4. Respect for private and family life of Roma and Travellers

4.1. Forced and coercive sterilisations of Roma women

From the early 1970s, under the influence of resurgent eugenics considerations in late communism, sterilisation as a birth control method was, as a matter of national and regional policy, disproportionately promoted to members of the Romani minority by social workers. These practices were an early and continuing part of human rights concerns raised by the Czechoslovak dissident group

Inhabitants in the Roma village of Barbulesti, Romania, October 2010.
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Charter 77.[115] Following the fall of communism, the new government ended state financing of incentives promoting female sterilisation as contraception. However, some health professionals appear to have acted outside the law, continuing the practice of sterilising Roma women without their full and informed consent throughout post-communism in both the Czech Republic and Slovakia. Cases have also been documented in post-communist Hungary.[116]

This practice very disproportionately targeted Roma women. During communism, social workers overwhelmingly targeted Roma living in social exclusion whose families were considered likely to contribute to what was referred to as the "high, unhealthy" birth rate of Roma women. In the post-communist era in the Czech Republic and Slovakia, social workers were no longer involved, but a recurrent scenario involved doctors sterilising Roma women either during or shortly after a second caesarean-section delivery. In some cases, consent was reportedly not provided at all prior to the operation. In other cases, the woman's signature was secured during delivery or shortly before delivery, during advanced stages of labour, i.e., in circumstances in which women can be in great pain and under intense stress. A further set of cases involved consent provided on the basis of a mistaken understanding of the terminology used to describe the tubal ligation sterilisation procedure, sometimes after the provision of inaccurate information, and/or absent explanations of the consequences and/or possible side effects of sterilisation or adequate information on alternative methods of contraception. Frequently, especially during communism, social workers put pressure on Roma women to undergo sterilisation, including through the use of financial incentives or threats to withhold social benefits

115. As provided in Commission on Security and Cooperation in Europe, Congress of the United States, "Human Rights in Czechoslovakia: The Documents of Charter 77: 1977-1982", Washington, DC, July 1982, p. 158.

116. On 29 August 2006, the United Nations Committee on the Elimination of Discrimination against Women found Hungary in breach of the Convention in the matter of *A.S. v. Hungary*. Ms A.S., a Roma woman, had been sterilised during emergency obstetrical services without her informed consent.

(one such case was also reported in the Czech Republic in 2007).[117] In some of these cases, racial motives appear to have played a role during doctor-patient consultations and the ethnic origin of the patients was referred to in medical documentation. Many of these women still suffer serious negative physical and psychological consequences as a result of having been sterilised without their full and informed consent.

In November 2009, the late Czech Ombudsperson Otakar Motejl, whose 2005 report on the subject[118] is one of the most important studies of the legacy of coercive sterilisation in Czechoslovakia and its successor states, stated that as many as 90 000 women may have been sterilised on the territory of the former Czechoslovakia since the beginning of the 1980s.

Of the three countries where unlawful sterilisations after 1990 have been documented, only the Czech Republic has issued a general recognition and expression of regret "over instances of error" in November 2009. The Czech Government's 2009 recognition has been important, whereas Slovakia's has repeatedly denied the existence of these practices. Hungary has not expressed regret in this regard.

None of the three countries have adopted a general remedy mechanism for victims of these practices. Czech courts have issued various forms of remedy to a handful of victims, including monetary compensation in one case and orders of apology by hospitals. However, during the period in which lawsuits concerning coercive sterilisation have been brought, Czech courts have also rendered more stringent interpretations of statutes of limitations for civil claims for damages such as the three-year time limitation, making the possibility of remedy for all victims significantly more difficult. Additional difficulties have arisen because the medical records of many of the victims appear to

117. ERRC, Letter to Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 18 February 2008.
118. Otakar Motejl, 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, December 23, 2005 (official translation).

have been destroyed by hospitals or in floods or fires. A particularly important obstacle is that the three-year time limitation is considered to start from the time at which the sterilisation took place, not from the time the victim became aware of it, which often happens at a later stage. Women also have to overcome shame and lack of awareness over possible avenues for redress.[119]

All three of the countries have, in recent years, strengthened their laws, regulations or general policies with a view to avoiding a recurrence of these practices. However, for instance, the possibility of performing "emergency" sterilisations on women without their informed consent remains legally possible in Hungary.[120] New cases have continued to be reported in the Czech Republic, Hungary and Slovakia, most likely because of the general impunity surrounding the cases.[121] No doctors or social workers have ever been punished in any of the three countries for carrying out coercive sterilisations.

