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The Path to Compensation: How the Ministry of Health Decides on the Claims of Sterilized Women Analysis of Decision-Making Practice

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Analysis of the decision-making of the Ministry of Health on compensation for victims of unlawful sterilization

All data were requested on the basis of Act No. 101/2001 Coll., on free access to information, thanks to the cooperation with Romea, which financed the data collection. We would like to thank them for allowing us to process the data, which highlighted serious shortcomings in the decision-making of the Ministry of Health.

The process of compensating victims of human rights violations, which requires a special compensation mechanism, deserves the attention of experts, state representatives and international organizations. These are exceptional situations that are not covered by ordinary legal regulation. Alternatively, the regulation does not take into account important specifics so as to be able to achieve the desired goal. This is usually fair compensation for unlawful interference which the State has not been able to prevent. Any such mechanism should be closely monitored, evaluated on an ongoing basis, and ultimately subjected to constructive criticism for future improvement. Each additional mechanism can be a more effective instrument of justice, mindful of victim protection and honoring efforts to minimize retraumatization.

One such mechanism was necessary to remedy the consequences of the illegal sterilizations that took place in Czechoslovakia and subsequently the Czech Republic for more than 50 years. They were first highlighted by Charter 77 in 1978, then by a comprehensive report by Ombudsman Otakar Motejl in 2006, which also called on the state to address them. Its acceptance by our country lasted for more than 15 years.

The special compensation mechanism was necessary because of the statute of limitations on claims for compensation under the ordinary law and also because of the evidentiary exigencies inherent in the passage of time. It was also important to create a simple, efficient process that presented a realistic chance of compensation. It had to be workable for victims of (often) advanced age and ill health, even in the absence of medical documentation.

A law allowing compensation for forcibly sterilized women was passed in 2021 with significant support across the political spectrum. This was a significant milestone in our history. It represented a willingness to acknowledge serious human rights violations. To acknowledge the eugenically motivated practice of controlling the reproduction of a predominantly Roma population. To come to terms with misconduct that had a fatal impact on the lives of hundreds, if not thousands, of people. Specifically, (often very) young women of reproductive age. A few dozen of them fought indomitably for decades for justice, which, together with national and strong international criticism, eventually led to success - the hope of just reparation for all victims. Coming to terms with the wrongs of the past is a prerequisite for the

possibility of continuing to develop a society based on respect for human rights and freedoms.

Compensation in the diction of the Ministry of Health

Act No. 297/2021 Coll. on the provision of a lump sum of money to persons sterilized in violation of the law has made it possible to obtain satisfaction in the form of CZK 300 000 for victims sterilized between 1966 and 2012 in the territory of our country. Victims could submit applications during the period of the law's effectiveness from 1 January 2022 to the end of 2024.

The Ministry of Health was entrusted with the processing of compensation applications. As a representative of the State, it plays a crucial role in actively redressing the injustice to which the State has committed itself. The Department had four and a half months between the effective date and the effective date to prepare to process the applications. One systematized post was created for this agenda.

The preparatory period also saw the creation of basic documents such as a template application form and instructions for making an application. The NGO sector suggested that these instructions should be simplified and translated into clear language with the target group in mind. Unsuccessful. A helpline for women applicants was also established. It was expected that 400 women applicants would be compensated.

Initially, in less than six months, the first 74 applications were assessed. Along with them, the first difficulties accompanying the application process became apparent. The Ministry of Health did not comply with the legal deadline of 60 days. This was a failure to meet a deadline of days, but rather months. This made the process unclear for the claimants, raising questions about the correctness of the procedure and concerns about their own mistakes, but also questions about whether compensation would actually be paid. Trust was thus broken.

The whole situation was exacerbated by the fact that the Ministry of Health was also failing to communicate with the applicants. It did not respond to emails, did not answer the hotline, and the lack of information led to deepening mistrust. This aspect also appeared serious because the applicants were mostly elderly women, often in poor health, and time was of the essence for them.

Another problem was the reluctance of the Ministry of Health to accept evidence other than medical records. This was despite the fact that the law provided for it. As stated in the explanatory memorandum, it was clear that some victims would not have medical documentation, whether because of legal or illegal shredding, as decades passed between the sterilisations and the state's acceptance of the solution. The State bears responsibility for the delay. He therefore intended to compensate those victims as well. More specifically, the State knew in advance that the documentation from 1966 and many years afterwards would not be preserved and that it was necessary to create conditions that would lead to the rectification of this historical injustice.

The reparation mechanism was to bring justice, not a formal step. That is why the NGO sector wrote an open letter to the Ministry of Health through the Minister of Health and also to the Prime Minister in an effort to highlight the shortcomings at a time when they can be corrected in a sufficiently timely manner. The success rate at this point was only around 50%.

Open letter from NGOs responding to the first data

Available data for the compensation period - from 1 January 2022 to 31 May 2022

261 applications submitted

Completed: 74 applications

Decisions in favour: 35 cases - applicants were successful in only 47% of cases.

Specifically, in an open letter signed by twenty organisations and personalities, the *signatories draw attention to the above difficulties as follows:*

"1. For the majority of compensation claims, the time limit set by law for their settlement is not met and the proceedings are dragged out for more months than the time limit set by law. This in itself undermines the claimants' faith in the process.

