sup>20</sup> The guidelines also importantly recognize that sterilization for the prevention of future pregnancy cannot be ethically justified on grounds of medical emergency: "Even if a future pregnancy may endanger a woman's life or health, she will not become pregnant immediately,

and therefore must be given the time and support she needs to consider her choice. Her informed decision must be respected, even if it is considered liable to be harmful to her health.<sup>21</sup>

In 2015, seven United Nations agencies, led by the World Health Organization, issued a comprehensive interagency statement entitled “Eliminating Forced, Coercive and Otherwise Involuntary Sterilization.” It notes, among other things, that Roma have been victims of coercive sterilization policies and practices since the eugenic era during World War II, and they remain so currently. The statement summarizes the many ways in which Roma have been tricked or coerced into undergoing sterilization and describes how such practices violate international human rights law. It notes, “Responding to coerced sterilization of indigenous and minority women, particularly Roma women, human rights bodies have emphasized the need to take legal and policy steps to prevent such violations from occurring and to ensure effective remedies, including apologies, compensation and restoration of fertility for victims.”<sup>22</sup>

Acts in the health field that are not carried out with free and informed consent are often called “involuntary” in normative guidance. Sterilization carried out without free and informed consent is also sometimes referred to as “forced.” As a term of legal art, however, “coercion”—a term frequently found in the criminal or contraventional law of national legal systems—appears to better describe an absence of free and informed consent, and thus the violation of rights concerned. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) has, in its General Recommendation No. 24, drawn an explicit link between coercion and “non-consensual sterilization,” noting that states “should not permit forms of coercion such as non-consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women’s rights to informed consent and dignity.”<sup>23</sup> In 2017, the Committee adopted General Recommendation No. 35 on gender-based violence against women, which sets out, *inter alia*, that violations of women’s sexual

and reproductive health and rights, including acts such as forced sterilization and forced abortion, may amount to torture or cruel, inhuman, or degrading treatment.<sup>24</sup> The committee has also found states in violation of the Convention on the Elimination of All Forms of Discrimination against Women in cases concerning the coercive sterilization of Romani women.<sup>25</sup>

### *The right to an effective remedy*

International law requires that all victims of coercive sterilization have an effective remedy, including, at a minimum, recognition of harm; therapeutic measures to address the medical and psychological consequences of these practices; effective punishment of the perpetrators; and monetary compensation reflective of the nature and gravity of the harms concerned. Where sterilization has been carried out for reasons of racial or other forms of discrimination, this discriminatory element must be explicitly recognized and rectified. These obligations flow from a range of international human rights treaties to which the Czech Republic is a party, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>26</sup>

In European human rights law, the right to an effective remedy is explicitly protected in article 13 of the European Convention on Human Rights as a “dependent right,” meaning that violations of it occur in connection with violations of a substantive right of the European Convention. However, the case law of the European Court of Human Rights also approaches the right to effective remedy as effectively pervasive throughout the substantive rights of the convention, including article 2 (right to life), article 3 (ban on torture and related forms of degrading treatment), and article 8 (right to private and family life), meaning that while the court sometimes specifies explicit violations of article 13, in other contexts

it holds that the right to effective remedy is included within articles 3 and 8 or within another substantive right of the European Convention.

In keeping with its consistent case law that the European Convention “is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective,” the court has specified above all that a remedy must be “‘effective’ in practice as well as in law.”<sup>27</sup> More important rights require more stringent remedies.<sup>28</sup> The court has additionally held that article 13 “must be interpreted as guaranteeing an ‘effective remedy before a national authority’ to everyone who claims that [her] rights and freedoms under the Convention have been violated.”<sup>29</sup> The court has found states in violation of the obligation to provide an effective remedy as a result of deficiencies in their compensatory regime.<sup>30</sup> No absolute standard has been provided as to whether there is an arguable claim under article 13; this is deemed to flow from the nature of the facts and legal issues at hand.<sup>31</sup> As noted above, however, coercive sterilization harms have been identified as a very serious invasion of bodily autonomy and are therefore a harm of a very grave order.

### Efforts to provide remedies in the Czech Republic

In 2009, four years after the Ombudsperson’s Office published its report on the issue, the Czech government finally issued an official order expressing regret for the country’s sterilization practices. Furthermore, it has since modified official guidance for doctors aimed at strengthening guarantees that sterilization must be carried out solely with the full, free, and informed consent of the person concerned.