The shortcomings in the remedies available for Roma women victims of forced sterilisation have been addressed by several international human rights bodies. Both the former and the current Commissioner have dealt with the forced sterilisation of Roma women. Former Commissioner Alvaro Gil-Robles, in his 2006 report on Roma, noted serious areas of concern with respect to the Czech Republic and Slovakia, concluding:

> *The sterilisation of women without informed consent is a serious violation of human rights. All allegations of such sterilisations including a possible ethnic bias must be effectively investigated. While victims may seek redress through the court system, in these types of cases, litigation has its practical shortcomings. These include the slow and costly nature of obtaining legal counsel, the extremely high evidentiary standards, and the possible difficulties of the investigators and the court system to deal sensitively with*

119. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his visit to the Czech Republic from 17 to 19 November 2010, p. 18.
120. ECRI Fourth report on Hungary, p. 39.
121. ERRC, "Factsheet: Summit-to-Summit Roma Rights Record", 20 April 2010.

the needs of the Roma people. It is therefore important to provide other remedies as well, for example in the form of an independent commission of inquiry to provide compensation or an apology to the victims. [122]

Commenting on sterilisation matters following his November 2010 visit to the Czech Republic, Commissioner Hammarberg stated:

The Commissioner welcomes the Czech Government's expression of regrets in November 2009 for unlawful sterilisations of women, a phenomenon that affected Roma women in particular. He notes however, that most of the recommendations made by the Czech Ombudsman in 2005, when he investigated the issue, remain to be implemented. The Commissioner finds it particularly unfair that women affected by this practice are presently without an effective remedy to obtain reparation, including compensation, a situation that should be urgently remedied in line with international law standards.

The Commissioner also stressed that sterilisation of women without their full and informed consent as a state-backed policy constitutes a type of gross or systematic human rights violation which needs to be redressed.

In October 2010, the UN Committee for the Elimination of Discrimination against Women (CEDAW) called for the Czech Government to compensate Roma women who were subject to coercive sterilisation and to take adequate steps to prevent coercive sterilisations in the future. Regarding Slovakia, on 25 March 2010, the UN Committee on the Elimination of Racial Discrimination (CERD) urged the Slovak authorities to:

… establish clear guidelines concerning the requirement of 'informed consent' and to ensure that these guidelines are well-known among practitioners and the public, in particular Roma women … The Committee also recommended that all reports of sterilization without informed consent be duly acknowledged and that victims be provided with adequate remedies, including apologies, compensation and restoration, if possible.

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122. Commissioner for Human Rights, Final report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the human rights situation of the Roma, Sinti and Travellers in Europe, Strasbourg, 15 February 2006.

The UN Committee Against Torture (CAT) made similar recommendations to the Slovak authorities in December 2009.

A number of cases concerning coercive sterilisation are currently pending before the Strasbourg Court against the Czech Republic and Slovakia, and some have been declared admissible. The Court has accepted to examine cases under Articles 3 (prohibition of torture), 8 (right to private and family life), 12 (right to marry), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights.[123] The Court has already held Slovakia in violation of the Convention in a case concerning access to their medical files by Roma women sterilised by Slovak doctors.[124] On 29 August 2006, CEDAW found Hungary in breach of the Convention in the case of *A.S. v. Hungary*. Ms A.S., a Roma woman, had been sterilised during emergency obstetrical services without her informed consent. In 2009, Hungary compensated her on the basis of the Committee's findings.