2. Although the enacted law specifically allows for evidence other than medical records, we are not aware of any cases where other evidence has been admitted. This means that claimants whose records have been shredded have not yet received compensation, even if the shredding was in violation of the law or the records were lost or destroyed. Yet the law has granted compensation for unlawful sterilizations since 1966."

The civil society also proposed solutions to remedy the dismal situation, namely:

"1. When reviewing individual applications by responsible officials, have the purpose of the Compensation Act and not to proceed in a purely formalistic manner when assessing applications. It is not the applicants' fault that it has taken the Czech Republic so many years to adopt the compensation mechanism that their medical records are irretrievably shredded or otherwise damaged.

2. Compliance with the time limit for processing applications (i.e. within 60 days as prescribed by law).

3. Adopting a methodology for determining whether circumstantial evidence may not be sufficient to recognize a claim would also help to address the current problems. This issue has previously been addressed by the Ombudsman in the 2005 Final Opinion.

4. Establish more intensive cooperation with civil society experts who have been working on the issue for a long time. The Ministry has so far shown insufficient interest in this form of cooperation."

Reply from the Minister for Health

The Secretary of State for Health responded by letter dated 15 September 2022, responding to each of the points. First, he said he regretted that the time limit for processing applications was not being met. He stated that this was due to objective reasons as only one post was allocated for this agenda and that too was not filled. The reason for this is the lack of interest from quality candidates and he also noted that it is a temporary post. He concluded by saying that the unit at the Ministry of Health had been overstretched for a long time and now they had to reallocate the agenda of dealing with claims for compensation for sterilisation carried out in breach of the law.

However, staffing difficulties are not the only reason, according to the Minister, who also said that the applicants do not send perfect applications and inaccurate or erroneous information is given, which puts a strain on the Ministry and creates a lot of sub-tasks and communication around them. He summed up the whole situation by saying that no improvement could be objectively expected in the short term.

In conclusion, the Ministry of Health has not taken any systematic steps to address such a fundamental deficiency as the failure to comply with the statutory time limit for processing applications, except to continue to fill the systematised post.

On the question of proof, the Court stated that, by the nature of the case and the fact that considerable sums of money are spent on the payment of compensation, it is necessary to prove the facts in such a way that there is no reasonable doubt about them. This is an administrative procedure governed by the principle of substantive truth. That information is true, but account must be taken of the specific

circumstances of the compensation mechanism, which, moreover, were the reason for its adoption.

The medical records are the basis from which sterilisation and, in many cases, its illegality can be proven. However, it is not the only means of proof and the Ministry of Health is obliged to lend a helping hand to the applicants and help clarify the facts. The Minister rejected the notion that his Department a priori rejected other evidence, adding that the Ministry was not called upon to provide legal advice and help the applicants to surmise what might lead to their successful claim for compensation. He also rejected the Ministry's formalistic approach and described this conclusion by civil society as unfounded. This statement credibly demonstrated his attitude towards the compensation process.

The clearly stated aim of the Compensation Act was to provide fair compensation for the victims of the serious human rights violations that the Czech Republic has caused. Both the law and its explanatory memorandum envisaged specific treatment in view of the evidentiary emergency arising as a result of the State's laxity. At later stages, however, the courts, including the highest ones, had found in favour of the applicants and had called on the Ministry of Health to change the attitude demonstrated above. You can read more about the courts' decisions in the section on court decisions. **The Minister said that as on September 15, 2022, the Ministry of Health had registered more than 370 applications.**

Is the data secret?

Romea.cz regularly submits requests for information pursuant to Act No.106/1999 Coll., on free access to information, with the aim of obtaining anonymized decisions by the Ministry of Health regarding compensation for illegal sterilizations. This information is subsequently shared with other organizations that provide legal assistance to the applicants. However, the Ministry of Health repeatedly violates the law in the processing of these requests, in particular by failing to meet deadlines for processing, demanding disproportionately high reimbursements and avoiding answering specific questions, such as about court proceedings.

Repeated failure to comply with legal deadlines and ignoring complaints

The Ministry of Health repeatedly fails to process requests within the time limit set by law. Romea.cz's last request for information was submitted on 15 April 2024, but as of the end of 2024 it had still not been processed, despite the fact that the legal deadline for providing information is 15 days (25 days in justified cases). The Ministry did not respond to repeated urgencies, nor to complaints of inaction, and even ignored requests to apply measures against inaction under Article 80(3) of the Administrative Procedure Code.

In some cases, the Ministry, after long delays, provides only part of the requested documents or sends an estimate of the costs that the applicant must pay in order to be provided with the information. As a result, the procedure is prolonged beyond the legal time limits, which prevents effective control of the Ministry's decision-making practice.

High and repeated charges for providing information

The Ministry of Health systematically demands disproportionate reimbursements, effectively preventing access to information. The applicant was assessed CZK 17 250 for anonymised decisions granting and refusing the application for the period 15 June 2023-15 April 2024 and for anonymised decisions on appeals. However, this is not the first large reimbursement; previous reimbursements have exceeded CZK 20 000. In total, Romea.cz has already paid tens of thousands of CZK for access to information.

When the League of Human Rights asked for information about ongoing court proceedings regarding compensation for unlawful sterilizations, the ministry responded that it does not keep a list of such proceedings. Nevertheless, it estimated the cost of finding this information at CZK 6,650.