With regard to individual remedies for victims, however, the Czech legal system has, to date, systematically failed. As noted above, the combined efforts of the Czechoslovak federal prosecutor and the republican prosecutors of both the Czech Republic and Slovakia were insufficient to hold any persons to account during the period following 1989. In the most recent wave of efforts, the Ombudsperson’s Office appears to have forwarded at least eight cases to

the General Prosecutor’s Office pursuant to the 2004 Ombudsperson’s Office inquiry.<sup>32</sup> These criminal investigations were generally suspended without any charges being filed by the investigating authorities, initially because of an interpretation of law whereby, apparently, medical practitioners could not be held criminally liable for acts undertaken in the course of their medical professional activities, and later for more nuanced reasons. In any case, it fell to civil society to appeal the suspended criminal complaints. Most were not appealed after being refused for a second time. In only two cases did the district prosecutor in the town of Most decide, in May 2007, that crimes had been committed by the two doctors performing the operation. However, in those cases, which concerned sterilizations performed in 1993 and 1998, respectively, criminal prosecution was deemed precluded by statutes of limitation.<sup>33</sup>

However, in some cases where the factual profiles were particularly strong, the refused investigations were repeatedly appealed. As a result, at least one criminal procedure reached the Czech Constitutional Court, where it was dismissed in February 2009. This case concerned the sterilization of 21-year-old Ms. I.Č. in 1997 in Ostrava City Hospital following the birth of her second child. The sterilization took place immediately following the birth, which occurred via Caesarean section. Ms. I.Č. had not been properly informed about the sterilization and did not know what it entailed when she signed what she believed was her consent to a Caesarean section; she signed this consent form while in labor and just prior to being operated on. Believing that she had been fitted with an intrauterine device, she did not realize that she was incapable of conceiving again until seven years after the operation, when she visited a doctor to have the device removed in order to have another child. The doctor informed her that in fact she had been sterilized.

In the case of I.Č., criminal proceedings filed by the Ombudsperson’s Office and opened into the crime of harm to health (in accordance with articles 222(1) and (2)(b) of the Czech Criminal Code) had been discontinued by the Ostrava City Police in April 2006. A month later, the Ostrava district

prosecutor, accepting the applicant's appeal, struck down this decision and sent the case back to the Ostrava City Police Directorate, which ultimately decided not to proceed with the case. A complaint against this finding was then dismissed by the prosecutor. The following year, the general prosecutor ordered a review of the case, finding that the district prosecutor had not proceeded in accordance with the law. In October 2008, the Ostrava City Police Directorate found that the doctors of the Ostrava City Hospital had not committed the crime of inflicting bodily harm on Ms. I.Č. when sterilizing her. The next month, the Ostrava district prosecutor dismissed her complaint against this decision as unsubstantiated.

Ms. I.Č. appealed the latter decision to the Czech Constitutional Court. She based her complaint on articles 7(2), 10(2), and 36(1) and (2) of the country's Charter of Fundamental Rights and Freedoms, as well as international human rights law. She noted that the fact that the sterilization had been carried out without her free and informed consent was inhuman and degrading, and that its illegality had already been recognized in civil law proceedings concerning the protection of personality.

In dismissing the case, the Constitutional Court held—and with reference to “repeated past decisions by the Court”—that a decision to suspend criminal proceedings is not a formal decision in the framework of a criminal prosecution and therefore does not include a right of appeal.<sup>34</sup> It further held that “criminal proceedings do not have, in the framework of the Czech legal order, the character of medium for the protection of subjective rights of physical or legal persons, but rather concern in essence the form of participation of citizens during the realization of the public interest in the suppression of crime.”<sup>35</sup> After further establishing that the Czech criminal law order did not include a right of “satisfaction” and that the victim did not have a fundamental right to “the punishment of the person who caused her harm,” the court held that “[c]riminal proceedings do not concern the rights and interests of the harmed party, or of any other physical and legal subject ... but rather concern the rights and interests of the state.”<sup>36</sup>

Civil claims for damages are risky in the Czech Republic because there are significant costs associated with an unsuccessful claim. Despite the Czech government's repeated insistence at international fora that the courts are the sole venue for claiming reparations, it has never provided any assistance to potential plaintiffs, the overwhelming majority of whom are women in precarious circumstances who lack the economic means to initiate such proceedings.

Nevertheless, a handful of coercive sterilization cases have been brought, and some of them have succeeded in meeting evidentiary standards for civil harm under Czech law. Cases in which remedies have been provided are those which are very recent and where the facts concerned are sufficiently unequivocal for practitioners to wish to risk the costs of losing a civil claim for damages (the losing party is required to pay the costs of both sides in a failed civil claim). In all but one of these cases, international donors have provided legal assistance because state-provided legal aid for these types of claims is not available. A summary of most of the known proceedings follows below.

