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The Honorable Thomas Hammarberg
Commissioner for Human Rights
Office of the Commissioner for Human Rights
Council of Europe
F-67075 Strasbourg Cedex
FRANCE

Dear Mr. Commissioner:

We would draw your attention to the urgent yet unresolved human rights issue of the coerced sterilization of Romani women in the Czech Republic, Hungary and Slovakia. We believe a thorough investigation of the extent of this problem by your office can assist in bringing about progress on this currently stalled matter.

Czech Republic

In 2005, the Czech Public Defender of Rights (“Ombudsman”) issued a report¹ which found that more than 80 complaints of coerced sterilizations submitted to him were all lacking in informed consent and constituted the illegal performance of tubal ligation or related sterilizing procedures on the women concerned, the vast majority of whom are of Roma origin. Some of the cases occurred during the communist era, but others have occurred post-1989, including as recently as 2004. The report included recommendations to the Czech government which were then echoed by other advisory bodies to the Czech government.

However, in the period since the publication of the Ombudsman’s report, none of the recommendations have been acted upon. All efforts to secure even the minimum measures of official acknowledgement and apology have to date come to nothing. Litigation of individual cases has resulted in several verdicts finding these surgeries were in fact illegal; however, in most cases, compensation has been deemed barred by statutes of limitations. All criminal charges have been shelved. Indeed, most cases cannot even be brought before courts for reasons of statutes of limitations, the destruction of hospital records, lack of legal aid, or combinations of these reasons.² Perhaps not surprisingly, in the wake of this silence, new cases of apparently coerced sterilization have taken place. In 2007, a Romani woman in the town of Frydek-Místek succumbed to pressure from social workers and underwent sterilization. In 2008, another Romani mother from the town of Karvina was sterilized without consent in the outpatient department of Havírov hospital.

¹ Ombudsman’s Final Statement:

<http://www.ochrance.cz/dokumenty/document.php?back=/cinnost/index.php&doc=400>

² The documentary “Trial of a Child Denied”, broadcast on CNN International in July and September 2008, includes interviews with the plaintiffs, the Ombudsman and Czech government officials:

<http://edition.cnn.com/video/#/video/international/2008/07/14/untold.stories.child.denied.bk.a.cnn>

Despite calls by United Nations Treaty Monitoring bodies including the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD)³ and the Human Rights Committee (HRC), as well as recommendations by the Human Rights Council in the framework of the 2008 Universal Periodic Review of the Czech Republic, the Czech government has failed to act adequately – or even minimally – to rectify these serious abuses or to improve legal and administrative safeguards for individuals and effectively communicate such safeguards to the public.

As in 2005, there is a need for a public acknowledgement by the Czech Government of the problem, in the form of a public and official apology. In addition, because the justice system seems unable to provide a meaningful remedy to the vast majority of the victims, the Government needs to provide another form of remedy. One example of such a remedy would be the creation of an administrative claims system with simplified fact-finding and a lower burden of proof than what is required in the courts. Under such an arrangement, if a victim demonstrates that she was subjected to sterilization in Czechoslovakia or the Czech Republic before 2006, and makes a credible claim that the sterilization occurred without her informed consent, the Government would pay an amount to her out of a special fund established for this purpose. Sums provided under such an administrative claims system should be proportionate to the gravity of the harm of coercive sterilization. Such a claims system should be run in a way that preserves the privacy and dignity of the claimants.

Civil society organizations and the Czech Ombudsman have repeatedly brought examples of such administrative claims systems from other jurisdictions to the attention of the Czech government since 2005, and advocated the adoption of such a procedure. As yet, these efforts to establish such a systemic remedy mechanism have not yet been accepted by the Czech government. The importance of such an arrangement is not solely the individual remedy provided to victims, although this consideration is primary. Experience from other Council of Europe Member States shows that such a specific administrative remedy is also crucial as a mode of public recognition of the systematic nature of the abusive practice, as well as for ensuring that the practice is once-and-for-all ended.

We believe a thorough investigation of the extent of the problem by your office, and a proposal to the Czech Government along the lines suggested above, can assist in bringing about progress on this currently stalled matter.

Slovak Republic

On October 17, 2003, your predecessor, Mr. Alvaro Gil-Robles, issued a report titled, “Certain Aspects on the Law and Practice Relating to Sterilization of Women in the Slovak Republic”.⁴ This report and recommendations were the result of a mission undertaken by the Commissioner’s office to Slovakia in September 2003 to review allegations concerning forced and coerced sterilization of Romani women in Eastern Slovakia.⁵ In 2006, Commissioner Gil-Robles followed up his work on a range of issues in the Slovak Republic during the period 2001-2005. In his

³ CERD Concluding Observations CERD/C/CZE/CO/7:

<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/ef198acfec1e81a1c12572d6004c6c60?OpenDocument>

⁴ Commissioner for Human Rights Report on sterilization in Slovakia 17 October 2003:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2003\)12&Language=lanEnglish&Site=COE&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2003)12&Language=lanEnglish&Site=COE&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679)

⁵ NGO Report exposing the issue of forced and coerced sterilization of Romani women in Slovakia:

<http://reproductiverights.org/en/document/body-and-soul-forced-sterilization-and-other-assaults-on-roma-reproductive-freedom>

“Follow-Up Report on the Slovak Republic (2001-2005)”, he concluded, with respect to the matter of coercive sterilization, the following:

The Commissioner welcomes the coming into force of the Public Health Act, and its provisions on informed consent and access to medical records. These were crucial issues which the Commissioner had addressed in his Recommendation to the Slovak authorities, and he is pleased to see that the new law has explicitly addressed these problem areas.