The overall approach to dealing with requests for information is inconsistent with the Department's obligation to provide information in an efficient manner. The fact that the Ministry does not keep a list of proceedings, although this should be part of its records, leads to an unbearable administrative burden for applicants.

The data we (don't) have

The apt title of this chapter is unfortunately a sad description of reality, as comprehensive statistical data was provided by the Ministry of Health only for the period between the beginning of the law's entry into force, i.e. 1 January 2022, and mid-June 2023. Unfortunately, the Ministry did not provide further data despite timely requests for information, and even in this area it violated the legal deadlines.

In other periods, we then work only with basic data such as the number of applications submitted and their classification into successful, unsuccessful and discontinued proceedings. In the following sections we then work with appeals and court decisions. We very much regret the impossibility of a comprehensive analysis being carried out for a significant part of the decision period.

Data analysis for the period 1 January 2022-15 June 2023

In total, a sample of 388 upholding and rejecting decisions was examined, not rejecting decisions. In the analysis, we sought to examine whether the period in which the sterilization was performed had an effect on the compensation received.

Of the 388 applications, 271 were granted and 117 were denied. Of these, there were 52 cases in which medical records were not submitted as evidence and 65 cases in which medical records were submitted in the proceedings. Please note that these data cannot be used to compare success rates with other data as this is not a sample that also includes discontinued proceedings.

In particular, the periods examined included the period between 1966 and 1989 and the post-revolutionary period from 1990 to 2000. In addition, we looked at the period between 1966 and 1981 to examine the impact of shredding periods, and thus the absence of medical records as a key means of evidence, on the possibility of obtaining compensation. The law aimed to compensate all victims sterilized between 1966 and 2012, yet the earliest sterilization for which a woman received compensation was not performed until after 1978. For sterilizations between 1966 and 1978, none of the claimants succeeded due to lack of evidence. In total, there were 10 female claimants and 0 were successful. The year 1978 was also the year in which Charter 77 first drew attention to the issue of involuntary sterilizations in our country.

The first period examined

Between 1966 and 1981, 34 women were sterilized and subsequently applied for compensation, of whom 10 were successful and there was a 29% success rate. During this period hospitals were legally allowed to shred medical records.

Second period examined

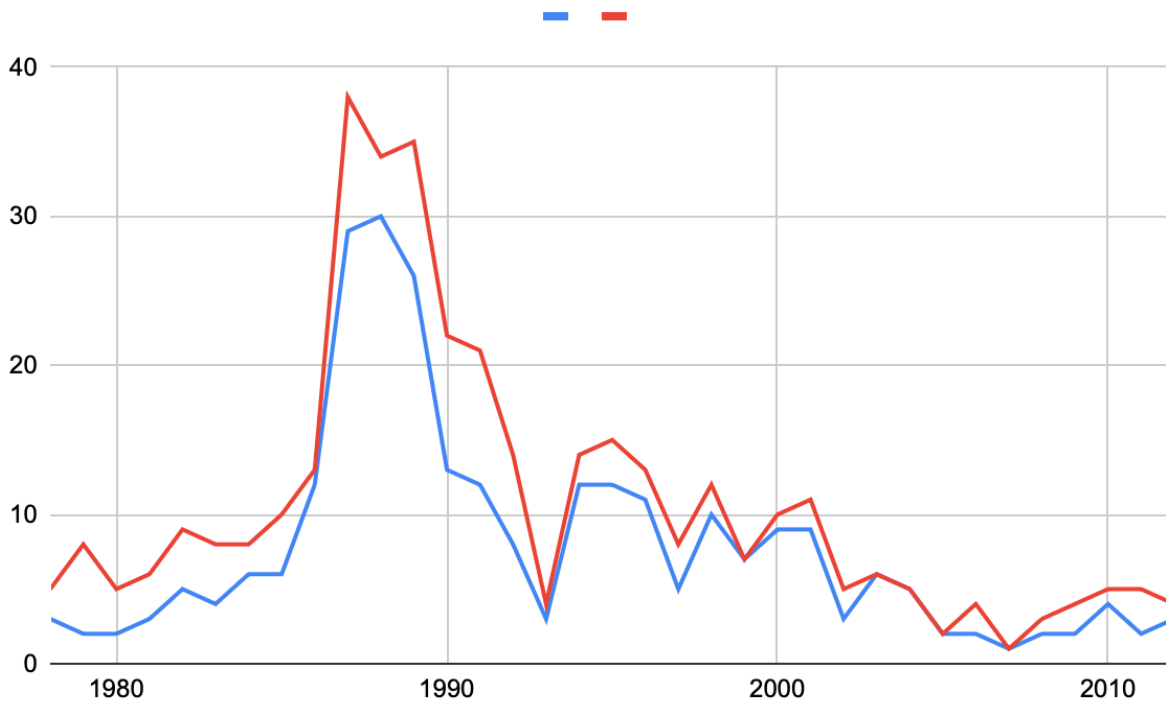
There were 189 applications for sterilization between 1966 and 1989, of which 128 were successful, giving an overall success rate of 68%. This was the pre-revolutionary period in which we expected the highest number of applications of the total. Our assumption was incorrect or the data is distorted due to the Ministry of Health's unclear procedure in the order of processing applications. It can be assumed that applications with missing documentation take longer to process than applications with documentation attached and therefore it cannot be concluded that there are fewer applications than for the following period.