In 2000, a court in the town of Plzeň (western Bohemia) awarded CZK100,000 (at that time approximately 2,500 euros) in damages to a woman who had been sterilized there in 1998. She had repeatedly explicitly refused to be sterilized, but doctors performed the operation anyway. In another case, the District Court of Ostrava recognized violations of law concerning the coercive sterilization of Ms. H.F. by Czech medical practitioners in 2001. In October 2001, Ms. H.F. gave birth in Ostrava's Vitkovická Hospital to her second child by Caesarean section. Her first child had also been born via Caesarean section. At the time of her second birth, Ms. H.F. was also sterilized by tubal ligation. Although her files indicate that “the patient requests to be sterilized,” legal requirements that consent be full and informed were not met. Although it had been foreseen well in advance of labor that she would give birth by Caesarean section, Ms. H.F.'s “consent” to the sterilization was secured by doctors only several minutes before the Caesarean operation, when she was already in labor.

Ruling in 2005, the Ostrava court recognized that Ms. H.F.'s sterilization was coercive and therefore illegal, and ordered the hospital to apologize in writing. The ruling was upheld on appeal, and the hospital's management has since provided an apology to Ms. H.F. The court, however, rejected Ms. H.F.'s claim for financial compensation with the reasoning that the statute of limitations for such a claim had expired.

The third case is that of Ms. I.Č., the facts of which are summarized above. In 2007, the Ostrava Regional Court ruled that Ms. I.Č. had suffered civil harms when she was sterilized without providing full and informed consent. In its ruling, the court ordered the payment of CZK500,000 (at that time approximately 18,200 euros) in damages. In 2008, the Czech High Court in Olomouc partially overturned the ruling and held that the three-year statute of limitations for compensation for violations of personality rights had expired. In so doing, the court interpreted very narrowly the three-year requirement to report an act of violation of rights, given Ms. I.Č.'s claim that she discovered her sterilization only a full seven years after the act had been carried out. The court ordered the Ostrava City Hospital to apologize to Ms. I.Č., but it did not order the payment of damages. However, in 2011, the Czech Supreme Court overturned the high court's ruling, holding that the high court had not sufficiently taken into account the individual circumstances of the case.<sup>37</sup> The Supreme Court sent the case back to the high court for revision. In December 2011, Czech media reported that the hospital and Ms. I.Č. had reached an agreement on compensation.<sup>38</sup> It was subsequently reported that the amount agreed on in the confidential agreement was CZK500,000 (approximately 20,340 euros) for damages or compensation, and CZK61,440 (approximately 2,457 euros) for the costs of her legal representation.<sup>39</sup>

The Czech media have also reported on awards for damages ordered by Czech high courts in other cases of coercively sterilized Romani women. In one case, the court reportedly ordered damages of CZK200,000 (around 8,000 euros) to a woman from northern Bohemia. Another woman

was awarded CZK150,000 (around 6,000 euros) in compensation for the removal of her ovaries without her consent. In 2012, the Czech Constitutional Court reportedly rejected an appeal in the first of the two cases seeking higher damages.<sup>40</sup>

Thus, not more than five persons have succeeded in securing anything approximating due legal remedy. In all cases, these persons have succeeded in achieving such remedies only after protracted legal efforts, which were generally challenged. The vast majority of women in cases of coercive sterilization have been statute-barred from seeking remedies, including damages for these harms. Indeed, many times it has appeared that Czech jurisprudence has hardened precisely to preclude the provision of effective remedies to these particular women. As summarized by the European Roma Rights Centre, the current state of play in Czech law is as follows:

*There is no specific remedy in Czech law for victims of forced sterilisation. A person who has undergone an unlawful medical intervention can seek redress by claiming a violation of her personality rights under the 2012 Civil Code (previously, the 1964 Civil Code). The general statute of limitation for civil claims is three years. In cases concerning personality rights, this limitation only affects the right to seek monetary compensation for violations. The law does not specify whether those bringing claims for violations of personality rights can seek non-pecuniary (i.e. moral) damages if they bring their claims after the three-year time limit has expired. However, the Constitutional Court, deciding a case of unlawful sterilisation in 2013, stated that plaintiffs who make their claims after the three-year time limit has expired cannot claim non-pecuniary damages, unless the effect would be contrary to "good manners" (dobré mravy). The notion of "good manners" is not explicitly defined in Czech law. The case law describes it as "a significant value in law that serves to balance legal norms and their realisation against the moral intention of the regulation or some notion of equity, such as a morality or equality of arms." The courts assess compatibility with "good manners" on a case-by-case basis. However, as a matter of practice, this notion is not applied in cases where the complainant was responsible for letting the limitation period expire. As a result, victims of forced sterilisation have only been able to make claims and secure compensation for non-pecuniary damage if they have complied with the general*

