



LIGA LIDSKÝCH PRÁV

NGO information to the United Nations Committee on the Elimination of Discrimination against Women

For consideration when compiling the List of Issues on the Sixth
Periodic Report of the Czech Republic under the Convention on the
Elimination of All Forms of Discrimination against Women

Submitted by the
League of Human Rights
June 2015

A. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to Czech Republic's compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "the Convention"). The purpose of the submission is to assist the Committee on the Elimination of Discrimination against Women with its consideration of Czech Republic's Sixth Periodic Report (hereinafter "Government Report") in this initial stage of the compilation of the list of issues by the Country Report Task Force.
2. The submission has been written by the League of Human Rights. League of Human Rights (LIGA) is a non-governmental non-profit organisation based in Brno, Czech Republic that uses law to advance human rights in the Czech Republic. We use strategic litigation, advocacy and capacity-building to bring about systematic changes to prevent further human right violations. In our work, we mainly focus on the rights of especially vulnerable persons or persons facing social exclusion, such as the rights of children, persons with disabilities or victims of police violence. Our vision is just, free and engaged society for all.
3. This submission focuses mainly on human rights violations that the Committee has emphasized in its previous reports, but which have not been properly remedied by the state, such as compensation for unlawful sterilization of Roma women and women and disabilities or treatment of women during and after childbirth. It also points out to other violation of human rights of women, especially from vulnerable groups, such as unequal treatment of women with disabilities regarding the right to marry and the right to care for their children or segregation of Roma girls and girls with disabilities in special, lower standard education.

B. SPECIFIC COMMENTS

I. Right to Education (Article 10)

4. Romani girls and girls with disabilities continue to be largely segregated in separate educational facilities. Out of 24 542 girls with disabilities at primary schools 11 000 are placed in so-called special schools, most of them are diagnosed only with speech disorders.¹ Recently, a number of international bodies have highlighted the barriers that girls with disabilities face when attempting to access mainstream education in the Czech Republic and have strongly criticized segregation practices. For example, in its Concluding Observations on the second periodic report of the Czech Republic, the United Nations Committee on Economic, Social and Cultural Rights presented its concerns “that children with disabilities in the State party are still primarily schooled in specialized institutions...”. Romani girls and boys still continue to comprise about 40% of pupils of so-called practical schools, a specific type of a special school for children with light mental disability.² The curricula of both kinds of special schools are inferior, which creates a great obstacle for possible future education for girls educated in those facilities.
5. Long-term segregation in such schools has serious detrimental effects on future lives and careers of the girls with very few of them continuing to take part in further education.³ The inferior curricula seriously impact on future employability, contributing to the disproportionately higher rates of unemployment amongst women with disabilities⁴ and ensuring their continued isolation from society in adulthood. Considering the already weaker position of women on job market⁵ Romani women and women with disabilities are facing multiple discrimination in access to education and employment.

SUGGESTED QUESTIONS FOR THE CZECH GOVERNMENT:

- **What steps will the government take to ensure that Romani girls are not disproportionately enrolled in the inferior curricula education?**
- **When will the government take steps to discontinue segregated education on the basis of disability and to create education system that is based on inclusion, equal access to education and equal opportunities?**
- **What steps will the government take to enable and promote the achievement of higher education among Romani women and women with disabilities?**

¹ See *The Statistical Yearbook of Ministry of Education*. Available online from <http://toiler.uiv.cz/roценка/roценка.asp>

² See *Thematic report on education of Romani students*, 2015. Available online from <http://www.csicr.cz/cz/Dokumenty/Tematicke-zpravy/Vzdelavani-zaku-dle-RVP-ZV-LMP-a-pece-poskytovana>

³ According to the last comprehensive study regarding people with disabilities in the Czech Republic, “*Disabled Persons Survey of 2007*” by the Czech Statistical Office, around one third of men and two fifths of women with disabilities in the Czech Republic only achieved primary education.

⁴ See OHCHR *Thematic Study on the Work and Employment of Persons with Disabilities*, A/HRC/22/25.

