

**PARALLEL SUBMISSION 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 47th SESSION 4 TO 22 OCTOBER 2010

ARTICLES 10, 12 AND 16: COERCIVE STERILISATION OF ROMANI WOMEN

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EXECUTIVE SUMMARY

1. The European Roma Rights Centre (ERRC)¹ submits this parallel report to the United Nations Committee on the Elimination of Discrimination Against Women (Committee or CEDAW) commenting on the Combined Fourth and Fifth Periodic Report of the Czech Republic, submitted under Article 18 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (Convention).
2. The present shadow report describes the current situation regarding one of the most serious human rights abuses of women – the practice of coercive sterilisation – and the legal, policy and other obstacles in reaching an effective remedy for the victims. The submission focuses only on issues directly related to the practice of coercive sterilisation; i.e. Articles 10 (equal access to education), 12 (equal access to health care services) and 16 (freedom from discrimination in all matters relating to marriage and family relations) of the Convention. This report aims to provide an update on the situation since 2006 when CEDAW last reviewed the Czech Republic. It includes an update on the court proceedings in cases of coercive sterilisation, legislative obstacles, comments on the information provided by the Czech government and recommendations for government action.
3. Sterilisations lacking full and informed consent implicate a number of the Convention's provisions, including Article 10(h), which stipulates that State parties have an obligation to take "all appropriate measures" to ensure "the health and well-being of families, including information and advice on family planning." These practices also call seriously into question the State's compliance with Article 16 of the Convention which requires State parties to "take all appropriate measures [...] in all matters relating to marriage and family relations." The Convention specifically requires that State parties ensure men and women "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights." Article 12 of the CEDAW Convention says "State parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period."
4. CEDAW General Recommendation 21 stresses the importance of access to information, specifically in the context of sterilisation.² Under General Recommendation 24 the CEDAW Committee urges State parties to "not permit forms of coercion, such as non-consensual sterilisation [...] that violate women's rights to informed consent and dignity." Finally General Recommendation 19 states that "Compulsory sterilisation adversely affects women's physical and mental health...." In the communication No. 4/2004 of 12 February 2004 the CEDAW makes use of Convention's provisions in cases of coercive sterilisations in the case of A.S. v Hungary.³

BACKGROUND INFORMATION

5. After the first official recognition of the problem of coercive sterilisation of Romani women by Czech authorities in December 2005, when the Public Defender of Rights (Ombudsman) published a report on his own investigation into the issue, the Prime Minister expressed regret for the practice (see paragraph 14 below) but the Czech Government has taken no significant steps to provide compensation to those affected. In his report, the Ombudsman reported that the practice of sterilisation without free and informed consent had been in place during communism in the former Czechoslovakia, mostly affecting Romani women. The Ombudsman also reported that the most recently documented case had occurred in the Czech Republic in 2001. Even though the Ombudsman recommended measures to be taken in order to make sure the women would not be precluded from access to justice, little

¹ The European Roma Rights Centre (ERRC) is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Information about the European Roma Rights Centre is available at <http://www.errc.org>.

² In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention: "Women are entitled to decide on the number and spacing of their children."

³ A.S. v Hungary, CEDAW/C/36/D/4/2004, 12 February 2004, revised on 14 August 2006. Available at: http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ww_CEDAW_Hungary_2006.pdf

has changed. There is currently no effective remedy available to most of the women subjected to this violation as stated in the subsequent paragraphs of this submission.