*three-year statute of limitations or, in some cases, if they have applied to this Court; if they are outside the statute of limitations, under domestic law victims can only secure a finding of a breach of their rights and an apology.*<sup>41</sup>

In addition, in many cases, hospitals have claimed that medical records have been destroyed by flooding, giving rise to the dilemma that courts may not even accept as established fact that the woman concerned has in fact been sterilized.<sup>42</sup>

Efforts to secure remedies via the courts have also, in a number of cases, exposed victims to slander or other abuses of personal reputation, such as tabloid media reports, asserting that particular named women were interested solely in financial gain. Since these reports have generally been in local and regional media outlets, women have had their most intimate health issues publicly exposed and have also had their reputations impugned broadly in what are frequently small and close-knit communities.

### *Ex gratia* compensation

The extensive and elaborate battery of obstacles described above points clearly to the need for an administrative procedure that would reverse the burden to establish harm and that would facilitate access to acknowledgement, compensation, and other relevant remedies, without requiring the person concerned to go to court.

In the past decade, every relevant human rights mechanism reviewing the Czech Republic has commented—with increasing detail—on this matter. The establishment of an *ex gratia* compensation procedure or mechanism for victims of unlawful forced, coercive, or otherwise involuntary sterilization has been recommended repeatedly by treaty monitoring bodies, including the CEDAW Committee in 2006, 2010, and 2016; the Committee on the Elimination of Racial Discrimination in 2007, 2011, and 2015; the Human Rights Committee in 2007; and the Committee against Torture in 2012.<sup>43</sup> In 2004, the Committee against Torture requested that information “on compensation provided for victims or their families in accordance with article 14 of the Convention [against Torture]”

be included in the Czech government’s next periodic report.<sup>44</sup> In 2012, the same committee expressed concern over the “absence of statistical data concerning compensation to victims of torture and ill-treatment, including victims of involuntary sterilization.”<sup>45</sup> A number of member states provided similar recommendations during the country’s Universal Periodic Review in 2012, as well as during its first Universal Periodic Review in 2008.<sup>46</sup> In particular, they recommended that the Czech Republic “establish a roadmap with clear timelines to finalise the cases of sterilization of Roma women without consent and ensure adequate compensation and reparation for such women” and that it “adopt measures to ensure the payment of compensations to victims of forced sterilization.”<sup>47</sup>

In 2016, the Czech Republic was reviewed by the CEDAW Committee. The committee regretted that “the State party has not fully implemented its previous recommendations ... to adopt a legal framework for the financial compensation for victims of coercive or nonconsensual sterilizations.”<sup>48</sup> It also noted with concern that a bill to establish extrajudicial mechanisms for addressing this issue had recently been rejected. In addition, the committee “reiterate[d] its concern that most of the compensation claims brought by victims of forced sterilizations were dismissed.”<sup>49</sup> Finally, it recommended that

*[i]n accordance with its previous concluding observations ..., its general recommendations Nos. 19 (1992) on Violence against women and 24 (1999) on Article 12—Women and health, and the recommendations in the final statement dated 23 December 2005 of the Ombudsman in the matter of sterilizations performed in contravention of the law and proposed remedial measures, the Committee reiterates its call for the State party to: (a) Review the three-year time limit in the statute of limitations for bringing compensation claims in cases of coercive or non-consensual sterilizations with a view to extending 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; (b) Establish an ex gratia compensation procedure for victims of coercive or non-consensual sterilizations; (c) Provide all victims with assistance*

to access their medical records; (d) Prosecute and adequately punish perpetrator[s] of the illegal past practices of coercive or non-consensual sterilizations; and, (e) 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.<sup>50</sup>

In June 2016, under the auspices of the Organization for Security and Co-operation in Europe, a meeting was convened with the Czech government, civil society, and international experts, with a view toward moving forward on the matter of remedies for the victims. The timing of the meeting was auspicious, as Switzerland was on the verge of adopting a comprehensive compensation mechanism for victims of similar practices. Experts from Norway and Sweden also presented their experiences of overcoming opposition to arrive at justice for people targeted for coercive sterilization and related practices.