⁵ For more on discrimination of women on labour market see OECD and EU documents; for example *Closing the Gender Gap: Act Now*, OECD publication, December 2012. Available online http://ec.europa.eu/europe2020/pdf/themes/31_labour_market_participation_of_women.pdf

II. Right to Health (Article 12)

Illegal sterilisations

6. Roma women and women with disabilities who have been sterilized against their will still can't access remedies for the forced interference with their integrity. Access to justice of these women have been extensively limited in the past *de iure* (e.g. many women with disabilities lacked legal capacity) or *de facto* (Roma women living in secluded areas, general discriminatory practices against the Roma) therefore it was virtually impossible for them to seek legal remedies during the socialist regime and directly afterwards. However, the Czech courts still holds that their right to obtain compensation for the wrongdoing is a subject of statute of limitation.
7. In January 2015, the Minister for human rights, equal opportunities and legislation has prepared a proposal of intent of a law for compensation of unlawfully sterilized women. However, this was met with a resistance of many authorities, including Ministry of Finance or Ministry of Foreign Affairs. The reluctance of the authorities to adopt this law might effectively delay or even stop the process. Moreover, the Government has not prepared any plan on how the information about the compensation mechanism will be disseminated once it is adopted. There is a risk that certain groups of vulnerable women, such as Roma women living in secluded areas or women with disabilities living in institutions will never learn about the possibility to claim compensation.
8. Furthermore, the proposal anticipates that the women prove beyond doubt that they have been sterilized during the certain period. However, LIGA found that many of these women will be unable to do so due to the lack of medical documentation. During collection of documentation of women who underwent sterilization against their will, it was found that out of 7 cases, in 4 cases the hospitals were unable to retrieve the medical documentation because it was destroyed during a flooding, it was shredded or simply lost. The lack of medical documentation might hinder the chances of many of the women to seek a remedy. Therefore it is necessary that the burden of proof is equally distributed between the women and the hospitals, and it would not rest solely on the women, especially in cases where the hospitals are responsible for the lack of evidence.

SUGGESTED QUESTIONS FOR THE CZECH GOVERNMENT:

- **What steps will the Government take to overcome opposition of the other authorities against the establishment of the compensation mechanism and to ensure that all women who have been unlawfully sterilized in the past will receive a proper remedy for the intervention with their integrity?**
- **How will the Government ensure that once the compensation mechanism for unlawfully sterilized women is in place, all affected women, especially women with disabilities and women living in secluded areas or institutions will be made aware about the possibility to claim compensation and about the process?**
- **How will the Government ensure that the compensation mechanism will be able to effectively grant compensation to all unlawfully sterilized women and that the burden of proof will be shifted in cases where medical documentation has been lost or disregarded by the hospital?**

Rights of women during and after child-birth

9. In the concluding observations in 2010, the Committee emphasized the violation of the rights of women during childbirth in hospitals and the need to respect women's rights, to ensure the gentle and safe care and allow them a choice of care.⁶ At the moment, even if the patients' rights are enacted on the statutory level in the Czech Republic, they are still not respected in practice, especially as regards to the right to free, prior and informed consent of women during childbirth. Women are provided with almost no information prior the delivery and they are only required to be submitted to routine care, which is often unnecessary or even harmful. The Czech Ministry of Health fails to follow the recommendation of the Committee, it does not evaluate the safety and efficiency of care and its compliance to scientific knowledge and respect for the rights of women in hospitals, especially the right to informed consent. Further, the Government does not have any concept of care during pregnancy and childbirth and has not adopted any protocol of normal birth. Moreover, the Czech authorities do not provide information about safe care during pregnancy and childbirth to women.
10. Two-thirds of practices labelled as harmful by the World Health Organisation (WHO) are carried out routinely in Czech hospitals: i.e. use of enema, use of pubic shaving, intravenous infusion in labour, prophylactic insertion of intravenous cannula, use of the supine position during labour, use of lithotomy position with or without stirrups during labour, sustained, directed bearing down efforts (Valsalva manoeuvre) during the second stage of labour, massaging and stretching the perineum during the second stage of labour, use of parenteral ergometrine in the third stage of labour and revision (manual exploration) of the uterus after delivery.⁷ Many other practices are used inappropriately. For example, episiotomy is recommended as necessary by the WHO only in 10 % of vaginal deliveries. However, in the Czech Republic this intervention is performed on every other woman during vaginal childbirth. In some hospitals it is done to 90% of primiparas. This means that this intervention harms the majority of women without any benefit for them or their children. Although the state collects statistical data of interventions in each hospital, this data is available to the public only in anonymous form, without divulging the names of the hospitals. Choice of hospital based on this data is therefore impossible. Another highly risky and unscientific intervention that routinely takes place during childbirth is pushing on the abdomen of mothers, called *Kristeller's expression*. This practice is forbidden in countries like France because of absence of scientific evidence on the safety of this method.
11. Ministry of Health with the physicians' associations created legislation on midwifery care, which prevents midwives to exercise their profession fully and independently (Decree No. 92/2012 Coll., The Minimum Requirements for Material and Technical Equipment of Health Facilities and Home Care Contact Centres). Midwives were not involved in the creation of this legislation. As a result, formally

