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The Permanent Mission of the Czech Republic to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (Special Procedures Branch) and with reference to a joint letter, Ref. OL Health (2002-7) Minorities (2005-4) G/SO 214 (78-15) G/SO 214 (53-24) G/SO 214 (89-15) CZE 2/2013, has the honor to forward requested information.

The Permanent Mission of the Czech Republic to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (Special Procedures Branch) the assurances of its highest consideration. *H*

Geneva, 24 May 2013



Enclosure

Office of the UN High Commissioner for Human Rights
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INFORMATION PROVIDED BY THE CZECH REPUBLIC
ON COMMUNICATION FROM SPECIAL PROCEDURES
JOINT LETTER OL Health (2002-7) Minorities (2005-4) G/SO 214 (78-15)
G/SO 214 (53-24) G/SO 214 (89-15) CZE 2/2013

Summary

The Czech Republic fully recognizes the right of individuals to control and decide on matters of their own sexuality and reproductive health. This includes the right to decide whether and when to have children. Surgical sterilization as a method of contraception is generally recognized as one of the means to exercise this right. Under Czech law, its performance has been always conditional on the patient's informed and freely given consent, obtained in compliance with law.

In 2005, the Ombudsman reported that in some isolated past cases the rules set by the applicable legislation had not been followed properly. His findings were based on examination of 58 cases concerning surgeries performed in 1961 – 2004.

Both the Ombudsman and the Health Ministry's advisory board concluded that the cases of non-compliance with laws and regulations were not racially motivated. Rather, the problem was that some medical practitioners did not fully recognize that even if a future pregnancy may endanger a woman's life or health, she would not become pregnant immediately, and therefore what she really needed was time and support to consider the option.

On the basis of the Ombudsman's recommendations, a series of measures have been put into place since 2005 to prevent any future irregularities. To raise awareness of the new rules, the Health Ministry launched information and education campaigns targeting health professionals as well as the general public.

The rules concerning patients' rights, including free and informed consent, have been reinforced by new legislation – the Specific Healthcare Services Act - effective since 1 April 2012. The Specific Healthcare Services Act sets out a mandatory interval of at least one week between the time when the patient is told that sterilization might be an option in his/her case, and the time when he/she actually consents to the surgery.

As confirmed by the Ombudsman in his 2005 report, civil action is an effective way to seek compensation for the harm caused by a healthcare professional's failure to follow the prescribed sterilization procedure. These compensation claims had been considered imprescriptible until 2008 when a new case-law determined that they were subject to the general three-year limitation period. However, according to the Constitutional Court, in these cases any objection that the claim has been brought after the time-limit must be considered in the light of the accepted principles of morality; courts must make sure that, given the circumstances of the case, it would not be overly harsh to apply the time limit. Based on this interpretation, in 2011 the Supreme Court rejected an objection that a compensation claim in a sterilization case was brought outside the limitation period, and the claimant received her compensation.

The Government is presently considering a proposal made by its advisory body, the Government Human Rights Council, to establish a non-judicial mechanism for *ex gratia* compensations, in order to complement the existing judicial process. The Government is considering a new comprehensive set of rules to give the claimants even easier access to legal aid and counsel.

Inquiries into allegations of non-compliance with sterilization procedures

Relevant domestic law before 2006

According to the 1966 Public Healthcare Act No. 20/1966, sterilization could be performed only if the patient consented to or explicitly requested the surgery (Section 27 of the Public Healthcare Act). The consent had to be free and informed and the patient had to be appropriately informed beforehand about the purpose and nature of the surgery, its consequences and risks.

The details of the sterilization procedure were set out in the 1971 Health Ministry Directive. There had to be a special committee to examine every request for sterilization. If the request was approved by the committee, the patient had to be informed in writing about the consequences of the intervention. Finally, the patient had to make a written statement of consent.

The Czech Republic has been a party to the Convention on Human Rights and Biomedicine since 1 October 2001. The Convention is directly applicable and prevails over domestic law. Its Article 5 provides that any intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. The person must beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time.

Investigation of individual cases by the Ombudsman and by the Supreme Prosecutor's Office

While the laws and regulations governing sterilizations were adequate *per se*, there were individual cases in which the correct procedure was not followed. Such cases were examined by the Ombudsman.

