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PROCEDURES SPECIALES DU
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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice.

REFERENCE: 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

18 March 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolutions 15/22,16/6,16/33,16/23,16/7 and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received with regard to the possibility of **establishing a compensation mechanism for victims of non-consensual sterilizations in the territory of the Czech Republic performed in contravention with the law.**

The issue of establishing an *ex gratia* compensation procedure or mechanism for victims of unlawful forced, coercive or otherwise involuntary sterilization has been recommended repeatedly by several human rights treaty bodies, including the Committee on the Elimination of Discrimination against Women in 2006 and 2010 (CEDAW/C/CZE/CO/3, CEDAW/C/CZE/CO/5), the Committee on the Elimination of all Forms of Racial Discrimination in 2007 and 2011 (CERD/C/CZE/CO/7, CERD/C/CZE/CO/8-9), the Human Rights Committee in 2007 (CCPR/C/CZE/CO/2), and the Committee against Torture in 2012 (CAT/C/CZE/CO/4-5). Further, a number of Member States provided similar recommendations during the review of the Czech

Republic at the Universal Periodic Review in 2008 and 2012 (A/HRC/8/52, A/HRC/22/3).

In 2011 the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance also expressed concern regarding the practice of forced sterilization of Roma women that were reported in 2006 and 2007 (A/HRC/17/40). In her report to the General Assembly in 2012 (A/67/227), the Special Rapporteur on violence against women, its causes and consequences also addressed the issue of forced sterilization as a form of violence against women.

In 2004, the Committee against Torture requested information “on compensation provided for victims or their families in accordance with article 14 of the Convention (against Torture)” to be included in the next periodic report of the Czech Republic (CAT/C/CR/32/2). In 2012, the Committee expressed concern for the “absence of statistical data concerning compensation to victims of torture and ill-treatment, including victims of involuntary sterilization” (CAT/C/CZE/CO/4-5).

In his report to the Human Rights Council in March 2013 the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found that “Some women may experience multiple forms of discrimination on the basis of their sex and other status or identity. Targeting ethnic and racial minorities, women from marginalized communities and women with disabilities for involuntary sterilization because of discriminatory notions that they are “unfit” to bear children is an increasingly global problem. Forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment. The mandate has asserted that “forced abortions or sterilizations carried out by State officials in accordance with coercive family planning laws or policies may amount to torture” (A/HRC/22/53).

According to the information received:

On 9 September 2004, a complaint was filed to the Public Defender of Rights by a group of Romani women with allegations of non-consensual sterilization. The plaintiff’s claims consisted of not having given their consent to their sterilization and of having signed documents without being adequately informed of the conditions of such medical treatments.

In 2005, the Public Defender published a report on the issue of unlawful sterilizations and suggested remedies for the victims. The report contained a number of recommendations to the Government, including “the adoption of legal provisions that would make possible reparation for those affected”.¹

¹ Final Statement of the Public Defender of Rights in the Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures, 2005, page 79.

On 23 November 2009, the Government publicly regretted the performance of sterilizations in contravention with the applicable domestic and international law.

On 17 February 2012, the Council for Human Rights recommended payment of compensation to all women victims of sterilization procedures inconsistent with the legislation. The Government is yet to consider favorably the Council's recommendations.

At the time of this communication, advocacy activities were being undertaken by civil society organizations to support and recommend the adoption of such a compensation mechanism.

On 27 November 2012, the European Court of Human Rights, in the case *R.K. vs the Czech Republic* took note of a friendly settlement including extrajudicial agreement compensation between the Czech Government and a woman victim of an unlawful sterilization.

Having considered the information that has been brought to our attention, we would like to express our concern for the lack of payment of adequate reparations to all victims of non-consensual and coercive sterilisations on the territory of the Czech Republic, including Roma women. We note that the Czech Republic has a responsibility to protect the rights of all persons in its territory, including the Romani women who were subjected to such illegal acts in its territory.

We consider it appropriate to make reference to Commission on Human Rights Resolution 2005/41 on the elimination on violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. In this context, we would also like to draw your attention to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

We would like to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to refrain from interfering directly or indirectly with the enjoyment of the right to health. In that connection, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights provides that the right to health contains both freedoms and entitlements, including the right "to control one's health and body, including sexual and reproductive

freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” (para.8). Regarding remedies and accountability, it holds that “any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition” (para.59).

We further would like to recall that, according to article 10 (h) of the Convention on the Elimination of All Forms of Discrimination against women (CEDAW) , “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women(...) (h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning. In this respect, General Recommendation No. 21 on equality in marriage and family relations recognizes in the context of “coercive practices which have serious consequences for women, such as forced ... sterilization” that informed decision-making about safe and reliable contraceptive measures depends upon a woman having “information about contraceptive measures and their use, and guaranteed access to sex education and family planning services”. Furthermore, article 12 of CEDAW obligates States Parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning (para.1) and provides that, notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. The CEDAW Committee explained in its general recommendation No. 24 on women and health that “[A]cceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity...” The Committee further stated that “States parties should not permit forms of coercion, such as non-consensual sterilization ... that violate women’s rights to informed consent and dignity”. Articles 16, paragraph 1 (e) of CEDAW provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (...) (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. We wish to recall CEDAW General Recommendation No. 19 on violence against women in which it states that “compulsory sterilization ... adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children”.

In addition, we wish to draw the attention of your Excellency's Government to Article 1.1 of the 1992 United Nations Declaration on the Rights of Persons Belonging to

National or Ethnic, Religious and Linguistic Minorities which provides that “*States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity*”. Article 1.2 also provides that “States shall adopt appropriate legislative and other measures to achieve those ends.”

Finally, we would also like to draw the attention of your Excellency’s Government to article 14 of the Convention Against Torture, which provides that victims of torture should have the right to redress and adequate compensation. In this regard, we would also like to remind you that paragraph 7e of Human Rights Council Resolution 16/23, which urges States “(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation, and urges States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken.”

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify any information related to our mandates, we would be grateful for your observations on the following matters:

1. Please kindly provide information on any measure taken to ensure that victims of non-consensual sterilisation on the territory of the Czech Republic are afforded due remedy and reparations – including compensation -- in accordance with article 2.3 of the International Covenant on Civil and Political Rights, article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and article 6 of the Convention on the Elimination of All Forms of Racial Discrimination. Please also include any measure intended to give effect to the Public Defender’s recommendations contained in the cited 2005 report², including the possible establishment of a compensation mechanism or procedure for victims of unlawful sterilizations.

2. Please kindly provide details, including disaggregated data, on cases of compensation to victims of unlawful sterilizations in the territory of the Czech Republic.

3. Please provide information on the legal provisions and guarantees against forced sterilization of women in the Czech Republic. Also provide information on measures adopted to prevent other cases of forced sterilization of women, especially among Roma women.

4. Please provide information on the measures taken to ensure that women, including Roma women enjoy an access to health care and services of high quality; and

² Ibid, pages 77 – 79.

indicate the measures taken to address discriminatory practices against Roma women among medical professionals.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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highest attainable standard of physical and mental health

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