



LIGA LIDSKÝCH PRÁV



JOINT SUBMISSION

**SHADOW REPORT  
TO THE COMMITTEE ON THE ELIMINATION  
OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

FOR THE  
**CZECH REPUBLIC**

UNDER ARTICLE 18  
OF THE CONVENTION ON THE ELIMINATION  
OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

FOR ITS CONSIDERATION  
AT THE 47<sup>TH</sup> SESSION  
4 – 22 OCTOBER 2010

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## SUBMITTING ORGANIZATIONS

**League of Human Rights** (Liga lidských práv, LIGA) is a non-governmental organisation based in the Czech Republic, which works towards the protection of human rights by working within the scope of the rights guaranteed by the Charter of Fundamental Rights and Freedoms, and other binding international conventions. LIGA promotes human rights with the aid of research and education in order to improve the quality of life for all, and by undertaking strategic cases in court, producing innovative arguments and landmark solutions.

Our ultimate vision is to develop a society in which human rights are respected in daily life, and where citizens are able to defend and protect themselves easily and efficiently, and without hindrance, from encroachments and violations of their fundamental rights.

LIGA is a member organization of the International Federation of Human Rights (FIDH).

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**Persefona** was founded by separating from the League of Human Rights program against domestic violence, which was helping victims of domestic violence since 1999. Persefona offers its services mainly to clients in Brno and South-Moravian region. Whole-country impact have their educational and expert activities, where Persefona is concerned on workshops for broader professional public and points out to the “white areas” in services for victims of domestic violence.

Persefona is a member of association KOORDONA, coalition of Czech organisations dealing with women rights, domestic violence and violence against women. Representatives of Persefona took part on creation of community plan of social services in city Brno and are also members of interdisciplinary team working on these matters.

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The two organizations named above have contributed to this shadow report according to their experience, as follows:

- League of Human Rights: coercive sterilizations, health care
- Persefona: domestic violence, health

# I. COERCIVE STERILIZATIONS OF ROMANI WOMEN (Articles 10, 12 and 16 of the Convention)

## I.1. Introduction<sup>1</sup>

From the 1970s until 1990 the Czechoslovak government sterilized Romani women programmatically, as part of policies aimed at reducing the “high, unhealthy” birth rate of Romani women. This policy was described by the Czechoslovak dissident initiative Charter 77, and documented extensively in the late 1980s by dissidents Zbyněk Andrš and Ruben Pellar. Throughout 2005 the Czech Ombudsman opened investigation of these practices. The Ombudsman report published in December 2005 concludes that *“The Public Defender of Rights believes that the problem of sexual sterilization carried out in the Czech Republic, either with improper motivation or illegally, exists, and Czech society has to come to terms with this”*.<sup>2</sup> The Ombudsman also brought three areas of recommendations in his report:

- Changes to Czech domestic law to better anchor the principle of informed consent in these areas.
- Supplementary measures to ensure a change of culture with regard to informed consent in the medical community, as well as among users.
- A simplified procedure for compensation to victims, where the intervention was result of implementing coercive sterilization policy.

In its concluding comments of 25 August 2006 the Committee urged the Czech Republic to *“take urgent action to implement the recommendations of the Ombudsman/Public Defender with regard to involuntary or coercive sterilization, and adopt without delay legislative changes with regard to sterilization, including a clear definition of informed, free and qualified consent in cases of sterilization in line with the Committee’s general recommendation 24 and article 5 of the European Convention on Human Rights and Biomedicine; provide ongoing and mandatory training of medical professionals and social workers on patients’ rights; and elaborate measures of compensation to victims of involuntary or coercive sterilization. It also calls on the State party to provide redress to Roma women victims of involuntary or coercive sterilization and prevent further involuntary or coercive sterilizations. The Committee requests the State party to report on the situation of Roma women pertaining to the issue of coercive or involuntary sterilization, in its next periodic report, including a*

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<sup>1</sup> The issue of coercive sterilizations was also in detail described in the shadow report submitted to the Committee for its 36th session by the European Roma Rights Center, League of Human Rights and Gender Studies.

<sup>2</sup> See the Ombudsman’s report available in English from <http://www.ochrance.cz/stanoviska-ochrance/zasadni-stanoviska/stanoviska-2005-2007/stanovisko-ve-veci-provadeni-sterilizaci-23122005/>

*detailed assessment of the impact of measures taken and results achieved."*

## **I.2. Latest development**

On its session on 13 December 2007 the Governmental Council for Human Rights adopted a motion on unlawful sterilizations and suggested that the government accepts the fact there were the practice of unlawful sterilizations, expresses public apology for that and commits themselves to take steps to prevent similar practice in future. The Council for Human Rights also suggested to the government to establish a special investigation body to investigate the practice. However, the government has never discussed the motion.