In 2005, following NGO field missions in Roma communities, the Ombudsman was contacted by 88 women complaining about non-compliance with sterilization procedures. In 12 cases it was found that the complainant had not in fact been sterilized; in some other cases the Ombudsman asked for additional information but did not receive it. As a result, the total number of cases actually examined by the Ombudsman was 58.

Each of the 58 cases was referred to the Supreme Prosecutor's Office for an inquiry. The inquiries were conducted by the law enforcement authorities in accordance with the Code of Criminal Procedure. Most of the cases were discontinued because the police concluded that no crime had been committed. Four of the cases were discontinued because of an expired limitation period.

In his report of December 2005 (made public in January 2006), the Ombudsman reported that in some isolated past cases the procedure prescribed by law had not been followed properly, and recommended a number of measures to prevent the recurrence of such situations.

Since the publication of his final report in January 2006, the Ombudsman has been contacted by additional 26 women. The Ombudsman has not examined these new complaints, and has only sent each complainant a letter informing her about the report and advising her to claim compensation from the hospital concerned and to bring action in court if necessary.

All the complaints received by the Ombudsman to date concerned surgeries performed in 1961 - 2004.

The Health Ministry's inquiry

In December 2004, the Health Minister set up an advisory board to examine the cases referred to the Ministry by the Ombudsman. The board existed until the end of 2006. It concluded that some medical institutions had made isolated mistakes in the past. The advisory board's inquiries did not prove that the irregularities found in the sterilization procedure had been planned or systematic. Neither had they been the result of ethnic/racial bias. The primary cause of these irregularities was that in the past, healthcare professionals were not trained to treat patients as equal partners and to keep a careful record of all aspects of the care or treatment, including any advice and information given to the patient.

The advisory board proposed some preventive measures to be taken by the Health Minister. In particular, the Minister was to take steps to raise the awareness of patients' rights, both among healthcare professionals and the general public, and to develop a more detailed model of the informed consent form.

Measures to strengthen the safeguards of free and informed consent

On the basis of the Ombudsman's recommendations, Czech authorities took a number of measures to ensure full compliance with the free and informed consent requirement.

Regulation No. 385/2006 on medical records

The Medical Records Regulation (introduced in April 2007) set out the particulars of a written form of consent. The form had to include a section which informed the patient about the purpose, nature, expected benefit, consequences, possible risks and alternatives of the treatment, and a section in which the healthcare professional certified that he/she had explained the treatment or surgery to the patient, and the patient certifies that the treatment or surgery had been explained to him/her, that he/she had been given the opportunity to ask additional questions and that the questions had been answered.

Act No. 111/2007 amending Public Health Care Act No. 20/1966

This amendment to the Public Health Care Act (introduced in May 2007) reinforced the already existing rule that the patient's consent was necessary and that the treatment or surgery had to be explained to the patient in advance, including its risks and benefits as well as the consequences of non-treatment. Exceptions to this rule were possible only in situations

specified by law as medical necessity in life-threatening situations when the patient was not able to make the statement of consent.

The amended Section 23 (1) of the Public Health Care Act provided clearer rules for advice to and consent of the patient. It explicitly said that every examination and/or treatment, its purpose and nature, its consequences, alternatives and risks had to be explained to the patient or to his/her representative.

Model form of informed consent

The new model form for informed consent to the sterilisation of fallopian tubes was published in the Health Ministry Journal in 2007. It includes an explanation of the surgery and its consequences, as well as a section in which the surgeon certifies that he/she explained the surgery to the patient, and the patient certifies that the surgery, its consequences and possible complications were explained to him/her. The form must be kept on file as part of the patient's medical records.

Awareness-raising and educational campaign

In 2007, the Czech Medical Chamber, the Institute for Postgraduate Education in Health Care and a number of other healthcare institutions were informed about the conclusions of the Health Ministry advisory board. They were also urged to ensure strict compliance with the legislation concerning sterilisations.

Advice on patients' rights, including the right to be explained a treatment and the right to refuse a treatment, is now available to both medical professionals and the general public at the "Quality and Security Portal" on the Health Ministry website. Patients can also consult "The Patient's Guide", a brochure published in April 2010.

Ethics and medical law, including human rights issues, are included in Master's and Bachelor's degree programmes at every faculty of medicine, as well as in postgraduate education programmes for medical personnel.