Third period examined

Sterilisations performed between 1990 and 2012 appeared in 199 completed applications, of which 141 women were successful. The success rate there was 71%.
Následující zjištěné skutečnosti

Involuntary sterilizations over time

For these findings, we distinguished between successful and unsuccessful applications. The lowest number of successful applications was for sterilization in 2007 with 1 application, and 2 successful applications were made in 7 different years across the period, with a significant increase between 1986 and 2001. The highest number of successful applications for compensation was for sterilisations carried out in 1987-27 applications, 1988-30 applications and 1989-26 applications. An interesting finding is that the frequency of successful and unsuccessful applications evolves equally.



Evidence other than medical records

We focused on other evidence that can be used to prove involuntary sterilization in women for whom medical records have not survived. Only two claims for which medical records were absent were successful with other evidence.

One was a certificate of social benefit provided for sterilization. This impermissible financial incentive was not a much more common phenomenon, but proof of such a benefit having been provided for decades was rarely preserved and not traceable in state archives. The second time was a report by the Office of the Ombudsman. Thus, the recognition of evidence other than medical records was quite unique, despite the original intent of the law and its explanatory memorandum. Later on, the Ombudsman and the courts, including the highest courts, opposed this practice.

Hospital as a factor

Another interesting finding is that the likelihood of receiving compensation may have been significantly influenced by the hospital itself. The hospital with the highest

number of procedures for which compensation was awarded was Most Hospital. These were 77 out of 81 cases. The success rate for claimants at this hospital was 95%. So, the workplace's efforts to cover up these practices were probably not great or they actually confronted previous misconduct. On the other hand, the Ostrava City Hospital, known as Fifejdy, illegally shredded medical records back to 2000, causing a 0% success rate for female applicants.

The speed of decision-making by the Ministry of Health is also worth noting. The fastest of the anonymised decisions was processed in 18 days. In contrast, the longest application took 316 days.

Follow-up available data

As of 19 September 2024, the Ministry of Health had registered 1971 applications. Of these, 1381 applications have been processed. Of these, 656 applications were granted, which is 47.5%. In 229 cases, proceedings were discontinued, or 16.5 per cent, and 496 applications were rejected, accounting for the remaining 36 per cent.

Total data available for the compensation period - from 1 January 2022 to 19 October 2024

Submitted: 1971 applications

Processed: 1381 applications

656 applications decided in favour

Refused: 496 applications

Discontinued: 229 applications

Thus 590 applications are still pending.

The average length of the proceedings for the clients of the League of Human Rights was 240 days and for the appeal proceedings for the clients of the League of Human Rights was 154 days. In the proceedings before the Ministry of Health, together with the length of the trial, the deadline for our client was 714 days.

The longest proceedings from the available data then took the following time. For the application proceedings it was 554 days, for the appeal proceedings it was 311 days and for the proceedings before the Ministry of Health from application through appeal and remand for further decision it was 874 days.

Of the discontinued proceedings, 23 concerned sterilisations carried out after 31.3.2012, for which it is not possible to obtain the relevant information necessary to assess whether the sterilisations were involuntary, thus confirming the continuing practice, albeit in terms of the failure of the individual(s).

Further developments in the decision-making of the Ministry of Health

The other data relate to the period from the beginning of the law's entry into force to 10 November 2023. A total of 1,519 applications have been submitted for that period. The Ministry managed to process 785 applications, which was 52% of the total. The number of unsuccessful applications was therefore 734, which accounted for the remaining 48%. The success rate during this period was 64%, which was somewhat unique, as can be seen in the preceding data. As a reminder, the success rate in the previous period was below 50%. And the same can be seen in the later data. The latest available data shows that out of a total of 1552 applications processed, only 720 were successful, which is 46%.

Total data available for the compensation period - from 1 January 2022 to 2 January 2025

There has been a significant increase in the number of applications in the last available period, probably in part because the administrative procedure allows for this possibility, and women have had the opportunity to reapply and, in light of the new case law, may have been successful even though they were unsuccessful in their first application. The ratio of first and second applications cannot be given, again in view of the lack of data from the Ministry of Health.

Submitted: 2266 applications

Processed: 1552 applications

Decisions in favour: 720 applications

Refused: 576 applications

Discontinued: 256 applications

Thus, 714 applications are still pending.

The information was provided by a spokesman for the Ministry of Health in the morning, and applications could be received until midnight on 2 January 2025, in view of the law's expiry on 31 December 2025 and public holidays. The numbers may therefore differ slightly from the final figures.

Court decisions play a key role in the issue of compensation for unlawful sterilisations, as they provide a legal interpretation of the relevant provisions and determine how Act No 297/2021 on a lump sum payment to victims of unlawful sterilisations should be applied in practice. The courts address not only the question of whether the conditions for compensation are met, but also interpret the principles of informed consent, the responsibility of state authorities and procedural fairness in deciding victims' claims. In particular, the decisions of the Supreme Administrative Court are important for unifying case law and provide binding legal opinions that must be followed by administrative authorities and lower courts.

Court decisions are also important because decision-making practice varies across the Ministry itself. The same or very similar cases could have been assessed differently. This inconsistency means that some claimants may have been unfairly disadvantaged.

