

THE STERILIZATION INVESTIGATION IN THE CZECH REPUBLIC



August 15, 2006

**Briefing of the
Commission on Security and Cooperation in Europe**

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Commission on Security and Cooperation in Europe
234 Ford House Office Building
Washington, DC 20515
202-225-1901
csce@mail.house.gov
http://www.csce.gov

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AUGUST 15, 2006

Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 2:07 p.m. in room 2255 Rayburn House Office Building, Washington, DC, Ronald McNamara, International Policy Director, Commission on Security and Cooperation in Europe, moderating.

Participants present: Ronald McNamara, International Policy Director, Commission on Security and Cooperation in Europe; Erika Schlager, Counsel for International Law, Commission on Security and Cooperation in Europe; and Gwendolyn Albert, Director, League of Human Rights (PRAGUE).

Mr. MCNAMARA. Good afternoon. My name is Ron McNamara. I'm currently serving as the International Policy Director for the Commission on Security and Cooperation in Europe.

We welcome you to this afternoon's briefing, which is part of, really, an extensive initiative relating to the conditions of Roma undertaken by our Commission for many years.

We appreciate your coming today to this briefing on the investigation into sterilization practices in the Czech Republic and Slovakia.

In 1987, the Helsinki Commission published a compilation of documents produced by Charter 77, at that time, Czechoslovakia's leading human rights movement. Included among those pages was Document No. 23, first issued in 1977 and signed by Charter spokesmen Vaclav Havel and Ladislav Hejdanek.

Writing about the situation of the Roma in Czechoslovakia [inaudible] 77 pays particular attention to the profoundly troubling practice of targeting Romani women with sterilization. The authors even warned that the Communist government's effort to eliminate this minority might escalate and then give rise to the charge of genocide.

Although in Czechoslovakia these sterilization policies changed after communism ended, it eventually became clear that, in both the Czech Republic and Slovakia, some Romani women continued to be sterilized without informed consent until very recent times.

The Helsinki Commission has closely monitored the situation in Slovakia and paid particular attention to the Slovak Government's 2003 investigation into this matter and the subsequent Slovak Government's pronouncements. We are alarmed that, even as

recently as February of this year, the head of the Slovak Nationalist Party, the party now in the coalition government, called for restricting the birth rate of Roma.

Late last year, the Czech Public Defender of Human Rights [also known as the Ombudsman] completed his own investigation into these matters, and his report was published in English this March. In it, he confirms that sterilization without informed consent had occurred in the Czech Republic. Today's briefing provides an opportunity to hear more about the Public Defender's conclusions and the sterilization practices being advanced.

To that end, we are very happy to have Gwendolyn Albert, the Director of the League of Human Rights, a Czech-based non-governmental organization with offices in Brno and Prague. Ms. Albert is a permanent resident of the Czech Republic and, in 2002, she was nominated to sit on the Czech Government Human Rights Council as a representative of civil society.

The Helsinki Commission does not usually hold briefings when the Congress is not in session, but we wanted to take advantage of the opportunity of Ms. Albert's visit to the United States and welcome her here today.

In addition, we have two statements that were submitted for the record regarding Slovakia's investigation into this issue. Copies of those statements by the European Roma Rights Center and by the Slovak Center for Civil and Human Rights are on the table to read in the briefing room here this afternoon, along with other materials related to Slovakia prepared by the Helsinki Commission. They will be included in the briefing record.

And I would also draw your attention to a staff report relevant to today's discussion, "Accountability and Impunity: The Investigation into Sterilization Without Informed Consent in the Czech Republic and Slovakia."

And all of these materials, as well as quite an extensive collection of materials relating to Roma as well as to the two countries, are available on the Commission's Web site, which is www.csce.gov.

In keeping with our practice of public briefings, after Ms. Albert has made her presentation, there will be an opportunity for some questions from the audience, time permitting, but we would ask that you identify yourself—your name and any affiliation, things like that—and try to pose the questions as succinctly as possible.

With that, I would also like to introduce my colleague, Erika Schlager, who is the Commission's Counsel for International Law. Erika has been following very closely the developments in the Czech Republic and Slovakia, as well as the conditions of Roma throughout the OSCE region.

So, we appreciate your being here and look forward to Ms. Albert's presentation.

Ms. ALBERT. Thank you, ladies and gentlemen.

Together with the international nongovernmental advocacy organization European Roma Rights Center, the League of Human Rights has been involved for the last 2 years in the attempt to secure justice for ethnic Romani women now living in the Czech Republic who were coercively sterilized during the post-war period in Czechoslovakia and in present-day Czech Republic.

The Czech Republic today is a highly racially homogenous society. Out of a population of roughly 10 million people, approximately 200,000 to 300,000 are members of the Romani minority.

Over the past 17 years, the number of human rights violations committed against them has risen sharply, ranging from racially motivated murder to discrimination in employment and housing.

In terms of coercive sterilization of Romani women, the oldest known instance of post-war coercive sterilization of which we are aware dates to 1958, and the most recent of which we are aware was in 2004.

This issue is of importance for human rights because it touches upon the issues which were at the core of the United Nations' adoption of the Universal Declaration of Human Rights in 1948 in the aftermath of WWII and the Holocaust.

The gross human rights violations and crimes against humanity committed by Nazi Germany had their roots in theories of race hygiene and eugenics, which are said to have been thoroughly discredited since then. However, as a result of enduring not one but two totalitarian regimes, the legacy of these theories in Czech medical and social welfare practice is only now beginning to be explored.

It should be emphasized here that the Czech Romani population was 95 percent exterminated during the Holocaust.

From the inception of the Czechoslovak Socialist Republic through to the present-day Czech Republic, social workers and doctors coerced Romani women into undergoing sterilization, either by offering them financial incentive, especially between 1973 and 1991, or threatening to withhold social welfare benefits or threatening to take their existing children into social care.

The most recent allegation of a social worker pressuring a Romani woman to undergo sterilization dates from 1995. The more recent cases, dating to 2004, seem free of social worker influence and are primarily instances of doctors recommending Caesarian delivery of pregnant women and then exploiting that opportunity to sterilize them without their informed consent after delivery, or sterilizing them without their informed consent during abortions, surgery for ectopic pregnancies, or removal of intrauterine birth control.

In September 2004, 10 coercive sterilization complaints were filed by Romani women with the Czech Ombudsman (inaudible), who asked the Health Ministry to investigate, and he began his own review of the Health Ministry's responses and handed over other incoming complaints to that ministry on an ongoing basis.

In December 2005, the Czech Ombudsman issued his final statement. This is a historic document for the post-Communist world in terms of its scope.

He reproached the Czech Health Ministry for having conducted a sluggish and overly formalistic inquiry, noting that even this unsatisfactory approach found that doctors had failed to follow legally established procedures, and that free and informed consent had been lacking in more than half of the cases they had managed to review.

The Ombudsman's own analysis finds the sterilizations to have been illegal due to lack of free and informed consent in 100 percent of the complaints, and says the consent that was given raised grave doubts as to the information process preceding consent, during which the combination of doctor and social worker coercion rendered any consent given legally invalid.

His primary reservation is worded as follows: Quote, "From a legal perspective, the unlawful nature of the sterilizations lies in the fact that consent that was without error and fully free in the human-rights sense was not given to the interventions. This conclusion applies to all cases without exception."

While emphasizing that implementation of the law in practice is more important than legislation itself the Ombudsman does recommend legislating a waiting period between approval by a sterilization commission and granting of consent and performance of the surgery, and requiring doctors to advise their patients of contraceptive alternatives to sterilization.

He recommends changing the culture of medical services provision and raising awareness among patients of informed consent; establishing a compensation mechanism for victims in cases where social workers were involved in the coercion, which he defines as cases from 1973 to 1991, noting that social work records and files pre-1990 have most probably already been shredded by now, since they are not required to be archived indefinitely.