6. ERRC and the Czech organisation Life Together (Vzajemne souziti) have conducted an ongoing investigation into the practice of coercive sterilisation and 20 new cases have come to light, most recently from 2007. In these newly discovered cases, the surgeries took place between 1989 and 2007 and appear to be lacking free and informed consent. In most cases, the women signed a consent document without being properly informed about the consequences of the operation. In some cases the women signed the consent form under threat, in some cases they do not remember signing any documents and one of the women was illiterate. As a result of the doctor's advice warning her that her pregnancy was problematic, one woman went for an abortion and was informed that her pregnancy could be interrupted only if she underwent sterilisation as well. Some of the women reported that they had not been asked to sign the consent form.
7. In their testimonies, the women reported continuous health problems related to the surgery, both physical and psychological. Furthermore, the women are deeply afraid of medical treatment as a result of their surgeries. For the vast majority of women, forced sterilisation has changed the quality of their family lives for the worse, as they wanted to have more children. In a number of cases their women's partners left them.
8. The Ombudsman's report of 23 December 2005⁴ described the practice of coercive sterilisations in the Czech Republic and proposed legislative measures, methodological measures as well as reparation measures to be taken by the governments. For legal measures, the Ombudsman proposed that a draft of a new Act on Healthcare include a provision specifically requiring that the time between the granting of informed consent and the operation must not be shorter than seven days. The Ombudsman also specified that the new Act on Healthcare should refer to the doctor's obligation to inform the patient of the nature of the intervention, its permanent consequences and its potential risks, as well as the available alternatives.⁵
9. The Ombudsman also proposed measures to be taken by the Ministry of Health in the non-legislative area, such as producing a handbook explaining the essence and implications of sterilisation to patients and providing continuing education of doctors with a focus on patients' rights. In the section devoted to reparation measures, the Ombudsman discussed the various circumstances reflected by legislation on sterilisation as it developed over time, finding that the policy of providing financial incentives to women who underwent sterilisation implies state responsibility.

In its Concluding comments from August 2006 CEDAW urged the Czech government 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 [...]; provide ongoing and mandatory training of medical professionals and social workers on patients' rights; 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.⁶

4 Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures. JUDr. Otakar Motejl, Public Defender of Rights, Brno, 23 December 2005. Available at: <http://www2.ohchr.org/english/bodies/cedr/docs/ngos/Public-defender-rights.pdf>.

⁵ The new act on healthcare has not been adopted yet as of 7 September 2010.

⁶ UN Committee on the Elimination of Discrimination against Women (CEDAW): *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Czech Republic*, 25 August 2006. Available at: [http://www.unhcr.ch/tbs/doc.nsf/0/50a930533a8ea63ac12572280038d1d6/\\$FILE/N0648060.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/50a930533a8ea63ac12572280038d1d6/$FILE/N0648060.pdf)

10. These comments were taken into account by the Czech Government in Decree 96 of 25 February 2007 in which members of the Government were instructed to keep the recommendations in mind.⁷
11. Similarly in its April 2007 Concluding Observations on the Czech Republic the UN Committee on the Elimination of Racial Discrimination (CERD) noted "with concern that women, a high proportion of which being Roma women, have been subjected to coerced sterilization."⁸
12. In follow-up to the Ombudsman's report and the recommendations of both CEDAW and CERD, the Czech Government Human Rights Council approved a motion with respect to the sterilisations in the Czech Republic performed in contravention of the law. In this the Council, inter alia, recommended:
 - the government to recognise the practice of illegal sterilisations, express regret over this practice and commit to take measures in order to prevent any similar action in the future;
 - to financially compensate the victims;
 - to initiate investigation regarding the sterilisations in the past and in order to do that establish a special committee to execute this investigation;
 - to continuously run an awareness campaign for the public in which the goal would be the prevention and education of public with regards to sterilisations as well as de-stigmatisation of the victims;
 - to amend the Act on Care and Health and the relevant legislation so that it includes new provisions regarding the sterilisation, informed consent of all patients, especially with regards to persons whose legal responsibility was limited. The practice of sterilisations should be implemented also in the draft of act on health-care services which is being prepared by the ministry of health care.⁹
13. Referring to most of the above-mentioned items in 2009, the Czech Human Rights and Minorities Minister prepared a motion with respect to the sterilisations of women in the Czech Republic performed in contravention of the law. This document, in which the Minister criticises the previous initiatives for merely expressing criticism but never achieving a comprehensive solution, was acknowledged by the government on 23 November 2009 in its resolution 1424,¹⁰ which states:

