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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 102/2016*,**

Communication submitted by:	J.D. et al. (represented by counsel, European Roma Rights Centre)
Alleged victim:	The authors
State party:	Czech Republic
Date of communication:	17 February 2016 (initial submission)
References:	Transmitted to the State party initially on 22 March 2016
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* Adopted by the Committee at its seventy-third session (1–19 July 2019).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Gabr, Hilary Gbedemah, Dalia Leinarte, Rosario G. Manalo, Aruna Devi Narain, Elgun Safarov, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.

Background

1. The authors, J.D. et al., are Czech nationals of Roma ethnicity born in 1966, 1969, 1960, 1960, 1964 and 1963, respectively. They submit that they have been subjected to sterilization without their informed consent and are therefore victims of an ongoing breach of article 2 (b) and (e) of the Convention, read in conjunction with articles 5, 10 (h), 12 and 16 (1) (e) of the Convention. The Optional Protocol entered into force for the Czech Republic on 26 February 2001.

Facts as presented by the authors

2.1 J.D. gave birth to four children by natural childbirth. After her last birth at the age of 34 years, she decided to use an intrauterine device as a contraception method. Following some difficulties, she visited her gynaecologist, who changed the intrauterine device but did not recognize that she was pregnant again. She learned about the pregnancy only when she sought treatment for complications. On 27 July 2001, she was hospitalized at the Ostrava municipal hospital. After diagnosing an ectopic pregnancy, the gynaecologist informed her that she needed immediate surgery to terminate the pregnancy, without mentioning sterilization. The hospital personnel prepared her for the procedure and made her sign papers whose content she does not remember, as she was suffering from pain caused by internal bleeding and there were many people around. After signing the form, she was taken to surgery and sterilized. The doctor told her about the sterilization only when he gave her the hospital discharge summary. Two sentences in the record alluded to the consent to be sterilized: “Patient requires sterilization. 27 July 2001” and “I agree with the surgery to the extent we agreed on with doctor.” There is no indication as to whether the doctor provided her with information about the sterilization. The consent of the “sterilization committee” required prior to the procedure is dated 31 August 2001, a month later. The Ombudsperson investigated the case and stated that the doctors had acted against the law because they did not obtain the informed consent of J.D. He referred the case to the police but they did not carry out a full investigation. The Medical Chamber, a professional self-regulatory body, found no misconduct.

2.2 G. gave birth to her first child in 1988 by caesarean section. Two years later, she became pregnant again and was informed by a pregnancy-risk specialist that the second birth might also have to be performed by caesarean section. No one mentioned sterilization. On 23 September 1990, she had bleeding and pain. After her admission to Vitkovice Hospital in Ostrava, the doctors let the birth progress naturally, but the next day, following complications, decided to perform a caesarean section. A nurse gave her an “antenatal form” and a consent form for sterilization. She was told “You have to sign this!” without further details. She was in pain, under psychological pressure and worried about her own life and the life of her child, and had no time to read the form properly while she was being moved to the operating room. In the document, it is stated: “I agree to the surgery I have been offered and to every other intervention which will appear necessary during surgery. Patient asks for sterilization at the same time.” The second sentence is written in a different typescript, raising the possibility that it was added after the author signed. It does not include details on whether the doctor provided any information about sterilization. Only 25 minutes passed between the doctor’s decision to operate and the birth of the baby. G. reports that she did not request sterilization. In the medical documentation, it is stated that she did: “While providing information about her medical condition and indicated surgery, patient in front of doctor and nurses asks for sterilization in order not to have children.” She was first told about her sterilization by the consultant in the post-operative recovery room, but did not understand the meaning owing to the technical language used. She learned about the full consequences from the doctor only the day after the surgery. She was 21 years old and she and her husband wanted another child.

The investigation by the Ombudsperson confirmed that the doctors had acted unlawfully because they did not obtain her informed consent for the sterilization; the case was referred to the police, who did not carry out a full investigation.

2.3 B. had two children when she became pregnant in 1981. In the fifth month of her pregnancy, the sterilization committee invited her for a meeting and offered her the possibility of sterilization as if it were a reversible, temporary method of contraception. She did not agree. Her twins were born by natural childbirth on 27 March 1982, without complications. Two months later, her doctor informed her that tumours discovered during the birth needed to be removed immediately. Shortly before the surgery and while she was under the influence of medication, she was given a consent form for sterilization; she does not remember what she signed. B. was sterilized during the surgery. After the operation, no doctor mentioned the tumours and she did not have any follow-up medical interventions. She was 22 years old. She learned of the sterilization many years later during a medical check-up. In 1982, she received a benefit of 2,000 crowns, probably for the sterilization. At the time she thought it was a social benefit connected to the birth. It is clear from the documentation of her general practitioner that she had been sterilized. However, there is no documentation of the surgery; the hospital claims that it had to be shredded because it was destroyed in a flood.

2.4 F. was 27 years old when she gave birth to her fourth child, on 16 March 1987. Shortly thereafter, social workers offered her the possibility of sterilization, described as a reversible procedure, and a related benefit. She initially refused, but later reconsidered given that she was not planning to have children in the near future. She agreed to the sterilization only on the basis of the information that she could conceive again in the future. When admitted to the hospital in Most, none of the medical staff referred to her sterilization, nor did she sign a consent form. Shortly after the procedure, she experienced pain during breastfeeding. Subsequently, she received the sterilization benefit. The hospital told F. that it had lost the medical documentation on the surgery, except for an undated document from a sterilization committee granting permission for her to undergo the procedure, which appears to have been written after 10 December 1966.

2.5 M. had four children when a social worker suggested the possibility of sterilization, describing it as a temporary, reversible procedure that would last three or four years. M. refused, but the social worker threatened her with increased supervision and the loss of her children to State care. She was admitted to the hospital in Most for the surgery. No information was provided, she did not meet any committee, nor did she sign a consent form. When she returned home, M. received the promised financial benefit from the social worker. She waited for her first menstrual cycle following the procedure, after which she was to visit the hospital for a check-up. When her periods did not come, she visited her gynaecologist, who initially did not believe that M. could be pregnant, because of the sterilization, but confirmed the pregnancy after an examination. M. was pregnant at the time of the sterilization, but had not been examined beforehand. She cannot provide medical documentation on the surgery because the hospital told her that it had lost it. The only document the hospital claims to have found is the undated approval from the sterilization committee, which appears to have been written after 10 December 1966.