In 2009 the Human Rights Minister Michael Kocáb presented its own motion to the government. Based on this motion, on the 23 November 2009 the Czech government adopted a resolution no. 1424<sup>3</sup> expressing government's regrets over the individual irregularities found in the performance of sterilizations contrary to law. The government also called to the Minister of Health to provide the government with information regarding sterilizations.

Although LIGA welcomes this resolution of the Czech government, we also remind that recommendations of the Ombudsman still have not been followed. For most of the victims of the practice of coercive sterilization it has been impossible to receive any compensation. LIGA lawyers have been represented three victims of coercive sterilization before the civil courts. In all the cases the courts declared that the sterilization was performed unlawfully and ordered the hospital to send a written apology to the victim. However, only in one cases of 2003 the victim was provided financial compensation of 200.000 CZK. In the rest of the cases where the civil application were lodged with the court more than three years after the sterilization, the courts applied the statute of limitation and rejected the claim.

Furthermore, apart from the Ombudsman's investigation of cases collected by non-governmental organizations in 2004 and 2005, there has been no official investigation of the practice. On 11 March 2005 the Ombudsman sent eight sterilization cases to the Supreme Public Prosecutor, along with the fact that the facts of the cases indicate that crimes may have been committed. However, although in some of these cases civil courts confirmed that the sterilization was unlawful, none of the cases were heard by criminal courts and investigators did not try to deal more than with these single cases and to investigate the former practices regarding sterilization in the hospitals. LIGA has information that the minority of Romani women was not the only group were coercive sterilization practice

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<sup>3</sup> Usnesení Vlády ČR ze dne 23. 11. 2009, č. 1424 k Podnětu ministra pro lidská práva ke sterilizacím žen v České republice prováděným v rozporu s právem.

was applied. There is also large group of women with intellectual disabilities who were placed in social care homes and sterilized without their consent. In many cases these women were deprived of possibility to decide on themselves through the guardianship and the institution where they were placed was appointed as their guardian and got a complete power

### **Recommendation:**

The government should take actions to fully investigate all possible cases of unlawful sterilizations and to do so the Government should create a special investigation group covering also members of civil society and secure its access to health documentation of any patients and mandate to conduct effective investigation.

The government should establish a fund for compensation of unlawfully sterilized woman and provide a necessary assistance for victims to obtain the compensation.

The government should also prepare new legislation on sterilizations that would respect rights of patients.

## **II. OBSTACLES TO THE FREE CHOICE OF PLACE TO GIVE BIRTH**

### **(Articles 12 and 16)**

#### **II.1. Freedom of choice of place to give childbirth**

A women's right to free choice of doctor is connected also with a right to choose a place to give childbirth. As LIGA reported also to the official Report on Human Rights in 2008<sup>4</sup>, Czech authorities are building obstacles for midwives to prevent childbirths outside the maternal hospital.

In April 2009 the Public Defender of Rights (Ombudsman) launched an examination of procedure in deciding of regional offices in matters of granting a registration to functioning to non-state medical facilities, where childbirths with midwives are possible. In his Report on examination<sup>5</sup> the concluded that in the Czech Republic there exist unequal approach to operators applying for registration and states that current legislation is not sufficient. Due to the report missing legislation is result of insufficient legislative work of the ministry.<sup>6</sup> In the consequent Final Statement<sup>7</sup> form February 2010 Ombudsman aside from insufficient legal enactment also criticized the Ministry's of Health commonly used argumentation, that the law no. 96/2004 Sb. does not settle the option for giving childbirth only with midwife outside the maternal hospital, because we can speak about "physiological childbirth" only subsequently, after it went without any complication. From this enactment Ministry deduce the impossibility of performing a midwife work alone, because we can never assume beyond all doubts, that the childbirth will be physiological. The Ombudsman clearly stated: "This interpretation I consider as a non-systematic, logically inconsistent up to absurd, because this interpretation of the legal term would practically in fact made the realization of it impossible."<sup>8</sup>

Abroad it is a common thing that so called childbirth houses are usual alternative to maternal hospitals and home births. Situation in Czech

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<sup>4</sup> Report on Human Rights in the year 2008, available at: [http://www.vlada.cz/assets/media-centrum/aktualne/Zprava-LP-2008\\_vlada-final.pdf](http://www.vlada.cz/assets/media-centrum/aktualne/Zprava-LP-2008_vlada-final.pdf), p. 75 (cit. 15.2.2010).