The Ombudsman does not find the state liable for coerced sterilization incurred exclusively by doctors, and also has refused to characterize the pre-1989 policy as having been of a genocidal nature.

To date, legislation relevant to coercive sterilization has yet to be amended as per the Ombudsman's recommendations.

Despite the sheer number of social workers, doctors and hospitals involved in coercive sterilization, to date the courts have instructed only one hospital to pay one victim compensation and one hospital to apologize to another victim in writing—a recommendation that has yet to take effect because it is being appealed by both sides.

No doctor or social worker has ever been punished, and no social worker has ever had previous recognition for having achieved sterilization targets revoked.

Given the scope of the violations, the punishment to date has been exceedingly disproportionate. The government has not indicated how it intends to further address or punish this wrongdoing, and seems not to appreciate the desirability of safeguarding the prevention of future harms, but contents itself with proposing expert review of any future allegations, which is unacceptable.

The government also has yet to institute a procedure for remedying victims or addressing criteria for those victims whose medical records have been destroyed, either by flood or because the records were shredded after their limit during which they were to be archived expired.

In May 2006, at a session of the Czech Government Human Rights Council's vote on whether or not to adopt material based on the Ombudsman's recommendations, ministerial members of the council blocked adoption of the material, with the Health Ministry disavowing any state responsibility at all and even arguing that the Czech Republic is not the successor state to the Czechoslovak Socialist Republic, which is not true.

At present, the Human Rights Council, as an avenue for advising the government on this serious matter, is at gridlock.

Most importantly, of eight criminal charges brought in cases of coercive sterilization complaints to the Ombudsman filed in March 2005, five of the cases have been dismissed, with experts and police characterizing acts which are illegal on the face of them such as a sterilization commission agreeing to a sterilization post facto—as constituting a crime. Such an action is illegal, against the law, on the face of it.

However, in the findings of the police, these instances are not characterized as actually constituting violations of the law. The victims are considering a Constitutional Court complaint regarding the way the criminal complaints are being handled.

Yesterday, I presented a shadow report to the U.N. regarding this matter, and on Thursday, August 17th, the Czech Republic will be reporting to the U.N. on this and other matters concerning women's rights.

In our report, which was submitted on behalf of the European Roma Rights Center, the League of Human Rights, and an organization called Gender Studies, based in Prague, we recommend:

That the government immediately and publicly apologize to the victims of coercive sterilization. It is key that the government acknowledge its responsibility to safeguard the human rights of everyone on Czech territory and its failure to have done so in this instance, so that the historical record can be set straight.

We recommend the government immediately adopt the legislative changes proposed by the Ombudsman.

We recommend the Health Ministry immediately implement the methodological measures proposed by the Ombudsman.

We recommend the government immediately establish the compensation mechanism proposed by the Ombudsman. Again, it is key that the government acknowledge its responsibility and atone for the wrongdoing it permitted to occur, and that victims' rights to compensation for the injury caused them be affirmed.

We recommend the government establish a fund to assist victims in bringing further claims under the compensation mechanism.

And we recommend the general prosecutor monitor the ongoing criminal investigation into the coercive sterilization complaints and publish its findings.

It is clear to us that no one in government has communicated the import of the Czech Ombudsman's findings to the authorities handling the criminal investigations and that the authorities themselves are performing their work poorly.

On behalf of the League of Human Rights, I hereby call on the U.S. Government to play a leadership role and use both its economic and political weight to encourage the Czech Government to adopt the above recommendations.

Questions, in particular, which the U.S. Government might want to raise with the Czech Government or, at a minimum, review in its human rights report on the Czech Republic are:

Does the Czech general prosecutor intend to monitor the ongoing criminal investigations into coercive sterilization allegations?

When does the Czech Government intend to make an official statement on the practice of coercive sterilization?

How does the government intend to address the Health Ministry's failure to monitor whether the information in the medical records actually reflects procedures performed in compliance with the law?

How does the government intend to ensure the requirement of informed consent to sterilization is made clear to everyone on Czech territory?

How does the government intend to ensure the giving of consent is understood as a legal act by everyone on Czech territory?

Does the government intend to conduct further research to determine exactly how many women suffered this practice?

How does the government intend to ensure doctors fully identify with and embody the principle that, in legal terms, patients are their equals?

With reference to the Genocide Convention, can the Ombudsman further expound his reasoning as to why he does not characterize the pre-1989 policy as having been genocidal, and can the government give its position?

Regarding doctors' motivation to recommend Caesarean operations, how does the government plan to monitor whether such recommendations are indeed performed *lege artis* in future and not secondarily motivated by a desire to exploit an opportunity to perform another intervention, such as sterilization?

How does the government plan to ensure that collusion between social workers and doctors to coerce women into sterilization is no longer ongoing?

The League of Human Rights believes that the swift resolution of this painful topic can have enormously beneficial results, not only for the Romani community and Czech-Roma relations, but for everyone on Czech territory who seeks medical treatment.

Thank you very much.

Ms. SCHLAGER. Gwen, thank you very much for, first of all, being here today, coming down from New York, coming from Prague, to make this presentation.

I think your remarks illustrate that, although there are many, many complex aspects to this issue, there is one very clear and unquestionable aspect, and that is: Sterilization without informed consent is wrong.

And I think, like many of the countries that have had to address this question, including the United States, Norway, Switzerland, Sweden, and others, I think that is the conclusion that we are hoping the Czech and Slovak Governments will articulate clearly and strongly and loudly.

I'd like to take the privilege of the Chair to ask the first question, and then I'll open the floor up to questions by others.

As you've noted, there has been some kind of public acknowledgment that these sorts of sterilizations were occurring during the Communist period.

Not only in the Charter 77 documents, but also, more generally, in Czech society this was acknowledged around 1990.

But why do you think the practice continued in some way even after communism formally ended? And do you have any observations on the differences between the cases that precede 1990, as opposed to the cases that are more recent?

Ms. ALBERT. I think that this was a practice that didn't have much to do with regime. It was a practice that had to do with an approach of social work services, in cooperation with public health concerns and public health services, as provided by doctors.

It is true that, in 1991, the decree that had legislated the payment of what was called a sterilization benefit was rescinded, but the meaning of that was not conveyed further to the practitioners, especially not to the medical practitioners.

So what happened was, in practice, along with developments in teaching about when sterilization is medically indicated in the Czech medical profession, this combined to produce a situation in which these sterilizations continued under restricted circumstances.

When pregnant women would come in for delivery, Caesarean delivery would be recommended, and then the sterilization would be performed. And for quite some time, it was

standard to instruct in the Czech medical system that, if there are two Caesarean deliveries, sterilization must occur as a medical procedure following.

Now, there are all kinds of questions raised as to why that is the case. And there has not been enough study of, for example, how often are Caesareans recommended to the general population, as compared to the Roma population. So there are all kinds of questions that need to be further studied with regard to this practice.

But I think there was an understanding in the Czech medical community that sterilization, as a means of addressing what had been earlier described during the communist regime as the “high, unhealthy birth rate of the Roma population,” quote/unquote—in other words, these doctors believed they were doing their public-health duty in violating these people’s rights.

They didn’t conceive of this as a rights violation. They didn’t conceive of it as illegal. They thought that they were performing according to indicators from the Sterilization Directive of—

[Audio gap.]

Ms. ALBERT [continuing]. Makes the authorities even more defensive.

I really should stress the Ombudsman’s document is an incredible advance for the region—the fact that he reviewed each complaint and the Health Ministry’s response to it himself.

I think that, at a diplomatic level, if it could be possible to convey to the Czech Government the necessity to address this, to not be afraid to address it, to realize that, unfortunately, it is something that has happened in many places in the world, to make them feel less isolated in their approach to dealing with it.