Government Resolution No. 1424 of 23 November 2009

On 23 November 2009 the Government of the Czech Republic issued a statement expressing regret for the individual cases in which the sterilization procedure was not consistent with the 1971 Directive, and instructed the Health Minister to take steps to prevent the recurrence of such situations. The steps taken by the Health Minister include:

In December 2009, the issue of sterilisations was placed on the agenda of the Expert Forum for the Development of Healthcare Standards and Concentration of Selected Highly Specialised Care.

Also in December 2009, the Health Ministry conducted an inquiry into compliance with the prescribed sterilization procedure, both at healthcare institutions controlled directly by the Health Ministry and at institutions controlled by regional authorities. The inquiry asked whether cases of sterilization performed at these institutions complied with Section 27 of the Public Health Care Act, whether the institutions used the model informed consent form published in the Health Ministry Journal, and whether they had set up sterilization committees

as required by the 1971 Directive. It was found that all healthcare institutions were aware of the imperative need to comply, and did comply, with the laws and regulations, and that in some cases their informed consent forms were even more detailed than the model form published in the Health Ministry Journal.

Act No. 373/2011 on specific healthcare services

The Specific Healthcare Services Act (effective since 1 April 2012) sets out comprehensive rules for the performance of sterilizations, superseding the previous regulations.

According to the Specific Healthcare Services Act, sterilization can be performed either for medical or for non-medical reasons. Medically indicated sterilization is permitted if the patient is aged over 18 and has made a written statement of consent to the surgery. Sterilization for non-medical reasons is permitted if the patient is aged over 21 and has applied for the surgery in writing, unless there are serious medical contraindications. Healthcare institutions managed by the Prison Service are forbidden from performing any sterilizations whatsoever.

The patient must be informed about the nature of the surgery, its lasting effects and possible risks. The consent form must be signed by the surgeon, the patient and by a witness or witnesses. The consent form is kept on file as part of the patient's medical records. The patient is given reasonable time to consider the benefits and risks - for medically indicated sterilizations, the mandatory interval is at least seven days; for sterilizations performed for non-medical reasons, the interval is at least 14 days. Finally, the consent must be reaffirmed by the patient or his/her statutory representative immediately before the surgery.

Compensations

In his 2005 report the Ombudsman notes that in cases where the patients' rights were violated as a result of the surgeon's failure to observe the rules, the responsibility lies squarely with the violating surgeon. Therefore, the Ombudsman concludes that in these cases the fair and equitable solution is that the patients should claim compensation through civil action.

Civil action had been an effective way to secure a compensation for unlawful sterilizations, as shown by a ruling delivered by a Pilsen court in 2000. In this case, a woman sterilized without her free and informed consent in 1998 was awarded CZK 100,000 in compensation.

The right to equitable compensation for a violation of personality rights had formerly been considered imprescriptible. The Supreme Court upheld this view in 2003, but in 2008 it reconsidered the issue and concluded that eligibility to claim monetary compensation for non-monetary damage was subject to the standard three-year limitation period running from the date on which the damage occurred.

However, by itself, this change of case-law does not mean that the claims should have no chance of success, especially in cases where application of the limitation period would be contrary to morality.

As early as in 1997 the Constitutional Court ruled that "the provisions of Section 3 of the Civil Code according to which the exercise of a right must not be contrary to morality apply

also to the exercise of the right to raise an objection of limitation". Similarly, in 2001 the Supreme Court repeated that an objection of limitation may (very exceptionally) be contrary to morality in situations when it is used merely as a way to disadvantage another party. Elaborating on this view, the Constitutional Court noted in 2005 that while objections of limitation are not, in principle, contrary to morality, "there may be situations where the rights to raise such objections is abused with the intention to prejudice the case of a party who missed the statutory time limit through no fault of his/her own and it would be overly harsh to let him/her lose the claim because of the expiry of the limitation period, with regard to the nature and scope of the right he/she invokes and to the reasons why he/she missed the time limit".

The above clearly shows that despite the change of the case-law on the application of the three-year limitation period in sterilization cases, the courts must consider, on a case-by-case basis, whether the application of the limitation period is consistent with morality, as required by the Civil Code. The court must take into account e.g. the date of bringing the action (i.e. whether the action was brought before or after the change of the case-law), the reasons why the claimant missed the time limit, and the time that elapsed between the end of the limitation period and the date of bringing the action – that is, the court must make sure that by deciding not to apply the limitation period because of the morality principle it would not prejudice the defendant's case.