2.6 C. gave birth to her third child on 5 November 1986. When a social worker visited to offer her the possibility of sterilization, she was interested in the financial benefit and did not plan to have other children for the time being. Her decision to sign the consent form was based on the information that the procedure was reversible. She was admitted to the hospital in Krnov on 8 February 1989 and shortly after the sterilization, she received the benefit. Approximately seven years later, she wished to

have a child, and she requested her gynaecologist to "untie the tubes".[1] The gynaecologist explained for the first time that she could not have children. This was not specified in the surgery documentation, and C. claims that no one in the hospital provided any information to that effect. The medical documentation contains her signature on blank paper with a statement reading "I agree with a surgery". On the reverse side of the decision of the sterilization committee, it is mentioned that the committee approved the sterilization because she already had three children and because of her Roma ethnicity.

2.7 No remedy in domestic law exists for victims of forced sterilization. A person who has undergone an unlawful medical intervention can seek redress through an action for the protection of "personal rights". However, the statute of limitations makes it impossible for women to seek an effective remedy and to request monetary compensation. The general statute of limitations for civil claims is three years.[2] In cases concerning the right to life, dignity, name, health, privacy or other personal rights, the Civil Code specifies that it is still possible to bring a claim after the time limit has expired, but restricts the right to seek monetary compensation.[3] The law does not specify, but the courts have confirmed, that victims of such violations can seek non-monetary compensation (an apology) if they bring their claim after the time limit has expired. It is therefore possible for the authors to make a civil claim and seek an apology. For a period of time, it appeared that victims of forced sterilization might be able to claim compensation even if they brought their claims after the time limit had expired, despite the provision in the Civil Code. The case law was inconsistent on this point, even at the highest judicial level. At one point, the Supreme Court interpreted the provision as allowing people in such circumstances to claim monetary compensation.[4] That judgment was overruled by the Supreme Court Grand Chamber.[5] The latter interpretation was confirmed by the Constitutional Court in 2013, which found that the Civil Code did indeed prevent victims of forced sterilization from claiming monetary compensation if they brought their claims for violations of personal rights after the time limit had expired, unless such a restriction would be contrary to "good morals"/"bonnes moeurs" (*dobré mravy*).[6]

2.8 The law does not explicitly define the notion of "good morals"/"bonnes moeurs". This notion may be applied in cases in which the fact that the limitation period has expired is not the fault of the complainant, e.g., when a woman learns that she has been sterilized after the three-year period has elapsed. However, she must bring the action to court within three years from the time she learned that she had been sterilized.

2.9 The authors were not in a position to bring a claim for compensation immediately following the sterilization. They did not fully understand what had happened to them and, during communist rule, it was unheard of for someone to bring such a legal claim. Some cannot name a particular date after which they "knew" they had been sterilized; for the last author, the realization came seven years after the fact. By the time they were in a position to understand and explain what had happened at a sufficient level to formulate a claim for compensation and received legal advice on how to bring the claim, it was far too late under the statute of limitations.

2.10 Some of the cases of forced sterilization occurred prior to the entry into force of the Optional Protocol for the State party. However, the authors argue that this does

[1] Terms used by the social worker.
[2] Czech Republic, Civil Code, Law No. 89/2012 of 3 February 2012, Book One, sect. 629.
[3] Ibid., sect. 612.
[4] Czech Republic, Supreme Court, Case No. 30 Cdo 1542/2003, judgment of 25 September 2003.
[5] Czech Republic, Supreme Court, Case No. 31 Cdo 3161/2008, judgment of 12 November 2008.
[6] Czech Republic, Constitutional Court, Case No. II, ÚS 7/13, judgment of 17 January 2013.

not preclude the Committee's consideration of the case under article 4 (2) (e) of the Optional Protocol, given that the failure to ensure compensation for victims of forced sterilization is an ongoing violation that continues to this day.

Complaint

3.1 The authors submit that they are victims of an ongoing breach of article 2 (b) and (e) of the Convention, read in conjunction with articles 5, 10 (h), 12 and 16 (1) (e) of the Convention. At the time of their sterilization, four issues emerged as the most significant characteristics of this practice: absence of free will, insufficient patient information, lack of formal requirements and complete absence of consent. Often, the victim formally agreed to be sterilized, but the consent was invalid owing to the pressure from the welfare and medical professionals, which resulted in the absence of free expression of will. Social workers often secured the consent for sterilization by threatening to take children into State care or deny social benefits. Such tactics were used specifically against Roma women. The sterilization monetary benefit placed pressure on the poorest in society. Women were often asked for consent just before the operation, when they were under the influence of painkillers and in extreme pain and anxiety.

3.2 The authors submit that article 2 (b) of the Convention "contains the obligation of States parties to ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subjected to discrimination contrary to the Convention".[7] Under article 2 (e), States are required to take measures that "ensure that women are able to make complaints about violations of their rights under the Convention and have access to effective remedies".[8] The Committee has emphasized that the "provision of remedies requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer".[9]

3.3 The authors maintain that they do not have access to an appropriate remedy for forced sterilization because no such remedy exists under Czech law. The State party has not adopted appropriate measures to prohibit discrimination against women and has not taken all measures to eliminate such discrimination. Because forced sterilization amounts to discrimination prohibited by articles 5, 10 (h), 12 and 16 (1) (e) of the Convention,[10] the requirement to provide a remedy under article 2 (b) and (e) is engaged in this case.

3.4 The authors maintain that it is not necessary for the Committee to find underlying violations of the above articles resulting from the sterilization in order to find violations of article 2 (b) and (e). In accordance with well-developed principles of international human rights law on the interpretation of provisions guaranteeing effective remedies, the authors submit that all they need to show in order to engage article 2 (b) and (e) of the Convention is that they had an arguable claim that they were victims of discriminatory treatment in breach of other provisions of the Convention.[11]

3.5 The authors submit that it is beyond dispute that they have an arguable claim that they suffered breaches of the Convention because they were forcibly sterilized.

[7] General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 32.

[8] Ibid., para. 36.

[9] General recommendation No. 33 (2015) on women's access to justice, para. 14 (e).

[10] *A.S. v. Hungary* (CEDAW/C/36/D/4/2004).

[11] The "arguable claim" standard applies for similar arguments under the European Convention on Human Rights. European Court of Human Rights, *Silver and Others v. United Kingdom*, judgment of 25 March 1983, para. 113 (a).

