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CEDAW Committee

OHCHR

Palais des Nations

CH-1211

Geneve 10

Mr Ibrahim Salama

Chief, Human Rights Treaties Branch

OHCHR

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20 November 2009

Dear Mr Salama,

The European Roma Rights Centre (ERRC) would like to submit written comments to the CEDAW Committee on the case of *A.S. v. Hungary, communication No. 4/2004*.

The ERRC welcomes the Hungarian Government decision and the payment of the extraordinary financial compensation to Ms A.S. based on the decision No. CEDAW/C/36/D/4/2004 of the CEDAW Committee.

The ERRC and the Legal Defense Bureau for National and Ethnic Minorities (NEKI), as the legal representatives of Ms A.S. have been continuously working on the full implementation of the CEDAW Committee's decision to ensure that the Hungarian legal provisions regulating sterilization are in line with international standards. ERRC/NEKI have consulted the respective Hungarian Ministries on several occasions offering expertise in the implementation. While the Hungarian Government has been open to consultation at a very high ministerial level, and it has made important steps to ensure the compatibility of the Hungarian laws with international law, the recommendations by the CEDAW Committee have not been fully implemented to date.

Coercive sterilization is not only a historical problem, but appears to be an ongoing phenomenon in Hungary. The ERRC was recently informed about the coercive sterilization of a woman in a public hospital in 2008. Thus the failure to fully comply with the CEDAW Committee decision poses a continuing threat to the well-being of Romani women today.

The ERRC would like to draw attention to the following specific recommendations previously made by the ERRC to the Hungarian Government on how to implement the general recommendations of the CEDAW Committee:

1) Review legislation on the concept of sterilization for medical indications:

According to Article 187 (7) of the Hungarian Public Health Act: “*Sterilization shall be performed for health reasons, if in the opinion of the specialist physician the pregnancy would directly threaten the life, physical soundness, health of the woman concerned, or the child to be born from such pregnancy would be likely to suffer from some serious deficiency, and the application of no other method of contraception would be possible or recommendable.*”

Sterilization can never be a life-saving intervention as nobody dies by not being sterilized. The risk averted by sterilization would be a potential health risk caused by a future pregnancy. Such a risk could always be averted by contraception. Therefore there is never a direct threat to life, health of the mother or the child that requires sterilization. If a woman decides to undergo sterilization for health reasons or family planning reasons, she should be able to assess the potential risks and benefits of sterilization or a future pregnancy.

According to the International Federation of Gynecology and Obstetrics (FIGO), it is for the patient to weigh the risks of continued fertility or a future pregnancy and decide whether to undergo sterilization. It is never for the doctor to make the decision for the patient.¹ There are no international medical standards which set forth medical indications for sterilization. We therefore contend that this concept should not be represented in the Hungarian Public Health Act and the entire paragraph quoted above should be removed.

2) The Hungarian legal norms still do not confirm that sterilization is irreversible

According to Article 187 (2) of the Hungarian Public Health Act, the information on the sterilization intervention to be provided by the doctor as a predicate to informed consent includes information on the “chances of reversibility”. This is in contravention with the generally accepted international legal and medical view that sterilization is irreversible. The WHO and the FIGO emphasize that the counselling prior to sterilization should include the information that sterilization is intended to be permanent, and that recognised available alternatives, especially reversible forms of family planning which may be equally effective, must be given due consideration.² The WHO also notes in its publication *Medical Eligibility Criteria for Contraceptive Use* that sterilization is intended to be permanent.³

¹ <http://www.poradna-prava.sk/dok/figo2.gif>

² ETHICAL ISSUES IN OBSTETRICS AND GYNECOLOGY by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women’s Health, Ethical Considerations in Sterilization, November 2006., available at: <http://www.figo.org/files/figo-corp/docs/Ethics%20Guidelines%20-%20English%20version%202006%20-2009.pdf>

³ Medical Eligibility Criteria for Contraceptive Use, World Health Organization (WHO), 4th edition, 2004., p. 8.

In its decision the CEDAW Committee reiterated that sterilization should be viewed as permanent: it is intended to be irreversible, and the success rate of surgery to reverse sterilization is low and depends on many factors.

Based on the above, the ERRC believes that no informed consent can be alleged without informing the patient about the permanent consequences of sterilization. The Hungarian legislation by requiring relevant information on the “chances of reversibility” raises concerns, as it suggests that the Hungarian Public Health Act approaches sterilization as a non-permanent procedure and the relevant counselling with the patients is therefore conducted based on that premise. Therefore the relevant Hungarian legal provision has to be amended by saying that the “patient has to be informed about the permanent nature of the operation” rather than “chances of reinstalling fertility”.

- 3) Regular monitoring of public and private health centres, including hospitals and clinics, which perform sterilization procedures to ensure that fully informed consents being given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach

The Government of Hungary informed the Committee that based on a decree 15/2007 (V.2) issued by the Ministry of Health monitoring health care providers is the duty of the National Center for Healthcare Audit and Inspection which carries out this function through medical inspectors. It aims at ensuring that the professional norms of care are met, among others. The National Center for Healthcare and Audit and Inspection performs its inspection activities based on an annual work plan and via inspections necessitated by specific complaints. The work plan on the scope and frequency of data collection and on-site supervision to be performed is prepared by the inspectors based on the criteria specified by the National Center for Healthcare and Audit and Inspection.

In its response to the CEDAW Committee submitted on 5 July 2007 the State Party informed the Committee that “in view of small number of related cases” the National Center for Healthcare Audit and Inspection does not include the monitoring of sterilization in the work plan. However, it is to be noted that there is no available statistical data related to complaints received so far on the breach of informed consent in connection with sterilization. The extent of the problem is not known but we have evidence that the problem is continuing.

The allegedly “small number of related cases” does not discharge the State Party of the obligation to implement the Committee’s recommendation to monitor public and private health centres that perform the sterilization procedure, so as to ensure that fully informed consent is being given by the patient before any sterilization is carried out.

Therefore ERRC contends that the National Center for Healthcare Audit and Inspection should include monitoring sterilization in its yearly work plans in order to ensure that sterilization is carried out based on a fully informed consent given by the patient.

Yours Sincerely,

Robert Kushen
Managing Director
European Roma Rights Centre