The Government

I. acknowledges the motion by the Human Rights Minister with respect to the sterilisations of women in the Czech Republic performed in contravention of the law, which is appended to this resolution,

II. expresses regret over the instances of errors found to have occurred in the performance of sterilisations in contravention of Health Ministry Directive ČSR LP-252.3-19.11.71, on the performance of sterilisation, dated 17 December 1971, and covenants to undertake the steps in point III of this resolution so that such behaviour will not occur in future,

III. charges the Health Minister to perform the following by 31 December 2009:

⁷ Decree of the Government of the Czech Republic, 96 of 25 February 2007. Available in Czech at: [http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/4D0EE157623A59AAC12572740028E8B2/\\$FILE/uv070205_0096.doc](http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/0/4D0EE157623A59AAC12572740028E8B2/$FILE/uv070205_0096.doc)

⁸ UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Czech Republic*, 11 April 2007. Available at: <http://www.unhcr.org/refworld/docid/46484d2d.html>

⁹ Motion of the Council of the Government of the Czech Republic with respect to sterilisations performed in contravention of the law; version approved by the Council on 13 December 2007. Available at: <http://www.vlada.cz/assets/ppov/rlp/cinnost-rady/zasedani-rady/sterilizace-text.pdf>

¹⁰ Resolution of the Government of the Czech Republic 1424 from 23 November 2009. Available in Czech at: [http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/\\$FILE/1424_uv091123_1424.pdf](http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/6430E40ED2EFF39AC1257674004347C2/$FILE/1424_uv091123_1424.pdf)

- a. To submit information to the government on the fulfilment of the measures proposed by the Health Ministry's Advisory Council on the issue of illegal sterilisations and the effectiveness of those measures;
 - b. To include the issue of sterilisation on the programme of the Expert Forum for the Creation of Standards of Care and Concentrations of Selected Highly Specialised Care
 - c. To address organisations directly managed by the ministry and, through the regional authorities, health care facilities in the Czech Republic which provide care in the obstetrical-gynaecological field in order to look into adherence to legal regulations on the performance of sterilisation.¹¹
14. While there may not be an increase in the incidence of coercive sterilisation, as a result of the ongoing work of civil society to assist the victims, the overall number of victims discovered is continuously increasing. Being aware of the statute of limitations affecting most of these women's cases, the women have continued to appeal to the Ombudsman. After receiving more complaints, the Ombudsman informed the women that his competencies did not allow him to do more than he had already done in his 2005 report and he instructed the women to appeal to the respective authorities – either the regional health-care authorities or in the case of state clinics, the Czech Health Ministry (see the Case Study below for a discussion of the ineffectiveness of this avenue).¹²

LEGISLATIVE CHANGES RELEVANT TO STERILISATION

15. In its report to CEDAW, the Czech Government states that it has not adopted any legislative changes but that the Government envisages doing so in the future. Similarly, no special mechanisms for compensation, as recommended by CEDAW at its 2006 session on Czech Republic, have been created to date.
16. As noted above, the Czech Government adopted Resolution No 1424 on 23 November 2009, in which it expressed regret concerning the individual errors identified in the sterilisation of women in breach of a Ministry of Health Directive.¹³ Even though the resolution also included an initiative proposing further steps and procedures to ensure such actions do not occur in the future, to date no concrete steps or procedures have been introduced by the Czech Government in this regard.
17. Similarly, the Czech Government has not introduced a financial compensation scheme for victims of coercive sterilisations and no agreement has been reached on the issue of a decree on sterilisation to improve upon the current directive from a human rights perspective.¹⁴ Such a decree should be modelled on the recommendations by the Ombudsman which called for a specific inclusion in the law on informed consent that a reasonable period of time must elapse between providing information about the nature and impact of sterilisation and expressing consent – a period that should not be shorter than seven days.¹⁵

CONTINUING ISSUES REGARDING STATUTORY LIMITATION IN CASES OF VIOLATION OF PERSONALITY RIGHTS

18. The legal framework and case law on statutory limitation in regard to violations of personality rights in the Czech Republic remains unsatisfactory in that victims of coercive sterilisations are denied effective remedy and the possibility of compensation due to the three-year time bar attached to bringing cases concerning personality rights before the courts.