⁶ The Czech Republic was recommended to adopt measures to respect women's rights during childbirth, namely: 1) adoption of law on patients' rights, 2) adoption of a protocol of normal birth care ensuring respect for women's rights and avoiding unnecessary medical interventions, 3) ensuring free and informed consent with all interventions on women during childbirth, 4) providing mandatory training for health professionals, 5) awareness raising for patients' rights, 6) taking steps to make midwife-assisted childbirth outside hospitals an option for women.

⁷ See WHO: "Practices which are Clearly Harmful or Ineffective and Should be Eliminated", page 23. Available at: http://whqlibdoc.who.int/hq/1996/WHO_FRH_MSM_96.24.pdf?ua=

birth centers led by midwives may be set up, but the strict requirements prevents their formation as well as the fact, that the birth centers are not connected to the public health insurance system. Physicians' associations, on whose knowledge the ministry relies on heavily are largely in a conflict of interest, since doctors and midwives are in a competitive relationship. Judge Lemmens of the European Court of Human Rights also noticed the advancing doctors' interests to the detriment of care recipients and midwives:

*"When the issue of home births came up for examination in 2012, the Ministry of Health set up an expert committee composed of representatives of care recipients, midwives, physicians' associations, the Ministry itself, the Commissioner for Human Rights and public-health insurance companies. However, the representatives of the physicians' associations boycotted the meeting, arguing that there was no need to change the existing legal framework. Subsequently, no doubt after some efficient lobbying, they managed to obtain from the Ministry that it removed from the committee the representatives of care recipients, midwives and the Commissioner for Human Rights, with the argument that only with the remaining composition would it be possible for the committee to agree on certain conclusions. I am not aware whether, once the committee had been cleansed, it was capable of making any suggestion at all."*⁸

12. The Ministry of Health also continues to prevent women from home births assisted by health care professionals, especially midwives. The Ministry and regional authorities refuse to authorise the midwives to assist home births. This approach has no legal statutory basis and the authorities are not able to justify it by scientific knowledge, either.⁹ This means that many women and their newborns remain without any medical support or care. State authorities also defer women from home births and sanction them afterwards, e.g. they refuse to grant the full amount of the maternity pay or social benefits or refuse to issue birth certificates for children born at home.¹⁰

SUGGESTED QUESTIONS FOR THE CZECH GOVERNMENT:

- **What steps will the Government take to ensure that every women and newborn receive proper health care regardless of the place of birth?**
- **What steps will the Government take to ensure women to have access to health care of their midwife during childbirth in hospital without necessity to be subjected to unwanted care of unknown health care professionals?**
- **What steps have will the Government take to ensure that scientific knowledge and WHO recommendation are reflected in practice and all harmful practices are eliminated from health care during and after childbirth?**

⁸ See judgement of the European Court of Human Rights in case *Dubská and Krejzová v. the Czech Republic*

⁹ On the contrary, WHO and FIGO (International Federation of Gynecology and Obstetrics) recommend home birth assisted by midwives as a safe option for low risk women.

¹⁰ In one case a family who failed to submit a report from a midwife because of fear of her persecution, but submitted all other documents did not receive a birth certificate even after a year and a half.