Their cases disclose stereotypes about Roma women, engaging article 5[12] of the Convention: they were targeted because they had large families, which is a common stereotype about the Roma that is impossible to separate from any discussion about forced sterilization. The purpose of this State practice is "to control the highly unhealthy Roma population through family planning and contraception".[13] In two of the six cases, the Ombudsperson found violations of their rights. All authors suffered a well-known pattern of forced sterilization of Roma women that has been taking place for decades. The State party has settled similar cases[14] in the European Court of Human Rights. In its concluding observations of 2006 and 2010 (CEDAW/C/CZE/CO/3 and CEDAW/C/CZE/CO/5), the Committee called upon the State party to "financially compensate the victims of coercive or non-consensual sterilizations performed on, in particular Roma women and women with mental disabilities", and noted with concern that "most of the compensation claims brought by victims of forced sterilizations were dismissed because of the courts' interpretation that the statute of limitations bars such claims after three years from the time of injury rather than the time of discovery of the real significance and all consequences of the sterilization".

3.6 The failure to adopt legislation ensuring that victims of forced sterilization are not subject to the ordinary statute of limitations deprives the authors of an effective remedy contrary to article 2 (b) and (e) of the Convention. The Committee has found that victims of forced sterilization are entitled to "appropriate compensation … commensurate with the gravity of the violation of … [their] rights".[15] Imposing on Roma women victims of forced sterilization the same statute of limitations that applies to any civil claim to secure compensation does not take into account their particular situation and amounts to intersectional discrimination that deprives them of an effective remedy. The difficulty of gaining access to justice is compounded by the psychological impact of forced sterilization, accompanied by feelings of inferiority, shame and stigma, which leads to a reluctance to challenge authority and draw attention to their situation. Expecting them to do so in the same time frame that applies to all citizens amounts to a failure to adopt legislation designed to combat discrimination against women.

3.7 The existence of effective remedies and the requirement to exhaust such remedies are closely linked: when there is no effective remedy for a violation, there is no need to exhaust remedies before lodging a petition. The issue of exhaustion is tied to the issue of whether there is a substantive violation of article 2.

3.8 A victim of forced sterilization could in theory seek a remedy through criminal proceedings under the Criminal Procedure Code and might, theoretically, secure compensation through such proceedings. According to the Criminal Code, forced sterilization can constitute the crime of "attack against humanity" or a crime of serious damage to health from negligence. The Code imposes stricter sanctions on perpetrators who breach a duty arising from their employment or profession (doctors, in cases of forced sterilization). The police dealt with some cases, but criminal proceedings were discontinued, making them ineffective. The Ombudsperson investigated and collected 87 cases. In his 2005 report, he stressed that "if criminal investigative bodies conclude that no criminal offence has been perpetrated, it does

[12] CEDAW/C/OP.8/PHL/1, para. 42.

[13] Otakar Motejl, *Final Statement of the Public Defender of Rights in the Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures* (2005).

[14] European Court of Human Rights, *R.K. v. Czech Republic*, application No. 7883/08, decision of 27 November 2012; *Helena Ferenčíková v. Czech Republic*, application No. 21826/10, decision of 30 August 2011; *Červeňáková and Others v. Czech Republic*, application No. 40226/98, decision of 29 July 2003.

[15] *A.S. v. Hungary*, para. 11.5.I.

not mean that no wrongdoing has occurred in these cases and that [the sterilization] was lawful". There is no information that any criminal sanction has been imposed in the cases investigated by the Ombudsperson or those of the authors.

State party's observations on admissibility and the merits

4.1 On 22 September 2016, the State party emphasized that it could neither confirm nor challenge most of the circumstances of the sterilizations of the authors. None of them have initiated domestic proceedings in which evidence could have been gathered and assessed by a court. J.D. and G. had their cases examined to a certain extent by the Ombudsperson and by the police. However, the examinations were conducted long after their sterilizations and the gathering of evidence was challenging.

4.2 According to a medical report dated 1 February 2002, B. was sterilized in 1982. F. stressed that she had been sterilized in 1987 but did not provide supporting evidence, except a 1987 decision by a sterilization committee granting consent to her sterilization upon her request. M. was sterilized in May or June 1987 and enclosed a 1987 decision by a sterilization committee granting consent to her sterilization upon her request. C. enclosed a decision by a sterilization committee granting consent to her sterilization upon her request and medical documentation on her sterilization in February 1989. She claims becoming aware of the full consequences of her sterilization seven years later. G. was sterilized on 24 September 1990 and claims that she became aware of "the full consequences" one day after the surgery. J.D. was sterilized on 27 July 2001 and claims that she became aware of her sterilization when discharged from the hospital, on 2 August 2001. Leaving the hospital, she told her husband that she probably could not have more children. He stated that they took the medical documentation home and that they both understood the meaning of the word "sterilization". The sterilizations of the last two authors were investigated by the Ombudsperson,[16] who made no mention of bad faith on the part of the medical personnel and/or their intention to ill-treat the authors.

4.3 The State party elaborates on the domestic law (the Civil Code in force from 1 January 1992 to 31 December 2013) and the case law of the Supreme Court and the Constitutional Court relevant to the interpretation of the application of the right to protection of personal rights and of the general limitation period for claims for compensation for non-pecuniary damage. The State party explains that the limitation period was not applied to such claims until 2008.[17] In 2008, the Supreme Court shifted its legal view, stating: "If the non-pecuniary damage compensation claim includes a claim for the payment of an amount of money, the principle of legal certainty excludes the passing of time without any legal effects."[18] It newly applied the limitation period to claims for compensation for non-pecuniary damage. However, the Constitutional Court interpreted the principle that rights must be exercised in accordance with good morals, which is an important corrective to a potential disproportionate hardship of the limitation period.[19] The Supreme Court quashed judgments of lower courts,

[16] "Final report about the outcome of the investigation", File No. 3104/2004/VOP/PM, 16 January 2006. The Ombudsperson concluded that "there was a breach of law because the principle of informed consent as a basic legal condition for the permissibility of medical intervention was not respected".

[17] Czech Republic, Supreme Court, Case No. 30 Cdo 1542/2003, judgment of 25 September 2003; Case No. 30 1522/2007, judgment of 28 June 2007.

[18] Czech Republic, Supreme Court, Case No. 31 Cdo 3161/2008, judgment of 12 November 2008.

[19] Czech Republic, Constitutional Court, Case No. II, ÚS 3168/09, judgment of 5 August 2010; Case No. II, ÚS 635/09, judgment of 31 August 2010.

stressing that they had not considered whether the limitation period complied with good morals.[20]

4.4 The State party maintains that the scope of the communication does not concern the circumstances of the authors' sterilizations and is limited to an alleged violation of the right to remedy in the given context. Therefore, the State party focuses on the alleged violation of their right to remedy.