¹¹ *Ibid.*

¹² *Letter from the Ombudsman.*

¹³ ČSR LP-252.3-19.11.71, on the performance of sterilisation, dated 17 December 1971. Available at: <http://www.vlada.cz/assets/ppov/rtp/aktuality/USNESENI-VLADY.pdf>.

¹⁴ *Id.*

¹⁵ Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures, p 77. Available at: http://www.ochrance.cz/fileadmin/user_upload/ENGLISH/Sterilisation.pdf

19. In fact, Czech case law on the issue of statutory limitation has not been consistent¹⁶ Despite the fact that the Czech Supreme Court in 2007, in at least 7 cases,¹⁷ ruled that statutory limitations do not apply to claims of personality rights, a meeting comprised of the Civil and Commerce Board and 31 Supreme Court judges decided to overturn the case law of the Supreme Court and sided with the Olomouc High Court, upholding a ruling stating that statutory limitation does in fact apply to cases involving claims of violations of personality rights.¹⁸ The decision was published in the collection of court decisions and statements of the Supreme Court, better known as the *Green Collection*, comprising the most pivotal court cases in the Czech Republic. As a result of the publishing of the aforementioned decision in the *Green Collection*, the Supreme Court has changed its case law, confirmed by a Grand Senate of the Supreme Court in case 31 Cdo 3161/2008. The ERRC expects this newly established case law to be followed by Czech courts in the future.¹⁹ This effectively means that victims of coercive sterilisation that put forward the compliant after the three years statutory limitation from the time they realise that they have been coercively sterilised do not have any remedies. It is extremely difficult for the women to come forward promptly for a number of reasons, including shame, a lack of awareness about the possibility of redress and a willingness to forget about such a traumatic event. Furthermore some of the women were not informed or did not realise that they have been sterilised until years later.

CASE STUDY – REGIONAL HEALTH-CARE AUTHORITY OF MORAVSKOSLEZSKY REGION, OSTRAVA

20. No general rules exist for complaining to the regional health-care authorities, each of which designs its own rules. In the examined case of the Moravskoslezsky Regional Health-Care Authority (RHA) in Ostrava, the specific rules for complaints include:

Article 5

Reception and dealing with complaints

[...]

(6) Respective departments are obliged to investigate the case and within 60 days send the complaining individual an answer to the complaint. [...] The answer will primarily inform whether the complaint as such, or in its parts, has been regarded admissible, partially admissible or non-admissible.

(7) In cases when the complaint for its complicatedness cannot be dealt with within the given time period, the departments are obliged to inform the complaining individual about this before the expiration of the ordinary period in written form in which they list the reasons for the delay and inform the individual about the new time period. [...] If the new period cannot be identified, the 60 days period will be given. Before its expiration the departments will submit information about the current status of the case and list the new time period if possible.

[...]

(10) The repeated complaint about a case which was already dealt with, unless it includes new information providing the reason for new investigation or new measures, will not be accepted until the complaining individual provides new information.

¹⁶ 30 Cdo 1542/2003.

¹⁷ The 7 seven cases are as follows: 30 Cdo 3592/2006, 30 Cdo 154/2007, 30 Cdo 739/2007, 30 Cdo 744/2007, 30 Cdo 792/2007, 30 Cdo 997/2007, and 30 Cdo 1522/2007.

¹⁸ Decision 1 Co 63/2003 issued in 2008 as R 4/2008.