However, I have to tell you that one of the things you must bear in mind regarding all of this is the extreme anti-Roma sentiment, prejudice and atmosphere that is prevalent in the Czech Republic. No discussion of this can take place without acknowledging that that is the way it is there, and it is important to take the government also to task over what it has done, in general, about the issue of anti-Roma sentiment and racism.

I, myself, have met even with people from the U.S. Embassy to discuss with them whether or not, for example, travelers to the Czech Republic should not be warned that, if they are people of color, it is not going to be the same experience for them as it is for a white tourist coming to the Czech Republic. It is a serious problem there.

You will find, in raising this issue with people, that they are resistant to acknowledging it.

And I think that one of the best ways to support the work is to try to support Czech organizations that know what racism is, why it should be eradicated, want to promote models of tolerance that have been developed elsewhere—for example, in the United States, the civil rights movement, et cetera. All of these things—not in a sense of preachiness, but it’s still really a very neuralgic and unaddressed fact.

The response so far of the government to these allegations, unfortunately, parallels its response to the big fracas over the special schooling and sending a large number of Roma children into schooling for people who were considered mentally retarded. The response to that was to amend the legislation in a way that is, unfortunately, cosmetic and formal.

The implementation—even though the legislation has some very wonderful statements in the beginning about the need to integrate—the implementation of it on the

ground, which is really what matters in human rights terms, what happens on the ground, what happens in practice, is far from achieving what the stated goals are.

So I would say, in general, to address anti-Roma sentiment with the Czech Government.

QUESTIONER. Hello. My name is Dorothy Taft. I'm with the Helsinki Commission.

Most of our focus today has been on the accountability of the government and the officials in the Czech Republic. But how would you describe the discussion that is taking place within the health community?

Because this is an incredibly embarrassing blight on the professionalism of—a very important aspect of any of our societies is how the health community treats the seriousness of, especially, informed consent, but even from a scientific and medical approach, the issues that surround sterilization, that surround the perhaps inappropriate prescription of Caesarean delivery.

So what's the discussion like in Czech Republic or perhaps in the whole region?

Ms. ALBERT. I can't speak to the region.

For the Czech Republic, I would have to say that, unfortunately, the discussion, from my point of view, has been very depressing, in that there is a sort of solidarity among doctors. They're sort of sticking together on this one.

There have been—the Ombudsman cites it in his report—examples of people who have been questioning, even before these issues were raised, the concept of informed consent. Why is it necessary? Isn't it a little too much for people to be coming and telling highly educated professionals that they don't have absolute say over what needs to be done for the health of the patient?

Now, in November, there is a decree that will take effect. It's a Health Minister's decree that is regarding informed consent. This was announced about 10 days ago. They sort of put out an official announcement that the Czech Doctors Association—Medical Association—has been tasked with standardizing the forms that are going to be used for people to consent to any major surgery. Of course, there are sort of hedgy words about what is major, what is not major, et cetera.

I must really stress here that, even in 1971, the sterilization directive that was drafted at that time as legislation was sufficient, and had the law been followed in practice, these abuses would not have occurred.

So, while it is, of course, desirable to standardize your form, it's what happens before that form gets signed that's crucial.

There is one teaching hospital that I know of in Brno. Our organization is actually involved in a project with them to train doctors in human rights concerns. What is informed consent? Why is it important? However, that's one hospital. I'm not seeing action for the country as a whole.

There has not been public discussion of this with doctors. There may be someone out there who really understands the issues that I'm raising and identifies with them as a medical professional. I very much doubt that that person would come forward and put a big red light on top of their head and say, "Yes, the League of Human Rights is doing the right thing."

Ms. SCHLAGER. If I could ask a quick followup question here related to the medical community. With respect to the access of patients to their own records, you mentioned

that some records are shredded because they're old, and there's a time for that to happen. Some were destroyed because of floods or other reasons.

For existing files, are patients able to access their own records for the purpose of these or similar investigations?

Ms. ALBERT. Yes, that is something that is missing from that decree that is going to take effect in November. It does not mention patients' rights to access their medical records, which is something that other human-rights groups have criticized.

In practice, it depends on where you are, to a large extent the mood of the person behind the desk, whether you are asking for something that's from a very long time ago, et cetera. It's never an easy matter to receive access to patient records.

This is something that the Mental Disability Advocacy Center, based in Budapest, has been addressing with psychiatric care patients. They had a few cases of people where the person responsible for providing them with a copy of their records interpreted the existing law to mean that they could read aloud the medical record and that that would be sufficient provision of a copy. There have been some court cases that have actually upheld the finding that that's not sufficient.

There were records destroyed by flood.

For a long time, the birth record, the record of what happens during delivery, was actually not considered part of a person's medical records, per se. I don't know why, but they weren't. That's something that's changed very recently, and I believe that's also referred to in the Ombudsman's report. So, for many people, when they go to access their medical records, their birth records are not part of them.

QUESTIONER. My name is Arlene Pacht, and I'm the President Emeritus of the International Association of Women Judges and worked at the League for Human Rights this past winter.

I would like to ask Gwen, what considerations are holding up pursuing challenging the treatment of the criminal cases before the Constitutional Court? That's one question.

And also, my other question really may go to Mr. McNamara. I am wondering what specific pressures OSCE can apply on the Czech Republic or on Slovakia, whether or not the European Union has any potent force to apply in this situation.

And also, you mentioned that you gave a shadow report at CEDAW. Whether or not there was any comment with regard to this issue in the Czech Republic CEDAW report, and what ensued, what kinds of questions came about as a result of that?

So, multiple questions.

Ms. ALBERT. Yes. With regard to the Constitutional Court complaint, I don't know that it's being held up, but it's a purely logistical matter. There is technically only one legal representative for all of the cases that were filed to the Ombudsman. That's the attorney, or lawyer, who works for the League of Human Rights, not even full time. It's our logistical question: How are we going to handle filing these complaints, and which case is the case that's going to be the strategic one to file?

With regard to CEDAW, or the United Nations, yes, CEDAW did ask about this. I have the Czech Government's answers here. CEDAW will ask them about it again on Thursday.

What is stated in the government's response are basically the same proposals that they gave to the Ombudsman the first time around. When the Ombudsman raised this

with the Czech Health Ministry in late 2004, they said: “We’ll put together an expert committee, and the expert committee recommends these eight things.”

He came back to them and said, “Those eight things, good as they are, are not enough.” They said, “Then we’ll put together an advisory panel.” The advisory panel took it’s time all through 2005, and when they came back, they came back with the same eight things and the Ombudsman said again these eight things aren’t enough.

Essentially, the Czech state then repeats those eight things here in its response to the U.N. and, yet, at the very end, says: “The Ministry of Health has not as yet decided about implementation of the measures proposed by the advisory team.”

So it’s made this proposal, but it’s reserving the right to ignore this issue for as long as it wants. This is my reading of their behavior and unclear communication with organizations such as ours and with the public about what’s going on.

Mr. McNAMARA. With respect to your question about the OSCE, certainly we don’t profess to speak on behalf of the OSCE. We’re a U.S. Government agency.

And we are trying, through the vehicle of today’s briefing and the report that we’ve issued, to draw some attention and to increase awareness regarding the matter.

The OSCE operates in a political environment. It doesn’t have a treaty basis to it, which the United States has insisted that that be the approach. So, therefore, it takes the political will to raise the issues in discussion with the relevant governments, in terms of violations which may have occurred in this area, as well as a whole range of human-rights issues. So, again, this is our, sort of, modest contribution to trying to raise this issue.

And, again, I think we also come to it with some degree of humility, as well, because, as has been pointed out, none of our countries is immune to practices. But it’s really how we come to grips with the past and try to give some measure—I think Gwen talked about—some measure of justice to the victims.