4.5 The State party submits that the communication is insufficiently substantiated for purposes of admissibility and incompatible *ratione temporis* with the Optional Protocol. There was a considerable delay in the filing of the communication, amounting to an abuse of the right to present a communication. The authors have not exhausted domestic remedies, given that they have not initiated any appropriate domestic legal proceedings. Domestic courts have had only a limited possibility to gather and assess evidence allowing them to objectively ascertain the circumstances of the cases. The possibility of the Committee to examine the case is limited in the absence of case files of domestic authorities and given that the authors themselves presented partial evidence.[21]

4.6 The authors should have provided prima facie substantiation of an interference with their rights and an arguable basis for a violation. If they wanted to file a complaint with an international quasi-judicial body, they should have borne a prima facie standard of proof. It seems that B., F. and M. did not meet such a requirement. It is hardly possible to infer the circumstances of their cases from the limited evidence enclosed with their communication when they have not initiated any domestic proceedings.[22] The Committee "does not replace the national authorities in the assessment of the facts"[23] and "it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence".[24]

4.7 The State party questions whether B., F. and M. "sufficiently substantiated for purposes of admissibility" the circumstances of their sterilizations and the alleged failure of domestic authorities to provide sufficient redress to them.[25] C. presented certain evidence to the Committee, and J.D. and G. had their cases examined by the Ombudsperson. The State party accepts that these three authors presented prima facie evidence for the purposes of admissibility.

4.8 The State party recalls the case of *A.S. v. Hungary*, in which the Committee considered "the facts that are the subject of the communication to be of a continuous nature and that admissibility *ratione temporis* is thereby justified".[26] The State party submits that in that case, the sterilization was performed less than three months before the entry into force of the Optional Protocol for Hungary and A.S. resorted to relevant domestic remedies shortly thereafter (within a reasonable period of 10 months after the sterilization).

4.9 The State party questions whether the Committee's conclusion in that case is applicable to the present communication, in which the relevant facts (regarding five authors) occurred long before the entry into force of the Optional Protocol for the State party. The events took place even well before the Optional Protocol entered into

[20] Czech Republic, Supreme Court, Case No. 30 Cdo 2819/2009, judgment of 23 June 2011; Case No. 30 Cdo 1528/2014, judgment of 22 October 2014.
[21] *Y.W. v. Denmark* (CEDAW/C/60/D/51/2013), para. 8.8.
[22] *T.N. v. Denmark* (CEDAW/C/59/D/37/2012), para. 12.7.
[23] *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.
[24] *M.S. v. Philippines* (CEDAW/C/58/D/30/2011), para. 6.4.
[25] *N. v. Netherlands* (CEDAW/C/57/D/39/2012), paras. 6.7, 6.10 and 6.11; *M.S. v. Philippines*, para. 6.5; *Y.C. v. Denmark* (CEDAW/C/59/D/59/2013), para. 6.4.
[26] *A.S. v. Hungary*, para. 10.4.

force internationally.[27] The time factor plays an important role in considering the *ratione temporis* admissibility. The lapse of time between the triggering event and the date of entry into force of the Optional Protocol for the State party should not be unreasonably long.[28] The lapse of time between the sterilization of the authors and the date of entry into force of the Optional Protocol for the State party should be taken into consideration and even when an act, omission or decision has "enduring effects [it] does not give a rise to a continuing situation".[29]

4.10 The communication is inadmissible for incompatibility *ratione temporis* concerning all authors except J.D. In *A.S. v. Hungary*, the author complained about the fact that she had been "subjected to coerced sterilization by medical staff at a Hungarian hospital"[30] and not about the alleged lack of domestic remedies. The present communication is limited to an alleged violation of the right to remedy, which cannot be considered "of continuous nature" without any time limitations, in the light of the fundamental principle of legal certainty.[31]

4.11 The Optional Protocol entered into force for the State party on 26 February 2001. For the purposes of individual communications, the Committee has temporal jurisdiction to examine the existence of effective remedies at the domestic level only after that date. This marks the material time for the purposes of the present case.

4.12 In its 2010 concluding observations, the Committee recommended that the limitation period for bringing compensation claims in sterilization cases should start "from the time of discovery of the real significance and all consequences of the sterilization by the victim". For the purposes of *ratione temporis* considerations and in the light of the above, it is imperative to ascertain when B., F., M., C. and G. discovered "the real significance and all consequences" of their sterilization. The starting point must be the actual dates of their sterilization. It appears that they were sterilized in 1982, 1987, 1987, 1989 and 1990, respectively. G. discovered "all consequences" soon after she was sterilized, on 25 September 1990 at the latest. C. claims that she became aware of the full consequences seven years after the surgery, in 1996. These two authors discovered "the real significance and all consequences" of their sterilization long before the entry into force of the Optional Protocol.

4.13 Concerning B., F. and M., there is no evidence suggesting when they discovered "the real significance and all consequences" of their sterilization. They remained silent on this point. Nevertheless, given that all three authors were sterilized in the 1980s, no less than 12 years before the entry into force of the Optional Protocol for the State party, the State party can reasonably expect that they discovered the "real significance and all consequences" long before 2001. It can reasonably be assumed that the authors had the medical documentation when leaving the hospital and knew that they could not have children because of their sterilization. Regular gynaecological check-ups are a common and free health-care service available in the State party. The passage of time must have uncovered "the real significance and all consequences" of their sterilization.

4.14 In sum, B., F., M. and G. became fully aware of their sterilization long before the entry into force of the Optional Protocol for the State party, most likely in the

[27] *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain* (CEDAW/C/39/D/7/2005), para. 11.5.

[28] European Court of Human Rights, *Janowiec and Others v. Russia*, application Nos. 55508/07 and 29520/09, judgment of 21 October 2013, para. 146.

[29] European Court of Human Rights, *Meltex Ltd. v. Armenia*, application No. 37780/02, judgment of 27 May 2008; *X. v. United Kingdom*, application No. 7379/76, Commission decision of 10 December 1977.

[30] *A.S. v. Hungary*, para. 1.1.

[31] *Dayras and Others v. France* (CEDAW/C/44/D/13/2007), para. 10.10.

early 1990s. C. became fully aware no later than in 1996. The State party maintains that this is outside the temporal jurisdiction of the Committee.