Czechoslovakia and its successor states and Hungary are not the only countries facing these issues. The elevation of eugenics to a state programme in Nazi Germany made coercive sterilisation a key element in the Nazi programme, particularly prior to the start of the Second World War and the shift to a programme of full-scale efforts to kill all Jews, "Gypsies" and others deemed "unworthy of life".[125] Sweden and Switzerland issued public apologies in the 1980s and 1990s for sterilisation programmes and related practices carried out from the 1920s

123. European Court of Human Rights, Decision as to the admissibility of Application No. 15966/04 by *I.G., M.K. and R.H. v. Slovakia*, 22 September 2009.
124. European Court of Human Rights, *K.H. and Others v. Slovakia*, Application No. 32881/04, Judgment of 28 April 2009.
125. See Bock G., *Zwangssterilization im Nationalsozialismus: Studien zur Rassenpolitik und Frauenpolitik*, Opladen: Westdeutscher Verlag, 1986. Victims of forced sterilisation during the Nazi regime have never been granted recognition as official victims of Nazism after Germany passed its Federal Indemnification Law in 1953. (See Herrmann S.L. and Braun K., "Excluded victims: the role of civil society in the politics of reparations for victims of Nazi sterilisation policy in post-war Germany", paper given at a conference on "Civil Society and Reconciliation in Comparative Perspective", 4 June 2009, London School of Economics and Political Science, Centre for Civil Society p. 2 and p. 6).

to the early 1970s. Sweden approved a compensation mechanism, but national discussion proceeded on the basis that the practices had not particularly targeted Roma, when in practice it appears that they very frequently did. The *ex gratia* compensation mechanism established in Sweden in 1999 allowed the compensation of victims even though the sterilisations were considered lawful at the time they were committed and a long period of time had elapsed since then. In Norway, a 2003 working group reporting on the issue of compensation to Roma and Travellers subjected to forced sterilisation during a similar historical period concluded that the Norwegian authorities should also implement a compensation arrangement, including resources for extended guidance and legal aid during the claims period.[126]

As a result of these and other cases reported worldwide, the International Federation of Obstetrics and Gynaecology (FIGO) adopted new guidelines on the performance of contraceptive sterilisation in 2011.[127] These guidelines state *inter alia* that sterilisation must be considered an irreversible procedure and patients must be so informed; that sterilisation for prevention of future pregnancy cannot be ethically justified on grounds of medical emergency; and that consent to sterilisation should never be a condition for access to medical care or to benefits such as medical insurance or social assistance.

The Commissioner believes that the member states concerned should publicly acknowledge that these gross human rights violations have taken place, express regret and accept their responsibility. The Commissioner recalls the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations and stresses the need for member states to set up effective remedy mechanisms. When it comes to compensation claims in court, time limits should take into account existing obstacles such as the destruction

126. Norwegian Ministry of Labour and Social Inclusion, Report of Working Group, "Compensation to Roman/Taters subjected to coercive sterilization", submitted to Ministry of Local Government and Regional Development, August 2003.
127. FIGO, "Female Contraceptive Sterilization", Executive Board Meeting, June 2011, pp. 192-4.

of medical records and the fact that women are not always immediately aware of the procedures they have been subjected to, or of the possibilities for redress. They may also have to overcome feelings of shame in order to complain. Any time limit should start from the time when the victim first became aware of the sterilisation. Assistance should be provided to victims accessing their medical records. Authorities should also consider establishing *ex gratia* compensation procedures for victims of coercive sterilisations whose claims have lapsed. In order to prevent the recurrence of coercive sterilisations, it is also important to adopt legislative changes clearly defining a requirement of free, prior and informed consent with regard to sterilisations, including a reflection period for the patient. Judicial and administrative sanctions must also be upheld against those persons liable for sterilising women without their full and informed consent.

4.2. Removal of Roma children from the care of their biological parents

Roma children are over-represented among the children placed in out-of-family care, including institutional and foster care. In some cases, this situation also has an impact on the over-representation of Roma children amongst adopted children. A particular important factor in determining this situation is the fact that children are removed from their families on the sole grounds that their parents' economic and social conditions are unsatisfactory, frequently following scrutiny by social workers which may be discriminatory on ethnic grounds. In some cases, high levels of institutionalisation of Roma children result from legacies of communist-era policies in which the state was promoted as superior to raising children than parents, particularly in cases where children come from deprived or vulnerable backgrounds or have some form of disability. School absenteeism and the lack of school enrolment were noted to be significant factors influencing the institutionalisation of Roma children in Bulgaria, Czech Republic, Hungary, Italy, Romania and Slovakia. In some cases, single Roma mothers or Roma girls who give birth before the age of 16 "may leave their children in institutions voluntarily or may be targeted for child removal by child protection