

Ref: CommHR/MOF/sf 203-2024

Petr Fiala
Prime Minister of the Czech Republic

Strasbourg, 3 December 2024

Dear Prime Minister,

My mandate is to foster the effective observance of human rights in the member states of the Council of Europe. An important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices.

I am writing to you regarding *the Law on the Payment of a Lump Sum of Money to Persons Sterilised in Violation of the Law and the Amendment of Certain Related Laws* (Zákon č. 297/2021 Sb) (hereinafter – the Law). The Law entered into force on 1 January 2022 and will expire on 1 January 2025. After this date, victims of forced sterilisation between 1966 and 2012, mostly Roma women, will no longer be entitled to claim compensation.

My Office began to engage with the Czech authorities on the issue of forced sterilisations almost two decades ago. Since then, each of my predecessors has stressed the need for redress and adequate compensation for victims of these serious human rights violations, as well as the removal of barriers to such compensation.

In 2021, my predecessor Dunja Mijatović welcomed the decision of the Czech authorities to establish the compensation mechanism. However, already in 2023, following her country visit to the Czech Republic, she expressed several concerns over its functioning. These concerns included: (a) the lack of a clear methodology for assessing compensation claims; (b) the excessive burden of proof placed on victims, particularly in cases where medical records of sterilisation were lacking; c) insufficient human resources and expert support needed for the Ministry of Health to deal with compensation claims in a timely and thorough manner. Against this background, she recommended considering extending the running time of the compensation mechanism, which would require an extension of the Law.

Most recently, I have been informed that of the almost 1,500 compensation claims processed by the Ministry of Health, only 688 were granted. The remaining claims were rejected, and many applicants appealed these rejections. The courts, including the Supreme Administrative Court, have delivered over 20 judgments in favour of victims. These judgments identified flaws in the compensation procedure and its application, mainly related to the threshold of evidence required and the burden of proof imposed on victims.

I have also received reports that victims who applied for compensation at an early stage were in a less favourable position than those who applied later. This was due to the developing case-law of the courts overturning negative decisions of the Ministry of Health, thereby providing additional legal guidance to the Ministry. It follows that those victims who applied later had more guidance on how to justify their claims using this case-law. Therefore, those victims who were rejected at an earlier stage may wish to re-apply for compensation using the recent case-law. The Committee against Torture and Inhumane Treatment of the Czech Government Human Rights Council also acknowledged this issue in its resolution of 4 October 2024 and called for an extension of the deadline for compensation claims for at least one year.

Finally, some victims may have refrained from applying for compensation due to the unclear procedure and inconsistent practice of decision-making. For example, one of the main challenges faced by victims was whether evidence of sterilisation other than medical records would be accepted, accompanied by the disproportionate burden of proof placed on them. For those victims who did not have medical records of sterilisation, often because these had been disposed of or, with the passage of time, destroyed due to fires, floods, or other reasons, there was a lack of clarity as to which other types of evidence would be acceptable, if any. Indeed, I understand that the practice of the Ministry of Health in this area remains problematic, despite the developments in case-law, as has also been pointed out by the Public Defender of Rights of the Czech Republic.

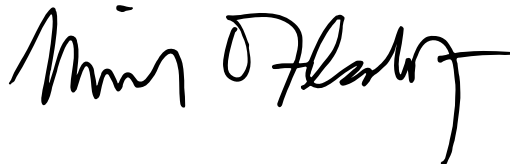
In this respect, it should be underlined that several judgments of the European Court of Human Rights have established that the practice of coercive sterilisation constitutes a violation of Articles 3 (prohibition of torture) and 8 (right to respect for private and family life) of the European Convention on Human Rights (see, for example, *V.C. v. Slovakia*, Application No. 18968/07, judgment of 8 November 2011). The Council of Europe Committee of Ministers' 2011 Guidelines on eradicating impunity for serious human rights violations state that member states should take all appropriate measures to establish accessible and effective mechanisms which ensure that victims receive prompt and adequate reparation for the harm suffered (Section XVI).

In light of the above, I respectfully ask you to use your powers to urgently initiate legislative changes to extend the Law for a period sufficient to ensure access to all victims. I also recommend addressing the outlined shortcomings in the procedure and practice to ensure that all victims can effectively exercise their right to compensation under a clear and consistent procedure based on the case-law in this matter. I trust that the Czech authorities will continue to involve and consult with victims of forced sterilisations and relevant civil society organisations working on this matter.

Please note that a similar letter has been sent to the Chamber of Deputies and the Senate of the Czech Republic.

I look forward to continuing our dialogue on this matter and stand ready to provide the necessary assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael O'Flaherty', written in a cursive style.

Michael O'Flaherty