4.15 The delay in filing the communication amounts to an abuse of the right to present a communication. The authors submitted the communication 15 years after the entry into force of the Optional Protocol. Most of them were sterilized more than 25 years ago. Given that they have not exhausted any domestic remedies, the "reasonable time" for submitting their communication should be determined on the basis of the moment when they discovered "the real significance and all consequences of the sterilization". For five of them, it must have been long before 2001 and for J.D., in August 2001. Although the "reasonable time" test is a delicate exercise,[32] the time between their sterilization and the filing of the communication was not "reasonable". A fair balance between the right of the authors to defend themselves by submitting a communication before the Committee and the right of States parties not to be held accountable past a "reasonable time" was not struck. Basic principles, such as legal certainty and facilitation of the administration of justice, "suffer" when the communication is brought to the Committee after such a long period.

4.16 As to the exhaustion of domestic remedies, the State party focuses on effective remedies available since 26 February 2001, the date of entry into force of the Optional Protocol for the State party, as of which date the Committee has temporal jurisdiction to examine the existence of effective remedies. The Committee's jurisprudence provides that sterilization is "of continuous nature". That rationale would suggest that the State party is under an obligation to provide effective remedies even to women who were sterilized before the entry into force of the Optional Protocol for the State party. This is the case of all the authors except J.D. They became fully aware of their sterilization most likely in the 1990s. On 26 February 2001, when the Optional Protocol entered into force for the State party, five of the six authors must have been long aware of "the real significance and all consequences" of their sterilization. J.D. became aware in August 2001 at the latest. The material time for the consideration of the exhaustion of domestic remedies derives from those dates.

4.17 None of the authors initiated any domestic legal proceedings at the time they discovered the real significance of their sterilization or after the entry into force of the Optional Protocol for the State party. The complaints of J.D. and G. to the Ombudsperson cannot be regarded as a domestic remedy within the meaning of article 4 (1) of the Optional Protocol, given that in the light of the Committee's jurisprudence, they are neither effective nor do they provide appropriate redress.

4.18 Since the entry into force of the Optional Protocol, civil action for the protection of personal rights under articles 11 of the old Civil Code (in force until 31 December 2013) has constituted an available and effective domestic remedy for all the authors of the communication.[33] In his report of 2005, the Ombudsperson confirmed that civil action is an appropriate remedy for unlawful sterilizations. The remedy had been available to the authors since the entry into force of the Optional Protocol for the State party in 2001. The case law of the domestic courts[34] confirmed the practical

[32] Individual opinion of Committee member Patricia Schulz, in *M.S. v. Philippines*.

[33] In respect of an unlawful sterilization, a civil action for the protection of personal rights constitutes an effective remedy (European Court of Human Rights, *V.C. v. Slovakia*, application No. 18968/07, judgment of 8 November 2011, para. 166). The Slovakian and Czech legislation were the same, given that the two countries had one legal system until the dissolution of Czechoslovakia in 1993. The relevant legal norms continued to apply in both States.

[34] In the Regional and High Courts' judgments of 19 December 2008 and 5 November 2009 in civil proceedings on the protection of personal rights, the courts stated that the sterilization performed in 2003 was unlawful and there was an unjustified interference with the woman's rights. In addition to the acknowledgement of the violation of rights, the courts awarded a compensation for non-pecuniary damage of CZK 200,000.

effectiveness of this remedy in sterilization cases and was well suited for the finding of violations of women's personal rights and the award of financial compensation. In the context of the civil proceedings, the authors were entitled to submit their arguments with the assistance of a lawyer, indicate evidence that they considered relevant and appropriate, have an adversarial hearing on the merits of their case and seek compensation. The authors had the opportunity to have the actions of the hospital staff that they considered unlawful examined by the domestic courts and, if successful, to receive appropriate redress.

4.19 The State party refutes the allegations that F., M., C. and J.D. did not have access to legal advice and emphasizes that since 2001, there have been two avenues for the authors to obtain legal aid. Pursuant to article 30 of the Civil Procedure Code, a presiding judge shall appoint a legal representative upon the request of a participant who fulfils the preconditions to be exempted from court fees if it is necessary for the protection of the interests of the participant. According to article 18 (2) of Act No. 85/1996 on the Legal Profession, a person who cannot receive legal services under this Act shall have the right to have their lawyer appointed by the Bar upon the person's application.[35] The Bar Association organizes free legal advice services in regions of the State party.

4.20 The claim by the authors that the limitation period prevented them from filing a civil action is incorrect. Until 2008, such remedy was free of any limitation periods. The State party is aware of inconsistencies in the case law of lower courts. However, the chances of the authors obtaining compensation were reasonably high because the Supreme Court, which is a general court of last instance, repeatedly adjudicated that such claims would not be time-barred.[36]

4.21 During the seven-year period from the entry into force of the Optional Protocol until 2008, there was no applicable limitation period for civil action for the protection of personal rights, including in respect of claims for non-pecuniary damage. The State party affirms that the authors should have exhausted civil action within a reasonable time from the moment they discovered "the real significance and all consequences" of their sterilizations.

4.22 The effectiveness of the remedy remained preserved after 2008 despite the new approach of the Supreme Court whereby claims for financial compensation were subject to the general limitation period. The law allows claimants to overcome a potential disproportionate hardship of the limitation period through the imperative that rights must be exercised in accordance with good morals. This applies when the aggrieved party does not let the limitation period expire through its own fault and in relation to whom the extinction of the claim would be a disproportionately harsh penalty.[37] Courts are obliged to assess the objection of limitation against its possible conflict with good morals, to find a fair solution and to consider whether the limitation period constitutes a disproportionately harsh penalty, when serious and permanent injuries to health are involved.[38]

4.23 The State party provides examples of cases in which the filing of a civil action led to the satisfaction of the claim for compensation for unlawful sterilization,

[35] The Bar may identify conditions for the provision of legal services, including the duty to provide services free of charge or for a reduced fee if the property and income situation of the applicant suggest so.

[36] Czech Republic, Supreme Court, Opinion File No. Prz 33/67, 1967; Case No. 30 Cdo 1542/2003, judgment of 25 September 2003; Case No. 30 Cdo 1522/2007, judgment of 28 June 2007.

[37] Czech Republic, Constitutional Court, Case File No. I, ÚS 643/04, judgment of 6 September 2005.