And, I mean, just thinking about the whole matter, it seems like it’s probably reasonable to expect that there might be quite a number of unknown victims and victims who may not even know that they were victimized in this regard, which raises a whole—obviously, there are a lot of sensitivities regarding this matter.

But I wonder, how does the medical establishment—because there’s a tremendous potential for, sort of, cover-up, if you will, if an individual comes forward and suggests that there may be some health concern that she may have and, you know, she may not have access to the information that shows, yes, there’s a good reason why there’s a problem in this area. And I wonder if that’s been encountered by any of the folks who have come forward as a problem.

And I have a couple of other questions later, too.

Ms. ALBERT. What I would say to that is that the environment in which the survivors of this practice are pursuing their claims is extremely confusing.

Sterilization, as performed in these cases, was performed by tubal ligation, which, after a few years, is indistinguishable from any sort of natural collapse in that area. We’re talking about a very, very small area. So even if you were to resubmit yourself to surgical intervention again to see were you really sterilized or not, doctors say that it’s not easy to tell the marks of such an intervention, especially if it’s performed laparoscopically.

As for the other issue regarding people who don’t even know that this happened to them:, I only recently found out, in the Czech Government’s response to CEDAW, that

they state the sterilization was not performed in 12 cases. I found this very confusing, because the Ombudsman's report had not said anything about that.

I asked the lawyer, who is representing some of the people, and she says that, in about three or four cases that she knows of, when the advisory board went to specific hospitals and said, "Can you tell us about this sterilization?" despite the fact that the woman involved was acting under the supposition that she was sterile, and the medical record said she had been sterilized, the hospitals and the doctors said, "Oh, no. Her, we didn't do."

I mean, the mind boggles. I don't know what to say about such an acknowledgment that the medical records are not reflecting reality but that is what, in at least three cases, our lawyers were told.

You had——

Ms. SCHLAGER. [Off-mike.] Can I just say one thing? Judge Pacht generally asked about international reaction to some of this. And I did want to note briefly that, in a resolution adopted by the European Union Parliament last year on the situation of Roma in general, there was a specific call for European Union countries to ensure that women were not sterilized without informed consent.

There are also two cases that have been brought to the European Court of Human Rights, which is the Council of Europe organ—two cases involving plaintiffs from Slovakia. One has to do with access to medical records, where there may have been improper sterilization, and the other has to do with actual sterilizations—alleged wrongful sterilizations.

And then, finally, I just wanted to add that, as Ron suggested, it's often hard for any country to address past wrongs, whatever the country is, including our own. When someone like the Public Defender for Human Rights has come forward and done such an outstanding job of addressing a very complicated and sensitive issue, I think one thing we can do is really support him in his efforts.

Mr. MCNAMARA. The question I had—a couple of things—was, one, regarding the media in the Czech Republic and its reaction to the work of the Ombudsman and, sort of, the ongoing matter.

And then, I wonder, at least from the Communist period certainly, my impression was that the nature of those regimes was such that generally they did a lot of number crunching and, at least, that there would be aggregate statistics available regarding, on an annual basis, the number of sterilizations that took place. And I wonder if there's been any attempt to analyze that situation.

Obviously, you know, some of those may have been victims, as we're talking about today, difficult to say exactly. But I wondered if anyone has looked at trends that occurred during that period, which, again, might be a little less sensitive, no less victimizing these individuals.

Ms. ALBERT. The media response, I would say, has been very good, in that it has been very dignified—really, really respectful of the dignity of the victims. We were quite surprised at this, because our work happened in the aftermath of the work in Slovakia, where the victims and their advocates faced just incredible vilification by both the government and the media.

So, the media has been good, but it has not been—how should I say? It hasn't pursued this issue. The Ombudsman gave his press conference in December, and since then,

we've been mostly contacted by foreign media. This story has been written about in Spain, in Venezuela, in just about everywhere, but there hadn't been a lot of ongoing media until we came here to discuss this at the U.N.

With regard to numbers, yes, my intuition would be that there would be some information to mine, regarding this. In his report, the Ombudsman seems to say that there isn't, given how long ago much of this occurred.

I would be interested to find out if there's anyone who has an alternative strategy to offer with regard to that. I find it hard to believe that archives don't include this information but you never know. Given the state of the medical records that were discovered, I should perhaps, you know, take him at his word that the records don't exist.

Ms. SCHLAGER. We're just after 3 o'clock. Do we have any other questions?

OK. Well, I think we'll leave it there.

And, Ms. Albert, thank you very much again for being here today.

Thank you, ladies and gentlemen, for coming.

Mr. MCNAMARA. I should add that there will be a full transcription of today's proceedings posted on the Commission's Web site by the close of business tomorrow. And, again, that's www.csce.gov.

Thank you.

QUESTIONER. I have one question.

Mr. MCNAMARA. If you can use the mike, please.

QUESTIONER. I'm Joan Mitric. Sorry I'm late. I just came in this morning from the Balkans.

And I just wanted to know if there is any comparative data reflecting the situation or practices in the regions: CE, Southeast Europe, the former Yugoslavia, Bulgaria, Romania? Any comparative data?

Ms. ALBERT. If there is, I'm not aware of it.

QUESTIONER. OK.

[Whereupon the briefing ended at 3:05 p.m.]

APPENDICES

MATERIAL SUBMITTED FOR THE RECORD BY GWENDOLYN ALBERT, DIRECTOR, LEAGUE OF HUMAN RIGHTS (PRAGUE) Coercive Sterilization Timeline

Compiled by Gwendolyn Albert, League of Human Rights, August 2006

Sources:

- “Situation of the Gypsies in Czechoslovakia”, Charter 77 Document No. 23
- “Struggling for Ethnic Identity: Czechoslovakia’s Endangered Gypsies, a Helsinki Watch Report”, Human Rights Watch, 1992, ISBN 1–56432–078–2.
- Final Statement of the Public Defender of Rights in Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures, December 2005
- “To Reach Agreement and Never Forget: Proceedings from the seminar ‘Minority Policy in Member States of the EU25 regarding the Roma and Sinti minority’”, Heinrich-Boll-Stiftung, 2006, ISBN 80–239–6867–X.
- Responses by the Czech Republic to the “List of issues and questions for consideration of the third periodic report to the Committee on the Elimination of Discrimination against Women”, distributed 17 May 2006, CEDAW/C/CZE/Q/3/Add.1
- Joint Submission June 2006, Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women for the Czech Republic under Article 19 of the Convention for the Elimination of All Forms of Discrimination Against Women for its consideration at the 36th Session 7–25 August 2006
- “Patients’ consent applied in many hospitals, CLK to unify”, 2 August 2006, Prague Monitor Daily Digest, www.praguemonitor.com/ctk/story__id=38105i20060803
- Personal communication with victims and their counsel.

AUSTRO-HUNGARIAN EMPIRE—PRE-CZECHOSLOVAKIA

1912—Czech scientists including Czech genetics pioneer Artur Brözek start a eugenics movement in the context of a desire to “strengthen the Czech nation”, which had yet to achieve political independence. Brözek demands “measures through which the state . . . could intervene wherever the self-love of sick and degenerated individuals might possibly oppose the strengthening of the nation.”

1914—outbreak of WWI. Brözek publishes “Cultivating Mankind”, a summary of ideas from the eugenics movement in the USA.

1915—Czech Eugenic Society founded, outlines program to explore the need for eugenics, analyze it, and propagandize for it. Sterilization is one measure discussed.

CZECHOSLOVAK FIRST REPUBLIC

1918—WWI ends. Czechoslovakia founded as an independent state—the “First Republic” begins.

1919—Czech Sokol Gymnastics Committee admitted to Czech Eugenic Society.