<sup>5</sup> Report on examination in matter of the procedure by county offices in deciding of the awarding the registration to operation non-state health facilities, where is possible to give birth with assistance of midwives from the day 4 November 2009, case no. 2481/2009/VOP/MP.

<sup>6</sup> Ibid. p. 17.

<sup>7</sup> Final statement in matter of the procedure by county offices in deciding of the awarding the registration to operation non-state health facilities, where is possible to give birth with assistance of midwives from the day 23 February 2010, case no. 2481/2009/VOP/MP.

<sup>8</sup> Ibid. p. 4.

Republic is eloquently characterized by a story of Birth House at Stork, which should broaden the childbearing care of Czech women.<sup>9</sup> This house asked for relevant permissions in year 2005, but it has not closed the registration procedure yet due to circle of refusal decisions, which are canceled and then delivered again. The Municipal court of Prague was dealing with this case in year 2009 and canceled the decision of Ministry of Health from 22 of January 2007 for non-reviewability.<sup>10</sup> League of Human Rights and Birth House at Stork in a common press release criticized the approach of Ministry of Health, who obstruct midwives to help women after normal, healthy and non-complicated childbirth, who choose for their childbirth other than hospital setting.<sup>11</sup>

### **Recommendation:**

The Government should secure free choice of place to give birth, regardless of if she prefers hospital, her home place or a birth house, for any woman including access of a health care professional of the women's choice.

## **II.2. Opportunity to leave the hospital with the child after the birth**

In the year 2007 a case of a woman from Hořovická hospital<sup>12</sup>, who left the hospital just few hours after the childbirth with a completely healthy child, was broadly covered by the media. From the initiative of the hospital and the child welfare department the court delivered a preliminary ruling according to which the child was delivered back to the hospital with the assistance of police. Mother came back with the child. This case launched a public discussion and pointed on the fact that in practice the medical stuff more follows methodic provisions called "Health facility policy for releasing newborns to domestic care" published in 7/2005 bulletin of Ministry of Health than the law. On the basis of this policy many hospitals are still persuaded that they cannot release the mother of the newborn child sooner than 72 hours after childbirth, although it should be clear that this methodic cannot establish any duties to parents. The hospital can take any steps against the parents only in case the child is in risk of death or severe health problems. The procedure of the authorities in the above case was also criticized by the former Minister for Human Rights, MUDr. Džamila Stehlíková.<sup>13</sup>

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<sup>9</sup> Available on web sites: <http://www.pdcap.cz/> (cit. 15.2.2010).

<sup>10</sup> See also Judgment of Municipal Court of Prague from the day 19 March 2009, case no. 10 Ca 145/2007-59-64, p. 2.

<sup>11</sup> Press release "It's not important where, but how the child is born" from the day 16 March 2009. available at: <http://www.llp.cz/cz/tiskove-zpravy/neni-podstatne-kde-ale-jak-se-dite-narodi-z267> (cit. 15.2.2010).

<sup>12</sup> E.i. <http://aktualne.centrum.cz/domaci/spolecnost/clanek.phtml?id=512666> (15.2.2010).

<sup>13</sup> See also: Official report of Stehlíková: child is not a "possession of the state". To remain in a hospital for 3 days after the childbirth is a right of a mother not her duty. Available at: [www.aperio.cz/download/071107\\_TZ\\_DS-1.doc](http://www.aperio.cz/download/071107_TZ_DS-1.doc) (cit. 15.2.2010)

**Recommendation:**

The Government should take all the necessary steps to secure possibility to leave hospital with a healthy child at any time after the child birth for any woman.

### **III. DOMESTIC VIOLENCE (Preamble, Articles 1 and 2)**

Meeting of the Committee on Elimination of All Forms of Discrimination against Women, that took place from 7 to 25 August 2006 recommended to the Czech Republic to focus more on domestic violence through full implementation and closer monitoring of the effectiveness of Act No. 135/2006, Coll. and amending current laws in the area of protection against domestic violence. The Czech Republic created a National Action plan to fulfil the recommendation with several aims. In following points we would like to stress few problems, which are connected with this National Action Plan.