This approach is reflected in a ruling delivered by the Supreme Court in 2001 on the *Červeňáková v. Ostrava City Hospital* sterilization case. The Supreme Court recognized that with regard to the circumstances of the case, the objection of limitation raised by the hospital was contrary to morality. As a result, the hospital agreed to an out-of-court settlement, including compensation. This Supreme Court ruling was based on a Constitutional Court ruling of 2010 – the Constitutional Court did not question the change of case-law which occurred in 2008; however, it stated that when ruling on claims for monetary compensation for non-monetary damage, ordinary courts should consider the question of limitation very carefully on a case-by-case basis, and should especially make sure that objections of limitation, if any, are not contrary to morality.

In addition to the case cited above, which ended in 2000 with an award of compensation for a unlawful sterilization, the results of the following cases are known:

Ferenčíková v. Ostrava City Hospital

In 2005 the Regional Court in Ostrava ruled that a sterilization performed in 2001 was unlawful and ordered the hospital to apologize to Ms. Ferenčíková. The sterilization was performed on the basis of a consent obtained from her immediately before she gave birth. However, the court also noted that Ms. Ferenčíková's compensation claim had been filed after the end of the limitation period. This opinion was upheld by the Supreme Court in 2009. Ms. Ferenčíková's constitutional complaint (a last-resort appeal to the Constitutional Court) was dismissed by the Constitutional Court for the reason that the application of the limitation period did not result in any violation of Ms. Ferenčíková's rights. The case was brought to an end by the European Court of Human Rights (ECHR) in 2011. The ECHR took note of the friendly settlement reached between the Czech Government and Ms. Ferenčíková and struck the case out of its list. The Government agreed to pay Ms. Ferenčíková a EUR 10,000 compensation.

Červeňáková v. Ostrava City Hospital

The sterilization was performed in 1997; the action was brought in 2005. In 2007 the Regional Court in Ostrava found that the conditions necessary for the validity of the informed consent were not met. The court ordered the hospital to apologize and to pay Ms. Červeňáková a CZK 500,000 compensation. However, on appeal in 1998, the High Court decided that the compensation claim had been filed after the end of the limitation period. In 2011 the Supreme Court reversed the High Court ruling on the grounds that the application of the limitation period was contrary to morality. Ms. Červeňáková and the hospital then agreed on an out-of-court settlement including a CZK 500,000 compensation. Ms. Červeňáková's earlier application to the ECHR was declared inadmissible in 2012 on the grounds of abuse of the right of application (the ECHR found that Ms. Červeňáková had not informed it about her friendly settlement with the hospital).

R.K. v. Krajská zdravotní, a.s.

In 2008 the Regional Court in Ústí nad Labem ruled that a sterilization performed in 2003 was unlawful because R.K. had not been given enough time to consider the consequences. The court ordered the hospital to apologize and to pay R.K. a CZK 50,000 compensation. In 2009 the High Court in Prague increased the compensation by another CZK 150,000. The case was brought to an end by an ECHR decision in 2012. The ECHR took note of the friendly settlement reached between the Czech Government and R.K. and struck the case out of its list. The Government agreed to pay R.K. a EUR 10,000 compensation.

A.M. v. Znojmo Hospital

In 2011 the Regional Court in Brno ordered the hospital to apologize to A.M. for a sterilization performed without her free and informed consent in 1982. However, it found that A.M.'s compensation claim had been filed after the end of the limitation period. In 2012 High Court in Olomouc ruled that in this case the application of the limitation period was not contrary to morality. From A.M.'s statements made in other proceedings, the court found that A.M. had actually been told about her sterilization already during her stay at the hospital in 1982. This disproved A.M.'s claims that she had not been aware of the sterilization until the Ombudsman's inquiry in 2005, in which she participated. The court also proved that A.M.'s financial situation had been sound, which ruled out the possibility that she had been unable to bring her action earlier because of financial hardship. This shows that A.M. missed the time limit entirely through fault of her own; as a result, the application of the limitation period was not contrary to morality. In 2012, this opinion was upheld by the Supreme Court as well as by the Constitutional Court.

The above are the only known cases in which the sterilised women who contacted the Ombudsman in or after 2005 actually acted according to the Ombudsman's recommendations and claimed compensation in court.

In February 2012, the Government's Human Rights Council approved a proposal for a policy response to the unlawful sterilization cases. The Council proposes that the Government should pay compensations to all women who underwent unlawful sterilization, provided that before the surgery the woman's decision-making abilities were affected by undue influence or pressure from social workers. In accordance with the Ombudsman's recommendations, such compensations are to be paid to women sterilized between the years 1972 and 1991, i.e.

during the period when it was permitted to offer the women financial benefits in exchange for sterilization. The Council proposes that these compensations should be available to women who have no chance to win compensation in court because the three-year limitation period has expired.