1923—Czech Eugenic Society, commenting on eugenics legislation, welcomes the introduction of sterilization as a measure.

1933—Nazi Germany publishes its Sterilization Act, Czech Eugenic Society welcomes it. On December 11 the Czech Association of Doctors tells the society “the Association will spare no effort to support these eugenic efforts.”

1934—Czechoslovak National Council discusses “degenerative effects on the state of the population.”

1935—International Congress on Criminal Law and the Prison System in Berlin sparks Czechoslovak debate on heredity of criminality.

1936—Czech Eugenic Society approves recommendation to enact eugenic sterilization into law.

1937—Czech Eugenic Society drafts Memorandum with sample directives, publishes it.

1939—1945 WWII; the Holocaust exterminates 95 % of Czech Roma

COMMUNIST CZECHOSLOVAKIA

1948—After the February putsch, policies are adopted to “assimilate” the ethnic Romani which further destroy their traditions, cohesion, and pre-existing modes of integration. Roma become generally identified as “criminal”.

1956—Communist Party decides to address the state of the Roma.

1958—Central Committee of the Communist Party of Czechoslovakia Politburo issues a Resolution on 8 April on “Work with the Gypsy Population in the Czech Socialist Republic”, and the Czechoslovak legislature adopts Act No 74/1958 on the Permanent Settlement of Nomadic Persons. The earliest known postwar coercive sterilization dates from this year; victims are largely illiterate.

1960—administrative reform blocks implementation of the 1958 plans

1961—current Criminal Code adopted

1964—current Civil Code adopted

1965—Central Committee of the Communist Party of Czechoslovakia Presidium Resolution 15 June tasks Govt to create a committee to handle “Gypsy population issues”. Govt does so in Oct and in Dec adopts “Rules for Organizing the Dispersal and Transfer of the Gypsy Population.”

1966—current Health Care Act adopted

1968—Government committee on “Gypsy population issues” disbanded, dispersion attempt ends. August: Warsaw Pact invasion and subsequent “normalization”.

1970—Czech Socialist Republic adopts Res. No. 279/1970 calling the prohibition of nomadism unconstitutional. The Union of Gypsies-Roma criticizes Labor Ministry proposals to sterilize Roma. Regional National Committees report “Gypsies breeding high rate of imbeciles” and the need to “curb” their growth. Campaign of “medical enlightenment” regarding family planning begins.

1971—Health Ministry adopts the Sterilization Directive, establishing medical indications for sterilization, the need for sterilization commissions to pre-approve sterilization, and the principle of patient consent.

1972—Czech Socialist Republic focuses on Romani unemployment and integration, establishes own Commission on Gypsy Population, codifies this in Resolution 231/1972. National Committees report that Romani applicants for termination of pregnancy are being given preferential treatment. Among Czech social workers there are no Roma employed.

1973—Policy of “sterilization benefit” officially begins. Social workers provide financial incentives to those agreeing to sterilization. They also threaten sanctions if cooperation is not forthcoming.

1976—Labour and Social Affairs Ministry issues handbook on work with the “Gypsy” population stating women 35 or under with four children or women 35 and over with three children meet the medical indications for sterilization.

1977—Charter 77 founded

1978—Charter 77 reports on the sterilization benefit practice (one paragraph) in its Document No. 23 on the Roma situation.

1988—Section 35 of the Czech Socialist Republic’s Health Ministry Decree No. 152/1988 implementing the Czechoslovak Soc. Rep’s Social Security Act further codifies existing practice by standardizing the sterilization benefit. Ruben Pellar begins mapping the practice in the Czech Socialist Republic for one year; it is widely known that social workers achieving sterilization “targets” are awarded recognition. The Czech Socialist Republic disbands its Commission on Gypsy Population.

1989 Velvet Revolution. Pellar finds the highest sterilization benefits in his data set are being paid to Romani women below 40 who have never given birth. Regional National Committees recommending promotion of three-child families through social benefit adjustment and obligatory sterilization after a sixth child.

NEWLY DEMOCRATIC CZECHOSLOVAKIA

1990—Charter 77 publishes its Document No. 3 on January 28 devoted solely to sterilization of Roma, reporting that in one year in the East Slovakia region alone, 1,111 Romani women had been sterilized, and reporting coerced terminations of pregnancy after sterilization interventions failed. The Czechoslovak General Prosecutor initiates an inquiry and asks the Czech and Slovak states to ask their Health Ministries to respond. They report on existing practice and he instructs the separate State Prosecutors to inform the Health Ministries of their specific failures to uphold the law. No criminal prosecutions are initiated.

1991—Legal entitlement to social benefit for undergoing sterilization is rescinded.

1992—Human Rights Watch conducts fieldwork, reports on the practice and on Pellar’s findings, but is unable to match victims’ claims to medical records for verification.

1993—The “Velvet Divorce”

CZECH REPUBLIC AND SLOVAK REPUBLIC NOW SEPARATE COUNTRIES

1997—Pellar asks the Office for the Discovery and Investigation of the Crimes of Communism (ODICC) to investigate sterilizations on 23 Sept. Czech TV reporter Dana Mazalová interviews Romani women about sterilization. Council of Europe adopts the

Convention for the Protection of Human Rights and Dignity of Human Beings with Regard to the Application of Biology and Medicine.

1998—ODICC adopts a statement that the Constitution has not been violated in sterilization cases. Court in Plzen awards damages to a woman who was sterilized despite her express refusal.

1999—the Committee for the Elimination of Discrimination Against Women (CEDAW) adopts its General Recommendation 24, point 20 concerns informed consent.

2000—ODICC closes its inquiry August 8, suspends the sterilization cases because it says there is no reason to believe a crime has been committed.

2001—Council of Europe “Bio/Medicine” Convention becomes binding on the Czech Republic, with priority over Article 10 of the Czech Constitution.

2002—August-October, the Counseling Center for Civil Rights in Slovakia goes to East Slovakia on a fact-finding mission into sterilization cases.

2003—The Counseling Center publishes its “Body and Soul” report about Slovakia on 28 January alleging not only coerced but forcible sterilization. Of 230 women interviewed, 140 showed strong indications that they had been forced to under the procedure. Victims alleged physical and verbal abuse by medical personnel. The Slovak government initiates an inquiry. The Slovak Government Human Rights section files a criminal complaint and police initiate investigation. The Health Ministry performs an expert inspection at hospitals, calls for victims to come forward, but finds no wrongdoing. The Health Minister criticizes “Body and Soul” and the participation of a US-based NGO in its drafting, implying a conspiracy to complicate Slovakia’s EU entry. The report’s authors are threatened with prosecution, as are victims. The Counseling Center responds that the police investigation was not impartial, that victims were harassed by police investigators, that local medical personnel refused to provide information on how to evaluate the damages caused to the victims in monetary terms, etc. The Health Ministry responds that it found no racial discrimination during its inspection and no “significant” violations. The Slovak Central Ethics Commission then drafts legislation that makes it impossible for sterilization to ever be medically indicated. Slovak Govt Resolution 1018 of October 28 closes the case and tasks the Interior Ministry with improving human rights training for police, and tasks the Health Ministry with ensuring non-discrimination in service provision and effective sanctions against discrimination.

April 2003—The European Roma Rights Center (ERRC) presents its first research from the Czech Republic on this question at an OSCE meeting; the Czech delegation calls the conclusions drawn exaggerated. ERRC also express its support for the authors of “Body & Soul”.

2004—Czech Republic and Slovak Republic join the European Union

As of August 2006, the last known coercive sterilization in the Czech Republic dates from this year.

February: European Roma Rights Center raises the sterilization issue with the Czech Ombudsman.

9 September: 10 coercive sterilization complaints are filed by Romani women with the Czech Ombudsman.

22 September: Czech Ombudsman asks the Health Ministry to investigate, begins his own review of the Health Ministry’s responses and hands over incoming complaints on an ongoing basis.