It is the court decisions that help to remove this fragmentation, provide clear guidance for the assessment of individual cases and contribute to greater legal certainty for claimants. Legal certainty and predictability of decisions are fundamental principles of the rule of law - those affected by legislation must be able to predict with reasonable certainty how their case will be decided. If decision-making practice is fragmented, this principle is violated because individuals do not have an equal chance of a fair decision. The courts therefore play a key role not only in correcting individual wrong decisions, but also in setting clear standards for administrative authorities and ensuring equal access to rights.

Overview of decisions of the Municipal Court in Prague and the Supreme Administrative Court (as of 31 December 2024)

Municipal Court in Prague

In total, he ruled on 29 cases.

In favour of the applicant: 24 cases (82.8%)

Against the applicant: 5 cases (17.2%)

Supreme Administrative Court (SAC)

In total, he ruled on 11 cases.

In favour of the applicant: 10 cases (90.9%)

Against the applicant: 1 case (9.1%)

Decision on the merits: 6 cases (54.5%)

Order (procedural decision, e.g. not granting suspensive effect, etc.): 4 cases (36.4%)

Order withdrawing the claimant's application for compensation: 1 case (9.1%)

Unsuccessful lawsuits for compensation for unlawful sterilization

1. 9 Ad 19/2022 - Judgment of the Municipal Court in Prague of 21 June 2023

The court dismissed the action on procedural grounds because the applicant had filed the opposition out of time. The Ministry of Health rejected her application and the decision was served on her by fiction, the document being placed in her mailbox. The time-limit for lodging an appeal expired without the applicant having taken any action. The Minister of Health therefore dismissed the appeal for being out of time. The Court held that, as a matter of procedure, decisions which have become final cannot be reviewed if the party itself has not exhausted its remedies in time. It also considered the possibility of a review or a retrial, but concluded that the conditions for such a procedure were not met.

2. 9 Ad 18/2022 - Judgment of the Municipal Court in Prague of 10 April 2024

The applicant was unsuccessful because her application could not be assessed due to a lack of medical documentation. The Ministry of Health stated that there was insufficient evidence to conclude that the sterilisation was carried out unlawfully and therefore rejected the application. The Court agreed with this approach and added that, in the absence of any medical record of the sterilisation, it was not possible to prove the illegality of the procedure on the basis of the applicant's allegations alone. The applicant had argued during the proceedings that the medical records had been shredded independently of her will, but the Court held that even that fact did not alter the applicant's burden of proof, which was to substantiate her allegations at least by circumstantial evidence.

3. 15 Ad 4/2024 – Judgment of the Municipal Court in Prague of 8 February 2024

The court dismissed the claim because the claimant's medical records contained a signed request for sterilization, explicitly stating that she requested the procedure "so that she would never become pregnant again." The claimant argued that she had signed the request after giving birth while in a physically and mentally demanding condition and that she had not been properly informed of the irreversibility of the procedure.

However, the court concurred with the Ministry's argument that the documentation contained no indications of coercion or manipulation. Furthermore, the claimant objected that the medical records were incomplete and invoked the principle of reversed burden of proof, asserting that the Ministry should have proven that the sterilization had been performed lawfully. The court, however, ruled that if the documentation exists, the burden of proof remains on the claimant.

4. 10 Ad 11/2024 – Judgment of the Municipal Court in Prague of 10 October 2024

The court dismissed the claim on the grounds that the claimant did not present any evidence proving that the sterilization had been performed without her informed consent. The medical records contained no entry regarding sterilization, leading the Ministry of Health to conclude that the procedure had not taken place.

The claimant argued that she had undergone a medical examination in the past, which confirmed her sterility, but she did not submit any document verifying this claim. The court ruled that in such a situation, compensation cannot be granted solely based on the claimant's assertion, if there is no objective evidence supporting her claim.

5. 15 Ad 10/2024 – Judgment of the Municipal Court in Prague of 17 December 2024

The claim was dismissed due to the repeated submission of an application without new facts. The claimant had previously submitted a compensation application, which was rejected, and later filed a new application with the same arguments but without presenting new evidence.

The Ministry therefore terminated the proceedings, stating that it was a repeated application without new facts. The court upheld this decision and stated that administrative proceedings cannot be artificially prolonged by repeatedly submitting applications with identical arguments.

Groundbreaking Decision of the Supreme Administrative Court

On July 4, 2024, the Supreme Administrative Court (SAC) issued a landmark ruling regarding the process of handling compensation claims for unlawful sterilizations. The case concerned a claimant whose application had been rejected by the Ministry of Health, on the grounds that there was no proof that the sterilization had been unlawful. The Ministry argued that the medical records had been destroyed and that the claimant had failed to provide sufficient evidence that the procedure had been performed in violation of the law.

However, the Supreme Administrative Court fundamentally rejected this approach. The court emphasized that shifting the full burden of proof onto the claimants contradicts the purpose of Act No. 297/2021 Coll., on a One-Time Financial Compensation for Victims of Unlawful Sterilizations. The SAC stressed that the Ministry, as an administrative authority, must actively establish the facts of the case and cannot merely passively wait for claimants to provide evidence. The court pointed out that many claimants are objectively unable to obtain evidence, particularly due to the destruction of medical records or the general failure of healthcare facilities to maintain proper documentation.