¹⁹ In 2006, the Prague Regional Court in the instant case obliged the defendant to pay financial compensation for immaterial harm caused to the plaintiff. The decision was overruled in December 2006 by the Prague High Court stating that the claim was subject to statutory limitation. In 2007, the Supreme Court quashed the High Court decision and sent the case back for rehearing. During rehearing, the High Court in 2008 again ruled that the claim was subject to statutory limitation. Subsequently in 2008, the great senate of the Supreme Court adopted the view published in the "Green Collection" as R 4/2008.

(11) If the case is pending at the court or is a matter of any ongoing process, the investigation will be stopped and the complaining individual will be informed about this.²⁰

21. Employees of the RHA informed the ERRC that, according to the general competencies of the regional authorities, they are not able to conduct their own investigations, to collect data, to interview witnesses, or to conduct any action other than to examine the submitted documentation. The RHA also cannot provide compensation or act in cases of individual failures.
22. Through an initiative by the Czech NGO Life Together assisting the coercive sterilisation victims, 20 victims who had never previously filed complaints were identified. Help in appealing to the regional health-care authority was provided to them. Of 20 complaints, the RHA rejected four because the clinics/hospitals are under the direct supervision of the Ministry of Health. Of the remaining cases, 13 cases were excluded for not including complete information, one was suspended because there the police were conducting an ongoing investigation and two cases are currently pending at the RHA.
23. For most of the coercively sterilised women it is complicated to provide the RHA with relevant documentation. In some cases the medical records have been lost in floods or fires, while in others the medical records are simply not available – and no further explanation is given. Some women never received their medical records after they left the hospital and currently do not have the information they need to access their records in the archives (e.g., if they do not remember the name of the doctor or the exact date of the operation). Thus the fact that the RHA cannot conduct its own investigation makes access to justice for the victims very complicated.
24. Most importantly, the RHA have very limited powers to take further action in cases where they find violations of patients' rights should they confirm that permanent damage to a patient's health was caused by physician neglect or an intervention contravening the principles of quality medical treatment. In such cases, the RHA needs to forward the case to the prosecutor. In previous cases of coerced sterilisations submitted to the prosecutor directly, the statute of limitations prevented further action. This has not been resolved by appealing to the regional health-care authority as the Office of the Ombudsman suggested and the women still cannot access justice.

COURT PROCEEDINGS IN ONGOING COERCIVE STERILISATION CASES

25. At present, three cases of coercive sterilisation are pending against the Czech Republic at the European Court of Human Rights.
26. In the case of Ms Helena Ferencikova, a Romani woman who was sterilised without her informed consent in 2001, as referenced in the ERRC submission to the Committee in 2005, there have been the following developments:
27. In January 2007, the High Court in Olomouc established that the sterilisation Ms Ferencikova had undergone was unlawful; however, the Court stated that the claims for financial compensation were subject to statutory limitation. The ERRC and local partners appealed the decision to the Supreme Court in April 2007, which rejected the case in March 2009. Subsequently, in May 2009 a complaint was filed with the Constitutional Court which was rejected in October 2009. On 15 April 2010, the ERRC and its partner organisation filed an application with the European Court of Human Rights invoking violations of Articles 3, 8, 12, 13, 14 and Protocol 1, Article 1 of the European Convention on Human Rights (ECHR).
28. The second case concerns Ms Cervenakova, a Romani woman who was sterilised in 1997 at the age of 21 after giving birth to her second child. The case was lodged jointly by

²⁰ Rules for accepting and dealing with petitions and complaints, Moravskoslezsky kraj, Rada kraje. Approved on 8 July 2010.

the ERRC and the League of Human Rights with a civil court in November 2005. In October 2007, the Regional Court in Ostrava ruled that the sterilisation was unlawful and awarded Ms Cervenakova damages of 500,000 CZK (approximately 20,000 EUR) to be paid by the hospital responsible for the unlawful sterilisation. In the November 2008 appeal proceedings, the Olomouc High Court upheld the unlawfulness of the sterilisation procedure but quashed the ruling on financial compensation, stating that the claim was subject to statutory limitation. The case was appealed to the Supreme Court in April 2009 where it is still pending. Simultaneously, an application was lodged in July 2009 with the European Court of Human Rights. The European Court application invoked violations of Articles 3, 8, 12, 13, 14 and Protocol 1, Article 1 of the ECHR.