October: Czech Health Ministry establishes an expert committee. Ombudsman asks the Labor and Social Affairs Ministry to report the impact of the Czech Socialist Republic's Health Ministry Decree No. 152/1988 implementing the Czechoslovak Socialist Republic's Social Security Act. Ombudsman asks the General Prosecutor to review the previous ruling of the Czechoslovak General Prosecutor in this matter.

November: Health Ministry decides to establish an Advisory Board, not just an expert committee.

December: the Advisory Board first convenes

2005 January—30 day waiting period between a caesarean and sterilization procedure takes effect in Slovakia.

March: Ombudsman passes eight sterilization complaints to the General Prosecutor for criminal investigation, which passes them on to the regions.

April: ERRC, Czech NGOs, sterilization victims and their counsel meet with the Ombudsman. The Ombudsman presents them with the following information:

- 76 complaints received at that point
- Distribution of ages at time of sterilization: 4 % unrecorded, 4 % under 20, 74 % between 20–35, 17 % over 35
- Distribution over time: 43 % of complaints pre-1989, 10 % of complaints between 1989–1991, 45 % after 1991
- Geographical distribution: complaints from all regions, most from the north where Romani population is high

The Health Ministry Advisory Board meets intensively during April.

July: Advisory Board meets again

August: Ombudsman forwards complaints to the General Prosecutor for investigation.

September: The UN Committee on the Elimination of All Forms of Discrimination Against Women notes the Slovak Government's response to the sterilization allegations, which the Slovak Government tries to spin as a statement that "sterilization is over" in Slovakia.

8 September: 87 complaints received total, the Czech Ombudsman tells the Health Ministry Advisory Board that its investigation of the first 50 complaints has been too sluggish

29 September: Advisory Board responds that upcoming amendments to the Health Care Act will address all concerns and says it will meet again in November. Czech Ombudsman responds saying their response is inadequate; at that point he had reviewed the Health Ministry's response to 50 cases and decided to close the inquiry.

November: District Court in Ostrava rules in the civil case of Helena Fereňková vs. Vitkovice Hospital. Ms Fereňková alleged coercive sterilization at age 19. Court finds violations of law and that the sterilization was coerced, orders the hospital apologize in writing, and rules the statute of limitations for financial compensation had expired but affirms F.'s right to compensation. Appeal is underway.

December: Czech Ombudsman issues his Final Statement, an historic document for the post-communist world in terms of its scope. He reproaches the Health Ministry, noting that even its sluggish and overly formalistic inquiry found doctors to have not followed legally established procedure and free and informed consent to have been lacking in more than half of the cases they managed to review. The Ombudsman's own analysis finds the

sterilizations to have been illegal due to lack of free and informed consent in 100 % of the complaints, and says the consent as given raised grave doubts as to the information process preceding consent, during which the combination of doctor and social worker coercion rendered any consent given legally invalid. His primary reservation is worded as follows:

“From a legal perspective the unlawful nature of the sterilisations lies in the fact that consent, that was without error and fully free in the human rights sense, was not given to the interventions. This conclusion applies to all cases without exception.” (pg. 76 of the official English translation).

While emphasizing that implementation of the law in practice is more important than legislation itself, he recommends legislating a waiting period between approval by a sterilization commission and granting of consent and performance of the surgery, and requiring doctors to advise their patients of contraceptive alternatives to sterilization; changing the culture of medical services provision and raising awareness among patients of informed consent; establishing a compensation mechanism for victims in cases where social workers were involved in the coercion, which he defines as cases from 1973–1991 (despite allegations that social workers were involved as late as 1995), while noting that social work files pre-1990 have most probably already been shredded since they are not required to be archived indefinitely. He does not find the state liable for coerced sterilizations incurred exclusively by doctors. He also refuses to characterize the pre-1989 policy as having been of a “genocidal nature”.

2006: February: The Czech Government Human Rights Council sends the Ombudsman’s recommendations and those of victim advocates to the Czech Government Human Rights Council Subcommittee on Biomedical Ethics for processing into a material the Human Rights Council could advise the Government to adopt. The UN Committee on the Elimination of All Forms of Discrimination Against Women requests the Czech Government clarify what it has done or plans to do in response to the Ombudsman’s recommendations.

May: the Czech Government responds to the UN Committee on the Elimination of All Forms of Discrimination Against Women, relying on Health Ministry information. At the Czech Government, the Human Rights Council votes to adopt the material produced by the Human Rights Council Subcommittee on Biomedical Ethics, with ministerial members of the Council blocking adoption of the material, the Health Ministry in particular disavowing any state responsibility at all and even arguing that the Czech Republic is not the successor state to the Czechoslovak Socialist Republic.

June: the ERRC, League of Human Rights and Gender Studies submit a Shadow Report on the third periodic report of the Czech Republic to CEDAW, emphasizing:

- 1) the relevant legislation has yet to be amended
- 2) the Health Ministry has only recommended improving training in patients’ rights as part of “lifelong learning”, not as part of the standard curriculum
- 3) the Government has not indicated how it intends to sanction the wrongdoing
- 4) the Government seems not to appreciate the desirability of safeguarding the prevention of future harms, but is content to propose “expert review” of any future allegations
- 5) the Government has proposed no remedy for victims whose medical records have been destroyed.

The Shadow Report authors recommend:

- 1) The Government immediately and publicly apologize to the victims.
- 2) The Government immediately adopt the legislative changes proposed by the Ombudsman.
- 3) The Health Ministry immediately implement the “Methodological measures” proposed by the Ombudsman.
- 4) The Government immediately establish the compensation mechanism proposed by the Ombudsman.
- 5) The Government establish a fund to assist victims in bringing claims under the compensation mechanism.
- 6) The Government seek legal opinion as to the best method for providing compensation in cooperation with the Council of Europe.
- 7) The Government publish the criteria for establishing veracity of claims.
- 8) The General Prosecutor monitor the criminal investigation into the coercive sterilization complaints and publish its findings.
- 9) The Government make financial assistance available to victims who wish to undertake artificial insemination.
- 10) The Foreign Affairs Ministry raise with the Slovak Government the issue of compensation for persons sterilized in the Slovak Republic who are now Czech citizens.

August: News item reports the Czech Medical Chamber is “unifying consent forms” in time for the Health Minister’s directive on informed consent to take effect 1 November. Of the eight criminal charges filed in March 2005, five have been dismissed, with experts and police characterizing acts which are prima facie illegal as not constituting violations of the law. The investigations also fail to explore racial motivation. The victims are considering a Constitutional Court complaint.

**MATERIAL SUBMITTED FOR THE RECORD BY BARBORA
BUKOVSKÁ, THE CENTER FOR CIVIL AND HUMAN RIGHTS**

11 August 2006

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Re: Forced sterilization of Romani women in Slovakia

Dear Commission Members:

We are respectfully submitting this letter to supplement the information on the forced sterilization practices of Romani women in the Czech Republic and the investigation of the given practices. Our organization, the Center for Civil and Human Rights (Center), based in Kőosice, Slovakia, has been documenting reproductive rights violations of Romani women in Slovakia since 2002 and representing Romani women in proceedings to obtain compensations for violations suffered. We have been also closely following the activities undertaken in the Czech Republic. Slovakia shares a history of forced sterilization practices of Romani women in former Czechoslovakia during the communist regime and following the fall of communism. Given this shared history and continuous violations of reproductive rights of Romani women, we believe that both governments must take steps to ensure the realization of these rights and provide remedies to victims.

We wish to bring to the Committee's attention the following issues of concern, which directly affect Romani women in Slovakia.