#### **III.1. Assistance to persons in danger of domestic violence (Goal no. 1 of the National Action Plan)**

##### The Problem with the length of judicial proceedings in cases of settling wife's maintenance and tenancy of entirety settlement

The major problem, which our clients faces, is a problem of settling wife's maintenance (§ 91 art. 2 Law no. 94/1963 Col.) and a problem of tenancy of entirety settlement (§ 149, § 149a, § 150 of The Civil Code) especially in relation to the length of judicial proceedings in these cases. Common type of domestic violence is economy violence. In this case woman is totally eliminated from using tenancy of entirety, has no money and no chance to provide basic necessities of life in case of leaving violent partner, which leads women to stay with violent partner in common household in most cases. In a case of married couple, the last chance to ensure proper level of living for the women is to take an action to settle wife's maintenance and when the couple is divorced to take an action to tenancy of entirety settlement. Principles on which basis judges make decisions are from the point of view of the victim fairly-minded, because in case of wife's maintenance settlement has woman right to equal level of living as her husband and in case of tenancy of entirety settlement the court value bread job and care about household and child welfare the same. The problem is the length of judicial proceedings, because it is not exception that the judicial proceedings do not start before one year after taking an action to the court and the case is not finished after two to five year period. For the victim it is than impossible to count with this money in case of leaving the violent partner in base, although she has the right to this money.

**Recommendation:** Determine time-limits for this type of actions in the Code on Civil Proceedings.

The problem with getting a low cost housing and providing a sanctuary accommodation for women, who are at risk of domestic violence

In conditions for making a contract to municipal flat tenancy, there is no attention paid to questions whether or not the applicant is a woman at risk of domestic violence. We believe that women at risk of domestic violence have a need of low cost housing. The problem is also in providing sanctuary accommodation. It should be possible to place woman in need in this type of facilities with priority.

**Recommendation:** Determine uniform conditions for providing of municipal having regards to the financial needs of domestic violence victims. Determine conditions for priority placing of domestic violence victims into sanctuary accommodation.

The problem with the possibility to ask for a state-paid attorney in criminal cases, when victim suffered only a moral damage (§ 51a Code of criminal proceedings)

According to the current Code of Criminal Proceedings the victim without sufficient economic background for paying attorney by herself, has a possibility to apply for court-paid attorney only if she suffered material damage. When the victim suffered only a moral damage, which is quite common in cases of domestic violence, victim has no claim on attorney paid by court.

**Recommendation:** Change the current Code of Criminal Proceedings and add a provision in which would be explicitly stated that the right to ask for court-paid attorney has also a victim who suffered only moral damage.

The problem with protection of the domestic violence victim during criminal trial proceedings (§ 46 Code of Criminal Proceedings)

Our clients, who announce domestic violence crimes to police aren't often sufficiently instructed about their rights in criminal proceedings. We believe that the police should always give a victim as much information (and as correctly) as it is possible. The victim should be instructed especially about her rights to ask for protection. It is much more difficult for the victim of domestic violence to announce the crime than for the other victims. It is mainly because of the close relationship between the victim and the offender. It is typical for victim suffering from domestic violence to be shaky, have very low self-confidence and live in constant fear. The proper instruction from the policeman who receives criminal

complaint and a policeman's offer of protection is for the victim very helpful.

**Recommendation:** Include domestic violence issues into obligatory education of police officers.

### **III.2. Children in danger of domestic violence (Goal no. 2 of the National Action Plan)**

The problem of custodial court's decision in cases of children, whose mother is a victim of domestic violence

From our clients we know about many cases where court set down an alternate care for children (§ 26 art. 2 of the Family Code) despite of explicit disagreement of our clients. The custody courts pay no attention to questions of domestic violence. We believe that in the cases, when mother is the victim of domestic violence from the child's father, alternate care for child is inappropriate. One of the basic premises for successful alternate care is the ability of parents to make an agreement about the basic principles of the breeding and care. Contrary to that the basic characteristic of domestic violence is inequality between parents, mental subordination of the victim, which totally excludes making any agreement.

**Recommendation:** Determine the duty for subsequent education focusing on domestic violence for judges of custody courts.

The problem of prescribing a mediation by an authority of child welfare department as a solution of conflicts between parents, if mother is a victim of domestic violence and the father is offender (§ 12 act no. 359/1999 Col.).