The court underscored the principle of a “defensible claim”—meaning that if a claimant credibly asserts that she was sterilized without her free and informed consent, and her claim is supported by contextual evidence (such as witness statements, other available documentation, or generally known facts about sterilization practices during the relevant period), her request cannot be denied solely due to the absence of medical records. The SAC ruled that in such cases, the Ministry must conduct a thorough evidentiary assessment and consider all available facts, rather than formally rejecting applications based on procedural technicalities.

Other Significant Legal Issues Addressed by the Courts

Administrative courts have already ruled on key issues concerning applicants’ claims for compensation for unlawful sterilizations. Among the most significant legal conclusions are:

1. ***Absence of written information about the nature and consequences of the procedure***

Courts have repeatedly addressed cases where applicants were not properly informed about the nature of the sterilization procedure, its irreversibility, and potential consequences. Under the legal framework in place at the time, written information about the irreparability and nature of the procedure was a mandatory requirement of informed consent. Judicial practice indicates that mere signatures in medical records do not automatically prove informed consent unless it is demonstrated that the applicant received clear and comprehensive information about the procedure and had the opportunity to make a free and uncoerced decision. Courts have consistently ruled that the absence of proper information invalidates consent and that the responsibility for proving this lies primarily with the medical facility and subsequently with the administrative authority assessing the application.

2. ***Insufficiency of general informed consent***

In some cases, the ministry relied on a general consent to medical procedures signed by the applicant upon admission to the hospital or on consent for a cesarean section or another procedure. However, the courts ruled that general consent cannot be considered valid consent for sterilization, which is a specific and irreversible procedure with long-term consequences for a woman's personal life. For informed consent to be valid, it must be clear that the patient explicitly agreed to sterilization as a separate procedure, not merely to general treatment or surgery.

3. ***Evidence without existing medical records***

Many cases involved situations where medical records had been destroyed or contained no information about the sterilization or its circumstances. In such cases, the Ministry of Health frequently rejected applications, arguing that the unlawfulness of the procedure could not be proven. However, the courts confirmed that the absence of medical documentation cannot be held against the applicant. In line with the principle of a defensible claim, the courts recognized that the unlawfulness of sterilization can be demonstrated through other evidence, such as witness testimonies, personal records, hospitalization documents, or other relevant materials. This conclusion aligns with the principle that if the state previously failed to properly maintain medical records, it cannot now use this failure to disadvantage the victims of these practices.

Case studies

In the following chapter, we will take a closer look at specific case studies, not only of court rulings, that illustrate how these principles have been applied in practice. We will analyze individual cases, their legal arguments, and the conclusions of the courts, which shape the current decision-making practice in the field of compensation for unlawful sterilizations.

Suspensive effect of a cassation complaint

The Supreme Administrative Court (SAC) has repeatedly ruled on the Ministry of Health's motions to grant a suspensive effect to cassation complaints in cases concerning compensation for unlawful sterilizations. In several instances, including the decision of April 4, 2024, case no. 7 As 12/2024-41, the SAC dismissed these motions.

In this ruling, the Ministry argued that if it were required to pay the claimant a one-time financial compensation based on a judgment of the Municipal Court in Prague, and the SAC later overturned that ruling, the state would suffer harm due to the difficulties in recovering the disbursed amount. However, the SAC stated that such situations are common in judicial reviews of administrative decisions and, by themselves, do not justify granting suspensive effect.

Despite these repeated decisions by the SAC, the Ministry continues to file motions for suspensive effect in similar cases. This approach may be seen as ineffective, particularly given the consistent case law of the SAC, which clearly defines the conditions for granting suspensive effect and emphasizes that concerns about difficulties in reclaiming disbursed compensation are not a sufficient reason to justify it.

Case Study 1: Awarding Compensation After Judicial Review

In 2022, Ms. R. B. submitted an application to the Ministry of Health of the Czech Republic for a one-time financial compensation for unlawful sterilization under Act No. 297/2021 Coll. The Ministry rejected her application, reasoning that the sterilization had been performed at her request and approved by the sterilization commission, allegedly following the legal procedure in force at the time.

The claimant appealed this decision, but the Minister of Health dismissed her appeal. She subsequently filed a lawsuit with the Municipal Court in Prague, which reviewed the case under file number 11 Ad 2/2023.

In her lawsuit, she argued that not all legal conditions for performing the sterilization under the legal framework at the time had been met. Specifically, she pointed to the absence of written information regarding the irreversibility of the procedure and its consequences, which was required by section 11 of the then-applicable directive of the Ministry of Health. She also highlighted discrepancies in dates her examination by the sterilization commission took place on October 21, 1982, while her sterilization request was dated October 22, 1982, indicating that the request had been submitted only after the commission's approval, contrary to the prescribed procedure at the time.

In its judgment of March 26, 2024, file number 11 Ad 2/2023-59, the Municipal Court in Prague annulled the decisions of both the minister and the Ministry of Health and returned the case for further proceedings. The court found that the Ministry had failed to consider the absence of written information about the procedure's irreversibility in the medical records and had overlooked procedural discrepancies in the approval of the sterilization.

Following this ruling, the Ministry reviewed its stance and granted Ms. R. B. a one-time financial compensation of 300,000 CZK under Act No. 297/2021 Coll. This case underscores the importance of thorough judicial review of administrative decisions and confirms that even after initial setbacks, pursuing justice remains meaningful.