- **What steps will the Government take to enable low risk women to choose a midwife as a health care provider financially covered on the equal by health insurance during pregnancy, childbirth and postpartum period?**
- **What steps will the Government take to allow establishment of birth centers led by midwives?**
- **What steps will the Government take to publish statistical data and rates of intervention of each hospital that provides maternity care covered from the health care insurance?**

III. Right to Marriage and Family Life (Article 16)

Right of women with disabilities to marry

13. Women with disabilities can be judicially barred from getting married during the legal capacity proceedings. Although the law no longer imposes automatic ban on marriage, since the new Civil Code does not allow for deprivation of legal capacity, it still allows the court to decide on the capacity to marry based on the fact, that a woman has a disability. The legislation (art. 16 (1)(a) and (b) of the Civil Code) and ongoing practice constitutes a violation of rights of women under article 16 of the Convention in connection with article 23 of the Convention on the Rights of Persons with Disabilities.

SUGGESTED QUESTIONS FOR THE CZECH GOVERNMENT:

- **What steps will the Government take in order to ensure equal access to marriage to all women regardless of their actual or perceived disability?**
- **What steps will the Government take in order to protect women with disabilities against exploitation and abuse regarding marriage and inform women with disabilities, their families and experts about risk prevention and means of support?**

Right of women with disabilities to parental responsibility

14. Similarly, during legal capacity proceedings, women with disabilities can be judicially barred from exercising their parental responsibility, even *pro futuro*, i.e. even before the woman gives birth to a child or before she becomes pregnant. This is an extreme violation of their rights as mothers to take care of their child, to represent them and make decisions in matters related to their children. Although the legislation contains a specific proceeding on limitation or deprivation of parental responsibilities in case the child is endangered or neglected which also includes legal safeguards, this is not applied in case of women with disabilities. On the contrary, the Civil Code allows for deprivation of parental responsibility solely based on the fact that the woman has a disability that affects her legal capacity.

SUGGESTED QUESTIONS FOR THE CZECH GOVERNMENT:

- **What steps will the Government take in order to ensure that all women can equally exercise their parental responsibility regardless of factual or perceived disability?**
- **What steps will the Government take in order to support women with disabilities in caring about their children and to inform them about their rights and responsibilities as parents?**

IV. Protection of Rights of Women through Other UN Instruments

15. Although the Government has expressed the commitment to maintain high standard of human rights in the Czech Republic, it has so far failed to ratify several international instruments that could strengthen the rights embedded in the Convention.
16. Optional Protocol to the International Covenant of Economic, Social and Cultural Rights establishes an individual complaint mechanism regarding the violation of the Covenant's rights. Similarly, Optional Protocol to the Convention of the Rights of Persons with Disabilities enables the Committee to consider of complaints by individuals claiming their rights have been violated. Further, Optional Protocol to the Convention on the Rights of the Child on a communications procedure brings a special procedure to receive communication by or on behalf of an individual or group of individuals. All three treaties enable individuals or groups of individuals to assert a wide scope of rights, many of these mirror and reinforce the rights of women and girls regulated by the Convention, such as a right to health, right to education or family rights.
17. The Government has signed the Optional Protocol to the Convention on the Rights of Persons with Disabilities on 30 March 2007, but up to this day the treaty was not ratified. In the National Plan for Equal Opportunities for Persons with Disabilities for 2015 – 2020, the Government has committed to prepare the optional protocol for ratification by 31 December 2016. However, no specific steps or more detailed timeline was set. As the previous deadline for ratification of the optional protocol was not met, there is a risk that again, this will not be the Government's priority.
18. The Optional Protocol to the Convention on the Rights of the Child on a communications procedure was signed on 30 Apr 2015, however, again no specific timeline for ratification was set. No steps have been taken in order to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

SUGGESTED QUESTIONS FOR THE CZECH GOVERNMENT:

- **What steps has the Government taken regarding the ratification of human rights instruments, such as the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in order to ensure the highest standard of protection of human rights of women and girls in the Czech Republic? What is the detailed plan and timeline for their ratification?**

Thank you for your attention to these written submissions. If you would like any further information, please contact Human Rights Leader:

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