In Norway, beginning in the 1990s, the Tater/Romani community began advocating for comprehensive documentation and redress for harmful practices, including coercive sterilization. From 1996 to 2000, the Norwegian Research Council earmarked funding for studying forced sterilization, and in 2000 historian Per Haave published a study entitled *Sterilization of Taters 1934–1977: A Historical Study of Law and Practice*. The study documented the sterilization of 125 Tater/Roma people, predominantly women, under the Sterilization Act, although this figure is not deemed—and was not claimed to be—comprehensive. According to the author, Tater/Roma women were especially overrepresented among those forcibly sterilized during the 1930s and 1940s. These findings prompted a demand from Tater/Roma representatives for an inquiry commission, and in October 2002 the Norwegian Parliament established an inter-ministerial working group to consider compensation for victims. Its 2003 report concluded that most cases, if brought to court, would be statute-barred and emphasized that these cases must be viewed within a context acknowledging the particular ethnic dimension of these harms. Since 2004, therefore, a previously existing *ex gratia* mechanism has been

extended to cover survivors of coercive sterilization.<sup>51</sup>

Sweden has had several generations of efforts to address coercive sterilization and to explore the extent to which Roma were targeted. In Sweden, 63,000 people—again overwhelmingly women—were subjected to systematic sterilization between the mid-1930s and the mid-1970s. This history was recognized in the 1990s, and a compensation mechanism was established. However, for various reasons—including the politics of having adopted the mechanism—there was no particular recognition of Roma victims. To address this gap, Sweden established a historical commission on the treatment of Roma. The commission published a white paper in 2014 that found a dark history when it comes to the country’s treatment of Roma and Travellers, including efforts to expel Roma from Sweden, systematic ethnic monitoring, and coercive sterilization.<sup>52</sup>

Switzerland began addressing these issues when it issued an official apology in 1986 to victims of the “Children of the Highway” scheme, in which the government had, for around 40 years, supported efforts to remove children from families deemed or viewed as problematic—very heavily involving the Jewish/Traveller community, a Gypsy-affiliated group. In 2014, a popular initiative was launched demanding a full independent inquiry into the issue, as well as 500 million Swiss francs to compensate survivors. More than 100,000 signatures were gathered, and legislation was duly initiated. The bill included acknowledgment of the victims’ suffering; regulations concerning access to archives that might contain relevant records; measures to raise public awareness and construct symbols of remembrance; support for an academic inquiry; and financial measures for the victims as a gesture of solidarity. The Swiss Parliament adopted the law in 2016, and it entered into force in 2017.<sup>53</sup>

In the Czech Republic, suggestions that a mechanism similar to those described above were raised as early as 2005, when the Ombudsperson’s Office issued its report. The report makes extensive reference to the Swedish experience, including government efforts as of 2005.<sup>54</sup> In 2014, a new Czech government appeared open to the possibility of

adopting such an *ex gratia* remedy mechanism for victims of these practices. Adoption of such a mechanism was included in the government program, and in 2015 a compensation bill was submitted to the government for consideration. However, in a striking turn of events, support for the bill was abandoned by nearly all relevant government officials, and the effort was abruptly dropped.<sup>55</sup>

Indeed, the Czech government has not requested any further investigation into the historical background that gave rise to the coercive sterilization of 90,000 persons in the former Czechoslovakia and present-day Czech Republic, despite the statement in the report of the Ombudsperson's Office that "[i]t is a major debt of Czech historiography that very little literature has been dedicated to the Czechoslovak eugenic movement so far and that treatment of this chapter of Czech history is not consciously worked with in society."<sup>56</sup> Indeed, even the expression of regret by the Czech government in 2009 was worded in such a way as to communicate that these wrongs were "individual" (in other words, isolated) cases, downplaying the systemic nature of the acts.

The government's current position—that all victims should pursue remedies via the courts—has threatened to compromise the solidarity of the women concerned, effectively removing those few whose cases can plausibly be brought to court from the wider community of victims. It is a powerful credit both to the Ostrava-based Group of Women Harmed by Sterilization and to its spokeswoman, Elena Gorolová, that despite over a decade of effectively fruitless efforts, victims continue to meet regularly and endeavor to move forward with their agenda.

## Conclusion

As currently constituted, the Czech legal system is manifestly incapable of providing effective remedies to victims of coercive sterilization, whose numbers are known to far exceed the five individuals who have received compensation after spending years in domestic courts, an undertaking that was possible largely thanks to financial assistance from international and other donors. Czech law should

establish an *ex gratia* remedy mechanism for victims of these practices, as a component of wider measures to provide effective remedies to victims of coercive sterilization, as required under international law.

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