[38] Czech Republic, Constitutional Court, Case File No. II, ÚS 635/09, judgment of 31 August 2010.

although the action was filed after the expiry of the limitation period.[39] Civil action has continued to constitute an effective and appropriate remedy. The Constitutional Court and the Supreme Court developed judicial practice mitigating potential consequences of the limitation period in sterilization cases.

4.24 Individuals can also file an appeal before the Constitutional Court to claim violations of their fundamental rights. The authors could have explicitly alleged a violation of the Convention before the Constitutional Court, given that a constitutional appeal constitutes a priori effective remedy.[40]

4.25 Even if the authors considered that there might have been certain inconsistencies in the case law of the domestic courts, it does not mean that the civil action was unlikely to bring effective relief, especially in a situation where the authors have "not made the slightest effort to avail [themselves] of available domestic remedies".[41] The State party recalls the jurisprudence of the Committee that "mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting domestic remedies".[42]

4.26 On the merits, the State party asserts that the substance of the complaint of the authors lies in the alleged lack of effective and appropriate remedies. The requirements of the Convention in respect of the right to remedy closely resemble the requirements of the exhaustion of domestic remedies under article 4 (1) of the Optional Protocol. The admissibility question of non-exhaustion of domestic remedies is closely linked to the consideration of the merits. Whether there was an effective and appropriate remedy available to the authors in respect of their sterilization remains the central question. The State party refers to its observations on the non-exhaustion of domestic remedies, in which it dealt in detail with the question.

4.27 The State party is aware of the gravity of the interference that unlawful sterilization bears. However, in sterilization cases, there is no specific obligation to provide a special remedy stemming from the Convention. The notion of the right to remedy allows for some degree of discretion for the States parties in designing their systems of remedies. The claim of the authors concerning the alleged emerging consensus on the need to adopt special legislation on compensation for unlawful sterilization is not fitting, given that it concerns a very small number of States, which solved, historically and substantively, different situations. It cannot be inferred from the authors' inactivity at the national level that the State party is obliged to adopt a special remedy. A general remedy adequately adapted for the purposes of finding a violation of women's personal rights should be a preferred option over a special remedy, given that it ensures equality before the law and is not prima facie discriminatory.

Author's comments on the State party's observations

5.1 On 12 December 2016, the authors maintained that the Committee was not asked to establish individually whether they were victims of forced sterilizations, but rather to establish that they lacked a remedy appropriate to the systemic nature of the practice of forced sterilizations of Roma women. It is nonsensical to expect people

[39] Czech Republic, Supreme Court, Case File No. 30 Cdo 2819/2009, judgment of 23 June 2011; Case No. 30 Cdo 1528/2014, judgment of 22 October 2014. The Court held that the objection of limitation concerning the claims for financial compensation of unlawful sterilizations was raised contrary to good morals and quashed the judgments of lower courts.

[40] European Court of Human Rights, *Buishvili v. Czech Republic*, application No. 30241/11, judgment of 25 October 2012, para. 56; *Heglas v. Czech Republic*, application No. 5935/02, judgment of 1 March 2007, para. 46.

[41] *Dayras and Others v. France* (CEDAW/C/44/D/13/2007), para. 10.12.

[42] *Zhen Zheng v. Netherlands* (CEDAW/C/42/D/15/2007), para. 7.3.

who are complaining about the lack of a remedy before the domestic courts to have brought a case that they claim was bound to fail. Once the State party introduces an appropriate remedy, the authorities will have the opportunity to test the evidence and make a determination in the cases of the authors. The scant evidence provided by the authors confirms that any civil claim they might bring, in which they would bear the burden of proof, is destined to fail.

5.2 It is incompatible with the Convention to expect vulnerable victims such as members of oppressed ethnic minorities to make a forced sterilization claim using a generic remedy with a three-year statute of limitations or at a time when the case law concerning such claims was inconsistent. The jurisprudence of the courts confirms that the authors stand no chance of a successful compensation claim.

5.3 Multiple national institutions and international bodies recognize the need for specific remedies for victims of forced sterilization. The State party has a long history of forced sterilization of Roma women and of missing evidence concerning such sterilizations. The authors insist that their claims are true and that they have provided all evidence available to them.

5.4 According to international human rights law, a woman bringing a complaint about a lack of effective remedies merely has to show that she has an "arguable claim" that she suffered the harm for which she is seeking a remedy. This is the consistent position of the European Court of Human Rights when applying article 13 of the European Convention on Human Rights.[43] The State party's standard of proof of "beyond reasonable doubt", is misleading, given that it applies to a different set of cases in which victims of ill-treatment request the Court to establish that the ill-treatment violated their rights. The authors merely have to show that they have an arguable claim that they were victims of forced sterilization. The ongoing nature of the violation means that their rights continue to be violated, regardless of when their sterilizations occurred. The subject matter of the complaint of the authors is the right to an effective remedy for the grave violations they suffered because of their sterilization. Their right to a remedy continues until today.[44]

5.5 The authors disagree that the delay in bringing their complaint amounts to an abuse of the right to present a communication. The idea of a compensation scheme for victims of forced sterilization has been subject to political, public and legislative debate for years. The process between 2009 and 2015 brought the issue into the open and empowered victims to seek justice. However, a draft bill calling for the establishment of an independent expert committee to review the individual claims of involuntary sterilization and to advise on appropriate remedies was rejected by the Government on 30 September 2015. The authors brought their complaint to the Committee after that process failed, within six months of the decision of the Government, which they believe is a reasonable amount of time. They recall that there is no time limit for the submission of complaints to the Committee.

5.6 When a State party has violated its obligation under international human rights law to put in place an effective remedy for a breach of human rights, there is no obligation to have exhausted all other remedies, which would have been inadequate or ineffective.[45] The authors contest the assertion that they should have brought a civil claim once they became aware of the full consequences of their sterilization. The

[43] European Court of Human Rights, *De Souza Ribeiro v. France*, application No. 22689/07, judgment of 13 December 2012, para. 78.

[44] The Human Rights Committee, *Sankara et al. v. Burkina Faso* (CCPR/C/86/D/1159/2003), para. 6.3.

[45] *Groupe d'Intérêt pour le Matronyme v. France* (CEDAW/C/44/D/12/2007), para. 11.8.

State party ignores the social marginalization, feelings of humiliation and fear that resulted in their initial reluctance to talk about their situation.

5.7 The State party further ignores the human rights law principle that the strict interpretation of domestic law on statutes of limitations can impede the rights of vulnerable victims.[46] The person bringing the claim bears the burden of proof. Women sterilized long ago do not have evidence because it was "lost" by the medical facilities. The authors have no hope of succeeding in any civil claim because they cannot produce the kind of evidence a civil court expects from a plaintiff.