In the light of this proposal, the Government is considering the possibility to set up an extrajudicial mechanism for *ex gratia* compensations. The Government will also consider the question of the limitation period as soon as an analysis of the issue is completed at the Justice Ministry.

Measures to ensure the access of women, including Roma women, to quality health care and services

The Czech Republic has a long tradition of preventive care for women, including care during pregnancy and delivery. All Czech nationals have access to health care regardless of sex, age, religion, ethnicity or race, sexual orientation, etc. Health care is covered by general health insurance. Every Czech national must have a general health insurance cover.

The general health insurance covers annual preventive check-ups for women aged over 15. The annual check-ups include cervical cancer screening. Also paid from the general health insurance is a biannual breast cancer screening programme for women aged over 45.

Prenatal and perinatal care for women is fully covered by general health insurance. Dispensary care for pregnant women is covered starting from the date on which the pregnancy is confirmed. Throughout her pregnancy, the woman is monitored by a gynaecologist specializing in prenatal care. During the first consultation the gynaecologist assesses the potential risks, on the basis of anamnesis and clinical findings, and sets out a programme of check-ups and monitoring on the basis of this assessment.

On average, a pregnant woman makes 10-11 visits to the prenatal specialist. Starting from the 36th week of pregnancy she regularly visits the maternity hospital she has chosen.

Dispensary care for women using hormonal and intrauterine methods of contraception is also fully covered from the general health insurance.

Healthcare services can be provided only at facilities that meet the technical, organizational and staffing requirements set out in the applicable laws and regulations. This ensures that the patients' right to a high standard of healthcare services is fully safeguarded.

Instruction on ethics takes up 17 hours of the Bachelor's and Master's degree programmes at faculties of medicine. Instruction on the human rights aspects of medical law takes up 15 hours. According to the laws and regulations setting out minimum requirements for medical study programmes, the programmes should include instruction on the basic laws and regulations relevant to the medical profession, medical ethics and practical doctor-patient communication skills, with emphasis on patients' rights and their exercise.

Medical ethics and law is also included in postgraduate education programmes for medical personnel.

Specific programmes for Roma women

The Czech Republic is aware that the Roma may have some practical problems with access to health care. The problems are dealt with locally, with the assistance of municipal fieldworkers and Roma advisors.

One example is the Sasstipen ČR project to create positions for health assistants in socially excluded areas. The project was implemented by Drom Romany Center from September 2005 till May 2007. The project ran in 7 regions of the Czech Republic and received financial support totalling CZK 10,802,620. The aim was to create and test a network of health assistants for Roma people vulnerable to social exclusion.

The Sasstipen ČR project fully met its aim. It improved the health situation of the Roma minority by teaching people who live in socially excluded areas to take responsibility for their own health and to use healthcare services. Among other favourable comments, the project received praise from the World Bank for helping increase the vaccination rate among the Roma in socially excluded areas and for improving their knowledge of the healthcare system, of the available healthcare services and of patients' rights and duties.

Since the completion of the Sasstipen ČR project, the health assistants have been receiving subsidies from the budget of the Ministry of Labour and Social Affairs.

Educating fieldworkers to provide health assistance

In some municipalities that were not covered by the Sasstipen ČR project, and yet felt the need to address problems with the provision of healthcare services to their Roma population, local fieldworkers were trained to provide health assistance to the Roma.

One opportunity for such training were the courses offered by Centrom civic association between June 2009 and November 2010. The aim of the courses was to train fieldworkers to serve as health assistants.

Subsidies available to health and lifestyle awareness projects targeting the Roma

The Health Ministry annually issues calls for projects under several programmes concerning health and lifestyle awareness and disease prevention.

The programmes include:

- National Health Programme – health promotion projects; the priority is to promote healthy diet and physical activity and to prevent alcohol and tobacco use;
- National HIV/AIDS Programme – the priority is free-of-charge anonymous HIV testing and education targeting mainly minority groups and groups with risky behaviour;
- Children and Youth Care Programme – the priority is to improve the health status of children and youth;
- Crime Prevention Programme – the priority is to promote the social aspects of health, including prevention of violence against children.