Source: Municipal Court in Prague. Judgment of March 26, 2024, file no. 11 Ad 2/2023-59. Available at: <https://www.zakonyprolidi.cz/judikat/msph/11-ad-2-2023-59>

Source: League of Human Rights. Another successful application: The Ministry granted compensation for unlawful sterilization. August 15, 2024. Available at: <https://llp.cz/blog/dalsi-uspesna-zadost-ministerstvo-priznalo-odskodneni-za-protipravni-sterilizaci/>

Case Study 2: Success After Repeated Application

In March 2022, the applicant independently submitted a request for compensation for unlawful sterilization to the Ministry of Health of the Czech Republic. The Ministry rejected her request, stating that there was insufficient evidence to prove the unlawfulness of the procedure. The applicant then sought assistance from the League of Human Rights, which filed an appeal against the rejection in October 2022. However, this appeal was also unsuccessful, as the Ministry upheld its original decision and dismissed the appeal.

Despite these setbacks, the League of Human Rights decided to submit a new compensation request, this time emphasizing new facts and evidence that had not been sufficiently highlighted in the original application. The new request pointed to serious deficiencies in the medical documentation, suggesting that the sterilization procedure had not been performed in accordance with the legal regulations in force at the time.

One of the key arguments was the absence of written information in the medical records regarding the irreversibility of sterilization, which was required by the legal framework at the time. Furthermore, it was emphasized that consent for the procedure had been obtained under conditions of time pressure and possible coercion, which could have affected the applicant's ability to make a free and informed decision regarding the procedure.

Another critical shortcoming was the form of consent to the operation. The medical documentation contained only a general consent statement with the phrase "I agree to the operation" and the applicant's signature on a separate, otherwise blank sheet of paper. This consent did not include any details about the nature of the procedure or its consequences. Such a form of consent did not meet the requirements for informed consent as defined by the legal regulations in force at the time.

After the submission of the new request, the Ministry reviewed its previous decision and concluded that the applicant was entitled to compensation. This case demonstrates that even after initial rejections, pursuing compensation remains meaningful, particularly when new evidence or arguments supporting the claim become available.

The experience of resubmitting an application for a previously unsuccessful client shows that in such cases, there is still a chance of obtaining compensation. Until the end of 2024, it is possible to file a new request. This is especially significant in cases where the Ministry or the Minister of Health has made decisions contrary to court rulings or when women have new evidence, such as newly discovered documents or witness testimonies.

Source: League of Human Rights. It Makes Sense! The Applicant Succeeded with a Request Submitted Only on the Second Attempt. August 19, 2024. Available at: <https://llp.cz/blog/ma-to-smysl-zadatelka-uspela-s-zadosti-podanou-az-napodruhe/>

Case Study 3: Compensation for Sterilization Due to Romani Origin

In 2022, the applicant submitted a request for compensation for unlawful sterilization, which was initially rejected by the Ministry of Health despite the fact that her medical records explicitly stated that the reason for the sterilization was her Romani origin.

After filing an appeal, the Minister of Health reconsidered the original decision and found the objections to be justified, leading to the granting of compensation.

In her initial application, the applicant stated that she had been sterilized without proper informed consent and that her medical records listed her Romani origin as the reason for the procedure. However, the Ministry of Health rejected the request on the grounds that the unlawfulness of the procedure had not been sufficiently proven.

After receiving the rejection, the applicant, through the League of Human Rights, filed an appeal, arguing several fundamental violations:

1. **Discriminatory racial motivation for sterilization:** The medical records contained the designation "ROMO," which clearly indicated the applicant's ethnic origin and suggested that the sterilization was performed for racial reasons, in violation of the legal framework in force at the time.
2. **Absence of medical indication for the procedure:** The sterilization was carried out without any medical justification, which was contrary to the regulations of the time, which required medical reasons for such a procedure.
3. **Deficiencies in the sterilization request:** The sterilization request lacked all the necessary elements required by the legal regulations at the time, calling its validity into question.
4. **Deficiencies in the sterilization commission's records:** The commission's report did not contain all the required information, suggesting that the decision to perform the sterilization was not properly documented.
5. **Deficiencies in the consent for the operation:** The consent form was not properly documented and lacked all the required elements, undermining its validity.
6. **Absence of written information about the irreversibility of the procedure:** There was no record in the medical documentation that the applicant had been informed about the irreversibility of sterilization, which was mandatory at the time.
7. **Failure to consider the assessment of the Ministry of Health's Department of Health Care:** The Ministry of Health failed to take into account its own Department of Health Care's assessment, which stated that there were no medical grounds for the sterilization and that citing the applicant's Romani origin as a reason for sterilization was unacceptable.

After reviewing the appeal, the Minister of Health acknowledged the validity of these objections and annulled the decision rejecting the application. The applicant was subsequently awarded compensation of 300,000 CZK under Act No. 297/2021 Coll.

This case is significant as it marks the first successful appeal in the compensation process for unlawful sterilizations that recognized discrimination based on ethnic origin. It also highlights the necessity of thoroughly reviewing each application and considering all relevant evidence and circumstances.