5.8 The authors faced several obstacles to accessing justice. Sterilizations were part of a systemic practice of population control, supported by the State and medical authorities. With no consensus regarding the unlawfulness of such practices, it was hardly imaginable to seek justice before the authorities. The State party failed to reach out by providing information on remedies that were physically, economically, socially and culturally accessible. It was only when the authorities began to envisage a remedy that the authors gained confidence that they would secure justice. When that process failed, they proceeded with their complaint.

5.9 Doctors or medical establishments should be liable for some of the sterilizations. However, the State party has the responsibility to introduce and implement a remedy that can establish liability and compensation. In the case of *A.S. v. Hungary*, the Committee found that Hungary was responsible for monitoring and ensuring sanctions in cases of forced sterilizations in public and private hospitals.

5.10 Some women sterilized in the 2000s were able to secure compensation under the civil law. This has no bearing on the situation of women who were sterilized years earlier and were unable to avail themselves of that legal procedure. The insistence by the State party that forms of free legal advice were available is of no help; in the absence of any outreach to victims of forced sterilization, combined with their low social position, such facilities were of no use to them. The idea that the authors should first have appeared before a civil court within three years of being sterilized, without the assistance of a lawyer, so that they could have a lawyer appointed, completely ignores the reality of their situation. The State party is aware of the shortcomings of the legal aid system; a proposal for a new act on legal aid was introduced in March 2016.

5.11 States parties must provide accessible remedies. The State party acknowledged that jurisprudence was inconsistent, leaving the authors with a "chance" of securing compensation. While some victims of sterilization might have been able to secure compensation before 2008, it would by no means have been clear to the authors that that was an appropriate remedy.

5.12 The "good morals"/"bonnes moeurs" principle is of no use to the authors in overcoming the statute of limitations. This discretionary exception to the rules imposes no substantive obligations on the courts; it is merely a procedural requirement when considering the granting of an exception. The courts have no practice in using the "good morals"/"bonnes moeurs" provision to overcome obstacles such as those faced by the authors. The two cases cited by the State party were different, given that they were filed during the period (between 2003 and 2008) when the courts were granting monetary compensation to some victims of forced sterilization despite the fact that the three-year limit had passed. By the time the cases of the authors would have reached the Supreme Court, the case law had changed and the statute of limitations blocked compensation claims.

[46] See https://theglobalfund.wd1.myworkdayjobs.com/External.

5.13 The statement by the State party that "the Supreme Court held that the objection of limitation concerning the claims for financial compensation of unlawful sterilizations was raised contrary to good morals and quashed the judgments of lower courts" is misleading. The Supreme Court found that victims of forced sterilization had a procedural right to have the "good morals"/"bonnes moeurs" provision considered. The Supreme Court ordered the lower courts to reopen the cases, not to find in favour of the victims. Given that the jurisprudence is now settled and that the authorities have rejected the introduction of a specific remedy, the authors have only a theoretical and illusory prospect of securing compensation from the courts through the discretionary application of the "good morals"/"bonnes moeurs" principle.

5.14 Individuals bringing civil claims for damages pay court fees, which are a percentage of the amount claimed. The authors are unlikely to be able to afford the fee and even if they could, the amount they would be able to pay would be so limited that it would be considerably lower than the amount of the claim. The court might exempt a person from paying the legal fee only if there were "especially serious reasons".[47]

5.15 The Constitutional Court can intervene after a long civil action has failed and can only require the courts to consider the application of the "good morals"/"bonnes moeurs" principle in the cases of the authors. Nothing indicates that their cases would trigger this discretionary exception to the rule prohibiting compensation claims after the statute of limitations has expired.

5.16 On the merits, the authors challenge the argument that there is no obligation to have a special remedy for victims of forced sterilization. Given the time of their sterilizations, the exclusion suffered and their marginalized position, they were entitled to a specific remedy. Other countries with a similar history (Austria, Germany, Peru, Sweden and certain states in the United States of America) have put in place remedies outside the ordinary legal system. The failure to do so, while other schemes exist for victims of ill-treatment under earlier discredited regimes, amounts to discrimination against Roma women who have been forcibly sterilized.

5.17 The domestic law and jurisprudence have led to the revictimization of the authors and intersectional discrimination on the basis of ethnicity, gender and social status, given that they do not distinguish between Roma women who are victims of forced sterilization and other plaintiffs requesting compensation in civil proceedings for ill-treatment and apply the same burden of proof and statute of limitations to everyone. Remedies for human rights violations should be tailored to reflect the vulnerability of certain categories. The authors, as victims of gross human rights violations, maintain that the State party is required to put in place a compensation scheme tailored to victims of forced sterilization.[48]

Additional submissions by the State party

6.1 On 5 May 2017, the State party reiterated that the authors had not attempted to shed light on the circumstances surrounding their sterilization and interprets their silence as a confirmation of its description of the circumstances. The State party rejects the claim that there were "several thousand" illegally sterilized women as unsubstantiated. The Ombudsperson documented several dozens of cases.

[47] Czech Republic, Civil Procedure Code, Law No. 99/1963 of 4 December 1963, sect. 138.

[48] The Committee recommended in its most recent concluding observations on the Czech Republic (CEDAW/C/CZE/CO/6, para. 29) that the State review the three-year statutory limitation period and establish an ex gratia compensation procedure for victims of forced or non-consensual sterilizations.

6.2 The present case does not concern sterilization itself, but the alleged lack of an effective remedy, as agreed upon between the parties. The State party focused correctly on the alleged violation of the right to remedy. However, the authors request that the Committee examine the communication *in abstracto*, without due regard to the individual circumstances of their cases. Such an approach cannot be followed in an individual complaint procedure, where the basis for the examination must be the individual circumstances of a particular case, not an alleged failure to follow the recommendations of United Nations treaty bodies in periodic reporting procedures. Reporting and individual complaints procedures have different rules and require different approaches.

6.3 The facts of the case cannot have continuous implications on the right to an effective remedy, as follows from the nature of this right and from procedural rules surrounding domestic legal remedies and the judicial system, including the principle of legal certainty. The reference by the authors to the Human Rights Committee case *Mariam Sankara et al. v. Burkina Faso*[49] is misleading. Although the judicial proceedings were initiated before the entry into force of the International Covenant on Civil and Political Rights and its Optional Protocol for Burkina Faso, they continued after the entry into force and were not concluded at the time of the adoption of the views of the Committee. In the present case, the authors did not initiate any domestic proceedings before the entry into force of the Optional Protocol for the State party, while they[50] were aware of the full consequences of their sterilization at that time. Therefore, the communication should be declared inadmissible *ratione temporis* in respect of the listed authors.