Our organization has been documented practices of forced and coercive sterilizations performed on Romani women after the fall of communism since 2002. In January 2003, we (together with the Center for Reproductive Rights based in New York) launched a detailed report entitled *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*. *Body and Soul* that documented the results of a our fact-finding missions in eastern Slovakia in 2002 and cites 110 cases of forced and coerced sterilization of Romani women. The Report also reveals widespread patterns of discrimination in public hospitals, including verbal and physical abuse by medical staff, racially discriminatory standards of care, misinformation in health matters and denials of access to medical records.

Our findings indicate that women are coerced by doctors to consent to sterilization. Coercive sterilization practices are occurring while women are undergoing caesarian sections. The lack of full and informed consent in performing sterilizations is striking. Some women know they have been sterilized and while other women only suspect they have. Women that do know they have been sterilized were told by doctors that the next pregnancy was life threatening; that either they will die or their child will die during birth, therefore they should be sterilized during the caesarian section operation. These women are usually coerced to authorize sterilization under situations where they are not able to make clear, informed decisions. Many women are first told of the purported future 'risk' of their next pregnancy and are asked to sign an informed consent document while on the operating table and in great pain (undergoing a caesarian section). Others are told nothing except that if they want to live they have to be sterilized, and still other women are told to sign documentation authorizing sterilization, after they are sterilized. In addition, we have documented cases in which unmarried minors were sterilized during a caesarian section without parental consent. Women are not given any information on post-sterilization medical care.

Moreover, there are many women who have had caesarian sections who have not been able to conceive but do not know if they have been sterilized, they simply do not remember if they signed a document consenting to be sterilized and do not recall the doctor telling them there was a risk in getting pregnant again. Many of these women suspect they have been sterilized. While there are many reasons that could contribute to infertility, we have documented a case where a woman had no knowledge that she was sterilized until we found documentation in her medical file that in fact showed she was sterilized. It is clear is that informed consent standards are not being observed resulting in grave violations of fundamental human rights.

Apart of forced sterilization, Romani women are suffering other human rights violations when seeking reproductive health services. Many hospitals in eastern Slovakia practice a policy of segregation in their maternity wards. Roma women are sent to rooms that are separated from those of white women and are often prohibited from using the white women's bathrooms and dining facilities. Their requests to be moved to different rooms are often ignored or met with insults from doctors and nurses. Hospital personnel have offered different justifications for this practice. Some claim that Roma women themselves desire to be segregated. Others have justified the practice by saying that it is not based on ethnicity, but on social categories, such as those with "low hygiene" versus "high hygiene" or those who are "adaptable" versus "non-adaptable." Some doctors have stated that this practice has been adopted for the benefit of white women who do not want to be in the same maternity rooms as Roma or that the practice was necessary to "respect the intimacy of the white woman."

Verbal and physical abuse against pregnant Romani women is also prevalent in the healthcare system in Slovakia. Roma women who seek gynecological care are degraded by doctors and nurses who refer to them as "dirty, stinky gypsies," "stupid cigani," and "young whores" who have too many children. Moreover, Roma women have complained that doctors and nurses in eastern Slovak hospitals have slapped them or tried to suffocate them during childbirth for either complaining about pain or for "having too many children."

The report *Body and Soul* has received extensive support in the international human rights community as well as from international institutions. However, the Slovak government has not yet adequately investigated or prosecuted those medical personnel responsible for the illegal sterilization of Romani women or of the charges of racial discriminatory conditions which exist in the regional hospitals. Although, under the international pressure, the Slovak law enforcement officials and the Ministry of Health launched separate investigations into the findings of the report, each investigation thus far had been similarly flawed: each governmental entity has reached hasty conclusions, ignored key facts and created an intimidating atmosphere for victims that has tended to dissuade them from voluntarily coming forward.

At the same time, Slovak officials have tried to intimidate both Romani women—victims of these practices—and their advocates. Authors of the report have been threatened by the Slovak officials with criminal investigation on two grounds: 1) failure to inform law enforcement officials of criminal activities if the report's findings are found to be true; and 2) "spreading false rumors and creating panic in society" under section 199 of the Criminal Code if the findings are found to be false. Romani women are suffering from the harassment of law enforcement bodies as well as from the medical personnel that retaliates against them for seeking vindication of their rights.

Attorneys at our organizations have been working on civil claims on behalf of Romani women seeking non-pecuniary damages. To date, however, no civil compensation claim has been successful as all courts rejected the claims of Romani women stating that forced sterilizations were medically necessary. Moreover, the local hospitals, local gynecologists and civil courts. In many instances tried to prevent Romani women from pursuing civil claims and denied them the access to their own medical records.

The failure of the Slovak Government to conduct a proper investigation of the above mentioned practices in a fair and just manner not only violates Slovak law but also International and European law enforcement, criminal justice and human rights standards. We appreciate the active interest that the Commission has taken in this issue and we ask it to urge the Slovak Government to comply with its international obligations and to take necessary steps to end and investigate the practices and provide compensations to the victims.

If you have any questions, or would like further information, please do not hesitate to contact us.

Very truly yours,

Barbora Bukovská

On behalf of the Center for Civil and Human Rights

Košice, Slovakia

**MATERIAL SUBMITTED FOR THE RECORD BY CLAUDE CAHN,
PROGRAMMES DIRECTOR, EUROPEAN ROMA RIGHTS CENTRE (ERRC)**

**Coercive Sterilization of Romani Women in Central Europe:
Slovakia**

The Helsinki Commission is today hearing testimony on matters concerning the coercive sterilization of Romani women in the Czech Republic.

These issues have been raised high on the agenda in the Czech Republic in part because they have been particularly severe in Czechoslovakia and its successor states—the Czech Republic and the Slovak Republic. In the former Czechoslovakia, the coercive sterilization of Romani women was elevated to the status of official policy. After the fall of Communism, Czechoslovak officials cancelled this policy, but not all doctors got the message; the practice has continued in both republics until very recently.

They have also been raised high on the agenda in the Czech Republic because of the bravery and engagement of the Czech Public Defender of Rights (“Ombudsman”) and his staff, particularly Deputy Ombudsperson Anna Sabatova. However, it is important in the context of this briefing to emphasize several points:

- In the first place, as Gwendolyn Albert has testified here today, the mainstream policy and law sector of the Czech Republic has not yet acted at all on the Ombudsman’s recommendations, which were published in December 2005. It is not enough for Czech officials to recognise that there has been a serious problem haunting Czech medicine; the government has an obligation both to act to prevent future abuses of this kind (by adopting adequate laws to protect individuals from these extreme harms), and to provide redress from the victims of these practices.

- Secondly, Slovak officials have approached these matters with nothing like the good will that the Czech Ombudsman has brought to the issue. Slovak officials have undertaken almost every possible effort to deny the existence of the problem, to hound the victims into silence, and to thwart any and all efforts to seek justice in these matters. Where Czech officials have to date been delinquent in righting these wrongs, Slovak officials have deliberately and maliciously sought to thwart justice.

- Finally, these are pan-European matters. The Czech and Slovak cases are particularly extreme, but are not isolated aberrations. Legacies of eugenics and racism, combined with weak patients rights cultures and bad law continue to provide a basis for concern. In Hungary, the ERRC is currently involved in litigation relating to coercive sterilisation matters taking place in post-Communism. Germany, Norway, Sweden and Switzerland all have histories of coercive sterilization of minorities and other groups. The Swiss government has acknowledged these practices and published a major study on the matter. The Swedish government has also done so, and has approved a compensation mechanism for victims.

Discussion of these matters follows, with particular focus on the very worrying situation in Slovakia:

SLOVAKIA

In April 2003, the ERRC testified before a Supplementary Human Dimension Meeting of the Organization for Security and Co-operation in Europe (OSCE) that steri-

lizations absent full and informed consent continued to be performed on Romani women in Slovakia. At that time, these matters had taken on urgency as a result of the publication of the report “Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia”, an NGO report providing extensive documentation of these issues.² At the April 2003 OSCE meeting, the ERRC provided its own documentation supporting the conclusions of the “Body and Soul” report.