The Commissioner notes with regret that the Slovak authorities have not yet established an independent commission to provide compensation or an apology to the victims. While victims may seek redress through the court system, in these types of cases, litigation has its practical shortcomings. These include the difficult and costly nature of obtaining legal counsel, particularly, for Roma women living in marginalised communities, and the extremely high evidential standards.

The Commissioner again encourages the authorities to consider creating an independent commission that might, on the examination of each case, provide effective and rapid non-judicial redress. Such redress would be given to individual applicants, who could show that appropriate procedures were not followed, without there necessarily having been intent or criminal negligence on the part of individual medical staff, but because of systemic shortcomings in the procedures permitted, and that in their particular case, sterilisation was without informed consent. Such a Commission might allow for alleged cases to be examined thoroughly, but with fewer formalities and less cost for applicants, than judicial proceedings.⁶

Unfortunately, these recommendations have not yet been acted upon. The Slovak government has similarly not acted upon recommendations issued by United Nations Treaty Monitoring Bodies such as the HRC, CESCR, CERD and most recently by CEDAW.⁷ While the Slovak Republic should be commended for reforming its sterilization law, ensuring stronger informed consent requirements and a waiting period for women who undergo sterilization, unfortunately, like the Czech Republic, the government has yet to take responsibility for failing to prevent such abuses and to provide remedies for the abuses which have already occurred — two key recommendations issued by the Commissioner in his 2003 report as well as by UN bodies.

We urge your office to follow-up with the Slovak government on their implementation of the recommendations issued in the 2003 report.

Hungary

In August 2006, the CEDAW Committee found Hungary in violation of the CEDAW Convention following the illegal sterilization of a Hungarian woman of Roma origin, Ms A.Sz., in 2001. The Committee recommended the Hungarian government provide appropriate compensation to Ms A.Sz.; review domestic legislation on the principle of informed consent in cases of sterilization and ensure its conformity with international human rights and medical standards; and monitor public

⁶ Office of the Commissioner for Human Rights, “Follow-Up Report on the Slovak Republic (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, for the attention of the Committee of Ministers and the Parliamentary Assembly”, Strasbourg, 29 March 2006, CommDH(2006)5, paras. 36-38.

⁷ CEDAW Concluding Observation to Slovakia 18 July 2008, paras 30 and 31: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SVK.CO.4.pdf>

and private health centres, including hospitals and clinics that perform sterilization procedures, to ensure that fully informed consent is given before any sterilization procedure is carried out.⁸

Since that time, the Hungarian government has failed to comply in full with the Committee's recommendations. On several occasions, NGOs sent requests to the Hungarian Prime Minister and responsible government ministries for the State's official standpoint concerning the implementation of the decision and the recommendations.

On the issue of individual compensation for Ms A.Sz., in March 2008, the Hungarian government advised that it would not provide compensation. However, concerning the review of the domestic legislation, information was provided in April 2008 that the Hungarian Public Health Act's provisions had been partly amended concerning the special information to be provided to patients in the context of sterilisation procedures.

We request that your office follow-up with the Hungarian government on the implementation of the CEDAW recommendations and urge the government to provide compensation to Ms A.Sz.

Conclusion

There is a pressing need for a general review in the Central European region of the persistence of this practice against Romani women, a practice which is ongoing and about which all of the governments concerned have not yet acted adequately. There is also a need for engagement with the individual governments concerned, to ensure that these matters are remedied once-and-for-all. The general public and physicians need to receive a clear message as to how women's human rights are to be safeguarded in this regard in future. We hope you will consider making such a review a priority.

We look forward to hearing from you soon on this important matter.

Sincerely,

Robert Kushen,
ERRC Managing Director



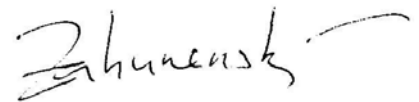
Kumar Vishwanathan,
Life Together



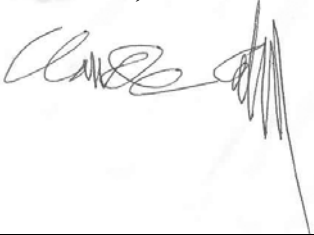
Gwendolyn Albert, Director
Women's Initiatives Network
Peacework Development Fund



David Zahumenský,
League of Human Rights



Claude Cahn,
Consultant, Think International



Christina Zampas,
Center for Reproductive Rights



⁸ CEDAW/C/36/D/4/2004 decision: <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/Decision%204-2004%20-%20English.pdf> and CEDAW/C/HUN/CO/6 CEDAW Recommendation: <http://www.un.org/womenwatch/daw/cedaw/39sess.htm#countries>