6.4 Regarding the burden of proof in a civil lawsuit, the plaintiffs are merely obliged to mark the evidence supporting their assertions. Consequently, it is up to the court to decide which evidence should be adduced. The fact that there were cases of sterilized women who were successful in their civil lawsuits confirms that the authors did not have to bear a disproportionate burden of proof. To completely omit an obligation to carry a certain burden of proof would disregard the use of any ordinary legal remedies in a national legal system.

6.5 The authors had seven years after the entry into force of the Optional Protocol for the State party to file a civil action, including a compensation claim, during which time they did not have to fear that their claim would be rejected for non-compliance with the general limitation period. Their persistent criticism of the respective limitation period is therefore unfounded. Even the authors confirmed that some sterilized women "might have been able to secure compensation" under the civil law remedies. The authors considered that "chance" was not sufficient for a remedy to be effective. However, the jurisprudence of the Committee suggests otherwise. Thus, the State party fulfilled its obligation to safeguard the right to remedy of the authors.

6.6 The State party disagrees that the avenue through the doctrine of good morals has not been effective in practice after 2008. It refers to a judgment of 22 October 2014,[51] in which the Supreme Court quashed the judgments of lower courts because they had not sufficiently taken into account the issue of compliance of the objection of limitation with good morals and pointed to an entirely different professional position of the parties to the proceedings, a hospital and a patient. It placed a strong emphasis on the vulnerable situation of sterilized women.

6.7 The Constitutional Court is a guardian of fundamental rights and freedoms; its rules on the exhaustion of remedies are similar to those of the European Court of

[49] *Sankara et al. v. Burkina Faso*, para. 6.3.

[50] B., F., M., G. and C.

[51] Czech Republic, Supreme Court, Case No. 30 Cdo 1528/2014, judgment of 22 October 2014.

Human Rights and the United Nations treaty bodies. It requires the exhaustion of domestic remedies. The authors implicitly admitted that in order to fully exhaust domestic remedies, they should have first resorted to civil action.

6.8 The State party maintains that the authors misinterpret its obligations under the Convention and the basic principles of the functioning of the individual communication procedure, including the rule of exhaustion of domestic remedies, by justifying that they did not have to exhaust available domestic remedies owing to their expectation that a special remedy would be established. The dissatisfaction of the authors with, and doubts about, the existing remedies do not release them from the obligation to exhaust them.

6.9 The State party disagrees with the claim by the authors that they did not have to exhaust the existing remedies because they did not possess sufficient evidence to pursue a civil claim. They argued that this is the very reason for which a special remedy needs to be to put in place. Even if a special remedy were introduced for victims of illegal sterilizations, they would have to bear a certain burden of proof that their sterilization had been performed in an illegal manner.

6.10 The legislative proposal was intended to be an ex gratia act and was never aimed at replacing the existing remedies, which are of a judicial nature and ensure stronger procedural safeguards, equal access to court, including of marginalized individuals, and independent examination of the cases. The State party decided not to establish the proposed special compensation mechanism, concluding that an "out-of-court" mechanism would not be an effective complement to the existing means of redress for the individual failures in the performance of sterilizations in the past.

Additional submissions by the authors

7.1 On 23 August 2017, the authors argued that the State party had not provided a direct reference or a copy of "another successful civil action" brought by a Roma woman to recover damages, referred to in their additional submission. The fact that some Roma women have been able to avail themselves of such a remedy does not mean that it is compatible with the Convention. The communication concerns gross human rights violations; the estimates of the numbers of Roma and other vulnerable women subjected to forcible sterilization run into the thousands.

7.2 On 27 November 2017, the authors submitted an expert opinion by the Center for Reproductive Rights arguing that special measures must be taken to ensure that marginalized Roma women have effective access to justice in practice and focusing on the harshness of the general limitation period.

7.3 On 29 March 2018, the State party disputed the alleged numbers of illegally sterilized women. The estimation of up to a thousand was based on the experience of Sweden and thus speculative.

7.4 On 23 July 2018, the authors maintained that the estimated numbers of victims were relevant and reliable and that the State party had failed to present any evidence such as statistical data or cases in which the courts had provided compensation for women who brought their claims after the statute of limitations expired. One case of a sterilization victim is currently pending before the European Court of Human Rights.[52] What the State party describes as a "reasonable" prospect of success is nothing more than theoretical.

[52] European Court of Human Rights, *Maderova v. Czech Republic*, application No. 32812/13, statement of facts of 26 June 2015.

Issues and proceedings before the Committee concerning admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66 of its rules of procedure, the Committee may decide to examine the admissibility of the communication together with its merits. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

8.2 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.[53] The Committee notes that both parties maintain that the present case concerns not the sterilization itself, but the right of the authors to an effective remedy and the alleged lack of such. The Committee notes the argument by the authors that the existing general remedies in the State party are not effective and that there is no special remedy available to them. The Committee also takes note of the assertion by the State party that the civil action for protection of personal rights and the constitutional appeal constitute appropriate and effective remedies to seek redress, including financial compensation, and that the State party is under no obligation to provide special or criminal remedy. The Committee further notes the explanation by the State party that the general three-year statute of limitations was not applied to the above-mentioned civil law remedy until 2008 and that its possible disproportionate effects on victims after 2008 were mitigated by the Constitutional Court's interpretation in the light of the good morals doctrine. The Committee notes that the State party provides examples of jurisprudence in order to illustrate that the civil law remedy would have been effective in securing the rights of the authors, including to financial compensation.

8.3 The Committee observes that five of the authors were sterilized between 1982 and 1990 and one in 2001, and that they became aware of the consequences of their sterilization several years before 2008. It also observes that none of the authors attempted to exhaust the available domestic remedies either before or after 2008. The Committee recalls its jurisprudence, according to which "mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting domestic remedies".[54] In the light of the foregoing, the Committee considers that the authors have not exhausted the available domestic remedies and that the communication is inadmissible under article 4 (1) of the Optional Protocol.

9. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (1) of the Optional Protocol;

(b) The present decision shall be communicated to the State party and to the authors.

[53] *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

[54] *Zhen Zheng v. Netherlands* (CEDAW/C/42/D/15/2007), para. 7.3.