The profile in cases in Slovakia, as in the Czech Republic, involves race-based targeting of Romani women for invasive and in most cases irreversible surgical procedures aimed at (and in most cases succeeding in) nullifying their ability to have children. The women concerned have been excluded from any form of dignified involvement in decisions to sterilize. Hundreds of women have been bullied or tricked into signing consent forms, signed them only after being informed that the operation had already taken place, or never signed them at all. They have emerged from childbirth traumatized and emotionally scarred for life.

A very frequent profile of such cases is as follows: a Romani woman, frequently from a poor, marginalized family, is recommended for birth by caesarean section. A form of caesarean section operation is performed (from among several available types of such procedures) which, if applied a second time, will make a third pregnancy potentially life-threatening. There are other forms of caesarean section which would not give rise to threats to the mother, but doctors choose not to undertake them. During the second birth, also performed by this particular mode of caesarean section, the woman concerned is sterilized by tubal ligation. Despite ample opportunity during the pregnancy, the woman concerned is never informed that sterilization may even be a possibility during her second birth.

Doctors performing such procedures secure consent for such sterilizations by waiting until the woman concerned is in labor and then requesting signatures on consent forms. Or they wait until she is heavily sedated to press for the signature. Or they offer the forms after the birth as “routine paperwork” to be signed by the out-patient. Or they never secure consent at all. In some cases, there is a visible paper trail of the racial considerations which go into such decisions.

In advanced democracies, standard procedure in such cases involves a formal request by the patient. The patient must fill out a detailed questionnaire to ensure that she understands all possible consequences of such procedures, including possible secondary health effects and the ultimate consequence—a permanent end to all possibilities for childbirth. In countries where legal protections are adequately in place, there is also a “cooling off” period of one or more months, before the operation takes place. Following this “cooling off” period, the person requesting the operation must explicitly re-affirm that they wish to be sterilized. Otherwise, the operation cannot take place.

In Slovakia, the conditions under which Romani women have been sterilized make a complete mockery of the idea of protections of patients against abuses by doctors. Cases documented by the ERRC and others include:

- Cases in which consent had not been provided at all, in either oral or written form, prior to the operation;

²Center for Reproductive Rights and the Advisory Centre for Citizenship and Human and Civil Rights, “Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia”, on the Internet at: http://www.crlp.org/pub__vid__bodyandsoul.html.

- Cases in which consent was secured during delivery or shortly before delivery, during advanced stages of labor, i.e., in circumstances in which the mother is in great pain and/or under intense stress;
- Cases in which consent appears to have been provided (i) based on a mistaken understanding of terminology used, (ii) after the provision of apparently manipulative information and/or (iii) absent explanations of consequences and/or possible side effects of sterilisation, or adequate information on alternative methods of contraception;
- Cases in which officials put pressure on Romani women to undergo sterilisation, including through the use of financial incentives or threats to withhold social benefits.

In a number of the cases documented in 2002 and 2003, explicit racial motive appears to have played a role during doctor-patient consultations. As the U.S. Helsinki Commission has itself noted,³ a number of high-ranking Slovak public officials have in fact made statements promoting the idea that Romani birth rates need to be curbed, possibly by force.

NGO findings were affirmed by a number of intergovernmental authorities during 2003. For example, following visits to Slovakia, the Council of Europe's Commissioner for Human Rights Mr. Alvaro Gil-Robles stated: ". . . on the basis of the information contained in the reports referred to above, and that obtained during the visit, it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent. The information available to the Commissioner does not suggest that an active or organized Government policy of improper sterilizations has existed (at least since the end of the communist regime). However, the Slovak Government has, in the view of the Commissioner, an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision of sterilisation practices although allegations of improper sterilizations have been made throughout the 1990's and early 2000."⁴

The Commissioner further concluded that "The issue of sterilizations does not appear to concern exclusively one ethnic group of the Slovak population, nor does the question of their improper performance. It is likely that vulnerable individuals from various ethnic origins have, at some stage, been exposed to the risk of sterilization without proper consent. However, for a number of factors, which are developed throughout this report, *the Commissioner is convinced that the Roma population of eastern Slovakia has been at particular risk.*"⁵ (Emphasis added.)

Similarly, an independent study mission of the Inter-European Parliamentary Forum on Population and Development (IEPPFD) concluded, "Participants did find, that in most cases Romani woman were sterilized without sufficient information to make an informed consent. This is due to the fact, that hospital doctors do not consider it their duty to inform the woman, even when they should have realised that the patient has not attended prenatal care, where this information is supposed to be given and will also not attend post

³ <http://csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord—id=202&Region—id=0&Issue—id=0&ContentType=R&ContentRecordType=R&CFID=8544015&CFTOKEN=85479108>

⁴ "Recommendation of the Commissioner for Human Rights Concerning Certain Aspects of Law and Practice Relating to Sterilization of Women in the Slovak Republic", paras. 51 and 52, at: http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/CommDH%282003%2912_E.doc

⁵ *Ibid.*, Para. 35.

natal care. In cases of emergency the patient is also not informed. This is open to very strong criticism.”⁶

At the April 2003 OSCE meeting, Slovak officials responded to reports about the coercive sterilization of Romani women by renewing threats made previously, at the time of the publication of the “Body and Soul” report, that the authors of the report would be criminally prosecuted. If the report proved correct, these officials maintained, then the authors of the report would be prosecuted for failing to report a crime (a criminal offence in Slovakia). If, on the other hand, the “Body and Soul” report proved to include false information then, said Slovak officials, the authors of the “Body and Soul” report would be prosecuted for spreading false reports, also a criminal offence in Slovakia.

In addition:

- The Slovak Ministry of Health directed hospitals not to release the records of the persons concerned to the legal representatives of the victims;
- Slovak prosecutors—despite extensive advice not to do so—opened investigations for the crime of genocide, a crime so serious that evidentiary standards could not be met, and they then predictably concluded that this crime had not been committed, ending their investigation into the matter. The same authority has repeatedly released misleading information to the media, deliberately perpetuating a state of delusion about the matter currently prevailing among the Slovak public.
- Slovak police investigating the issue urged complainants to testify, but reportedly warned a number of them that their partners might be prosecuted for statutory rape, since it was evident that they had become pregnant while minors; under this pressure, a number of victims withdrew testimony.

Efforts to coercively sterilise Romani women in the Czech Republic and Slovakia have arisen as a result of a combination of factors including but not necessarily limited to: (i) the unaddressed legacy of eugenics in Central and Eastern Europe, which continues to influence medical practice in these countries to today; (ii) a general vacuum of respect for patients’ rights, (iii) particular contempt for the moral agency of Roman women; and (iv) “concern” at high levels of Romani birth rates. As a result of these, hundreds of Romani women have suffered extreme harms at the hands of doctors. These issues have been raised regularly by domestic and international agencies since the late 1970s. As yet, however, no action by either government has been sufficient to provide adequate remedy to victims, or even to stop the practice once and for all.

A number of legal complaints are pending with respect to these issues in the Czech Republic and Slovakia. One complaint is pending concerning these issues in Hungary. Since no authority in any country in Central and Eastern Europe has yet provided the kind of just satisfaction the governments of Norway and Sweden have managed on coercive sterilization issues, these efforts will continue. There are also reasons for believing that the time is right for a pan-European or even global initiative to examine the issue and to provide guidance on ways forward. This is an area in which U.S. leadership can play a key role in seeing justice done.



⁶ See: http://www.iefpd.org/index.asp?ID=360&id_sous__menu=14

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