Source: League of Human Rights. The Minister of Health granted compensation to a woman who was sterilized due to her Romani origin. March 15, 2023. Available at:

<https://llp.cz/blog/ministr-zdravotnictvi-priznal-odskodneni-zene-ktera-byla-sterilizovana-kvuli-svemu-romskemu-puvodu/>

Case Study 4: Awarding Compensation After a Successful Appeal

In 2022, the applicant submitted a request for compensation for unlawful sterilization under Act No. 297/2021 Coll. She stated that the sterilization was performed in a hospital in Ostrava in the early 1990s. She described that the procedure was carried out without her free and informed consent, as she was not properly informed about the nature of the procedure, its consequences, and its irreversibility.

First Decision of the Ministry of Health

The Ministry of Health rejected her application by a decision dated March 5, 2024, ref. no. MZDR 15866/2022-13/PRO, stating that the applicant failed to meet the burden of proof. The Ministry concluded that it could not be established that the sterilization had been performed in violation of the legal regulations in force at the time. In its decision, it stated that no medical records existed because they had been destroyed and that the applicant had not provided sufficient evidence.

The applicant challenged this decision by filing an appeal, which was initially submitted as a blanket appeal on March 21, 2024, and subsequently supplemented with detailed arguments on April 2, 2024.

Arguments in the Appeal

In the appeal, the applicant raised several key objections to the Ministry's decision, particularly:

- **Absence of informed consent** – The applicant was asked to sign a document while experiencing labor pains and was not informed about the nature of the procedure.
- **Violation of the principle of material truth** – The Ministry failed to conduct adequate fact-finding by refusing to accept proposed evidence, such as a family member's testimony and historical documents confirming sterilization practices at the time.
- **Failure to consider the historical context** – The applicant repeatedly pointed out that, during the relevant period, systematic sterilizations without proper consent occurred in the Czech Republic.
- **Excessively high burden of proof** – The Ministry did not attempt to ascertain the true facts of the case and instead shifted the burden of proof onto the applicant, contrary to the purpose of the Compensation Act.

In its initial decision, the Ministry refused to consider the testimony of a family member, despite the fact that this individual could confirm the applicant's reactions

following the procedure and her longstanding efforts to seek justice through the media and public demonstrations.

The applicant also supported her claim with historical materials demonstrating that sterilizations were routinely performed at the time without proper patient education. She provided further evidence of her continued efforts to have her case recognized.

During the proceedings, on October 31, 2024, the Ministry received a request for the application of a measure against inaction, as the case had been unreasonably delayed.

Decision of the Minister of Health

After reviewing the contested decision, the Minister of Health upheld the appeal and amended the Ministry's decision, awarding the applicant a one-time compensation payment of CZK 300,000. The minister found that the applicant's claims were credible, plausible, and defensible, forming a sufficient set of indications that the sterilization had been performed unlawfully.

The decision explicitly referred to the judgment of the Supreme Administrative Court dated July 4, 2024, case no. 9 As 61/2023-65, which established that in cases where medical records are missing, the absence of evidence cannot be held against the applicant. Instead, it is the Ministry's responsibility to clarify the facts through other means.

The Ministry must adhere to the purpose of the law, which is to compensate all women who were involuntarily sterilized during the relevant period.

Significance of the case

This case confirms the crucial role of the appeal procedure in compensation processes. The Ministry initially rejected the application without sufficiently reviewing the submitted evidence, but during the appeal process, the administrative authority's error was acknowledged, ultimately leading to the applicant receiving compensation.

Source: Decision of the Minister of Health dated December 19, 2024, ref. no. MZDR 15866/2022-13/PRO.

Case Study 5: The Burden of Proof Paradox – When the Absence of Documentation Benefits Applicants

In 2023, the claimant filed an application for compensation for unlawful sterilization under Act No. 297/2021 Coll. The Ministry of Health rejected the application, citing the existence of a signed sterilization request in the claimant's medical records. The Minister of Health subsequently dismissed the appeal, prompting the claimant to file an administrative lawsuit with the Municipal Court in Prague (case no. 15 Ad 4/2024).

The court dismissed the lawsuit, ruling that the claimant had failed to prove that the sterilization was performed without her free and informed consent. It pointed out that the sterilization request contained the unequivocal wording: "*I request permission for sterilization, i.e., a procedure ensuring that I will never become pregnant again,*" which, according to the court, indicated that the claimant must have been aware of the nature of the procedure.

The claimant argued that she had signed the request only after giving birth when she was not in a condition to make a rational decision. She claimed that she had not been adequately informed about the irreversible nature of sterilization and that it had been presented to her as a temporary contraceptive method. However, the court stated that the medical documentation contained no indications supporting this interpretation. It also refused to apply the reversed burden of proof, stating that such a principle applies only to civil medical disputes between patients and healthcare providers, not to administrative proceedings concerning public rights.

This ruling creates a paradoxical situation in which applicants who lack medical records have a better chance of obtaining compensation. In such cases, administrative authorities must consider the applicant's *plausible assertion* if supported by circumstantial evidence. However, if a signed sterilization request exists, the burden of proof is on the applicant to demonstrate that she was coerced or misled into signing it.

Source: Municipal Court in Prague. Judgment of October 17, 2024, case no. 15 Ad 4/2024-45. Available at: <https://www.zakonyprolidi.cz/judikat/msph/15-ad-4-2024-45>