29. The third case pertains to a Romani woman from northern Bohemia who in 2003, at the age of 33, was sterilised in connection with the delivery of her fourth child without her informed consent. Civil court proceedings were initiated in 2005 and a ruling was handed down in 2008 in which the first instance court held that the sterilisation had been unlawful and ordered the hospital to pay 50,000 CZK (approximately 2,000 EUR) in damages to the sterilised Romani woman. As the compensation was 10 times less than in the case of Mrs Cervenakova, the decision was appealed in 2009 on the damages amount and in November, the High Court in Prague increased the damages amount and ordered the hospital to pay 200,000 CZK in damages to the client. The ERRC jointly with the League for Human Rights filed an application to the European Court of Human Rights in 2008 arguing ineffective investigation of the performed sterilisation. The case is currently pending.

COMMENTS TO INFORMATION PROVIDED BY THE CZECH GOVERNMENT TO THE CEDAW COMMITTEE CONCERNING THESE MATTERS

30. In its submission to CEDAW the State party indicates results of their own previous research in which 80 complaints were examined and states that in 44 cases the guidelines valid at that time were not fully complied with, while in 36 cases this was due to administrative deficiencies. Doubts about the authenticity of signatures were ascertained in eight cases.²¹
31. The State party does not provide any information about whether it is planning to take action as recommended by the Ombudsman, the Czech Government Human Rights Council, the Czech Human Rights and Minorities Minister, and four UN bodies (CEDAW, CERD, HRC, and the Human Rights Council's Universal Periodic Review (UPR)). In this light it may interest the Committee to learn that the government, which took office in May 2010, has eliminated the position of Human Rights and Minorities Minister.

RECOMMENDATIONS FOR GOVERNMENT ACTION

32. The ERRC recommends the government of the Czech Republic to undertake the following:
- Comply with the recommendations listed in the "Final Statement of the Public Defender of Rights in the Matter of Sterilisations Performed in Contravention of the Law and Proposed Remedial Measures" from 23 December 2005, later elaborated on and referred to by other governmental bodies, including the Minister for Human Rights and Council of the Government of the Czech Republic for Human Rights;
 - Adopt measures that include preventive components (legislative changes concerning the law on informed consent and the lapse of time between information provided and expressing consent and an awareness campaign for patients and doctors) as well as compensation for all victims (financial compensation as well as a de-stigmatisation campaign for the victims);
 - Amend relevant legislation concerning statutory limitations in personality claim cases to adjust the three year time limit to start from the date of discovery rather than date of

²¹ Combined fourth and fifth periodic report of States parties: Czech Republic; Convention on the Elimination of All Forms of Discrimination against Women. 22 May 2009. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/346/17/PDF/N0934617.pdf?OpenElement>

- injury as the current legislation on statutory limitations prevents the vast majority of coercively sterilised women from accessing justice within the Czech legal system; and
- Establish, in legislation and practice, an ex gratia compensation procedure modelled on the Swedish compensation mechanism introduced for victims of coercive sterilisation.
33. The ERRC respectfully requests that the Committee ask the State party the following questions:
- What legislative steps, if any, has the State party taken to address the shortcomings in the current legal provisions on informed consent and the law on statutory limitations currently preventing sterilised Romani women to access legal remedies?
 - What steps, if any, has the state taken to investigate recent practices of coercive sterilisation and to prevent such violations from occurring in the future?