The lack of interest in domestic violence issues appears not only at custody courts but also at child welfare departments. We know more and more cases where social department of municipal office order (under the threat of a fee) mediation in order to solve parent's problems, if the mother is the victim of domestic violence. We think the mediation is an inappropriate way how to solve these conflicts because of the inability of victim to make an agreement with the offender (mediation is a procedure where the third independent party helps parties to reach an agreement). A precondition of this agreement should be the equality of parties and the

equality is missing in cases of domestic violence. This inequality of parties cannot be healed by authority of social worker or mediator.

**Recommendation:** Determine the duty for subsequent education focusing on domestic violence for social workers.

### **III.3. Working with offender (Goal no. 2 of the National action plan)**

#### The problem of fractionalise care provided to offender

There is no unified model of working with the offender. There should be a unified model which would deal with all offenders and there should be a coordination not only within the Czech Republic Probate and Mediate Office but also coordination of this office with non-profit organizations which work with offenders.

**Recommendation:** Enact a law which would determine uniform model of working with the offender.

## **IV. RAPE** **(Preamble, Articles 1 and 2)**

### **IV.1. Availability of legal representation by attorney for victims of rape crime**

According to existing Code of Criminal Proceedings only the victim that claims reparation for the material damage can apply for court-paid attorney. In the rape case the victim mostly suffers only a moral injury, not the material damage. It means that the attorney for free is usually not available for the victim of rape crime. So the victims have to pay the attorney, but they can't afford to pay it is very expensive.

**Recommendation:** Change the code of criminal procedure, when the attorney for free could be appointed also in cases when the victim claims reparation only for moral injury.

### **IV.2. Protection of rights of the victim of rape crime in criminal proceedings**

We often see that the victim is not sufficiently instructed about her rights. The elementary instructions are provided by the police, but they are very formal and the victim that survived very harrowing incident should talk about it in a strict environment of a police station with an unknown people who have some kind of authority. In this situation the victim does not memorize the instructions very well. The instructions are often given in legal language which is incomprehensible for the ordinary people. If the victim wants complex legal information, she has to find them herself. The net-system of non profit organizations which provide free legal aid is deficient. In practise it is also very infrequent to use confidentiality of witness in the sense of making her personal data and identity secret, despite the fact, that the rapist know the victim's face, he does not need to know her name or address etc.

**Recommendation:** Precise instructions for the victim by the law enforcement authorities, especially by the police, best in the written form. Support for non-profit organizations which provide free legal aid.

The law enforcement authorities' approach to the victim of rape crime

In criminal proceedings the victim is often treated only as evidence not as a human being who was seriously injured by the crime. This is unfortunately reflected also in insensitive or unprofessional behaviour of the workers of the authorities. Even if they are professionals, they often succumb to myths about rape, and they fail to catch victim's needs, to understand victim's behaviour. Professionals often don't know the psychology of the victim, and their behaviour can cause subsequent harm to the victim.

**Recommendation:** Education for all workers, who can have a contact with the victim of rape crime in their profession. It should be about the ways how to treat and behave to victim of sexually violent crime.

#### Secondary traumatism of the victim in criminal procedure

In criminal proceedings the victim is remitted to a repeated questioning; some of them are in the presence of the rapist and many other strange people (for example at the court hearing, where public can be present). These questionings are often repeated after a long time and they are intensive source of secondary traumatism. Due to the way the questionings are held, the victim can often feel that the purpose of it is not to proof guilt of the rapist, but to proof the innocence of the victim.

**Recommendation:** Use rigorously the victim's rights given her by the Code of Criminal Proceedings. In practice use technical equipment of investigation buildings and questioning rooms, the possibility to separate the victim and the rapist, use recording equipment etc. Eliminate the necessity of repetition of questioning the victim (by the use of recording equipment, non reversible mirror etc. and also certain changes in Code of Criminal Proceedings as the possibility to use official record of giving an explanation in criminal procedure at the court).

#### Insufficient integrated cooperation

In practise the victims don't obtain information where to find another help. Police don't refer enough to psychological or legal centres. On the other hand there are some myths about police work in helping organizations. There is no cooperation between this organizations and authorities which causes that victim doesn't obtain services of such quality as they could be. The problem is also the lack of organizations helping victims of rape crime.

**Recommendation:** Advancement of cooperation between the law enforcement authorities and institutions which meet the victims of rape crime. On the side of non profit organizations it may be for example offer of education for workers, accompaniment to the police or to the court. On the side of the law enforcement authorities it is above all sharing the

information about existing services for victims, giving a contact, consultation with that organization etc.