

Report of working group

Compensation to Romani/Tatars subjected to coercive sterilization

Submitted to the Ministry of Local Government and Regional Development
August 2003

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Foreword

As a follow-up to the Storting's consideration of the question of compensation to Taters and at the request of the Minister of Local Government and Regional Development, the working group has investigated and considered the question of alternative forms of compensation for coercively sterilized Taters.

The working group commenced its work on 16 January 2003.

As the coordinating ministry for policy regarding national minorities, the Ministry of Local Government and Regional Development provided the chairman of the working group, Director General Petter J. Drefvelin. Other participants were Georg Hilmar Antonsen, adviser, Ministry of Social Affairs, Ingrid Renolen, adviser, Ministry of Health and Thea Baastad, higher executive officer, Ministry of Justice. The secretary of the working group was Tove Skotvedt, adviser, Ministry of Local Government and Regional Development. Hildegunn Heinum, adviser, Ministry of Local Government and Regional Development participated until 1 January 2003.

The working group took as its point of departure Norway's experience with existing compensation arrangements viewed in relation to the needs of the Romani people and to national and international obligations regarding national minorities. The working group has also assessed the Swedish compensation arrangement for coercively sterilized persons.

The work was carried out in consultation with representatives of the Romani people and the Centre for Combating Ethnic Discrimination.

Oslo, 27 August 2003.

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1. Introduction

Tatars/the Romani people currently hold the status of *national minority* in Norway. The Norwegian government has a special responsibility for persons belonging to this group with regard to maintenance of identity and culture and protection against discrimination.

The most important government instruments for this policy are the Council of Europe Framework Convention for the Protection of National Minorities and Report No. 15 to the Storting (2000–2001) National minorities in Norway – Government policy with regard to Jews, Kvens, Roma, the Romani people and Skogfinns.

The Norwegian government previously pursued an assimilation policy which is characterized today as an abuse of the Romani people's identity and culture. For many years, the Romani people have drawn attention to these matters, and partial confirmation of such an abuse has been provided by research.

The Storting has requested that the question of compensation for coercive sterilization be examined more closely by the authorities. In addition to this, the Council of Europe in its consideration of Norway's follow-up of the Framework Convention for the Protection of National Minorities has called upon Norway to examine existing compensation arrangements with a view to improvement of access for the Romani people.

2. Background

The question of compensation for past abuses against the Romani people has been raised in the Storting and the Government on various occasions. In private bill No. 8:62 (1995–1996), the member of the Storting Erling Folkvord raised the Romani people's situation. He submitted three proposals. Item 1 of the proposal concerned abuses:

“The Storting requests the Government to submit proposals concerning redress for the Tatars as a group and for compensation to Tatars (persons belonging to the Romani people) who have been subjected to ethnic cleansing or other types of abuse by the Norwegian government or by bodies that in practice have acted on behalf of the public authorities.”

This item was voted down.

On publication of the research reports from the project “Sterilization of Tatars 1934–1977”, *Romanifolkets Landsforening* (the Norwegian Association of Romani Peoples) requested in a letter of 28 May 2000 addressed to all parliamentary groups and committees that an inquiry commission be appointed to conduct hearings with participants from the Church of Norway and *Norsk misjon blant hjemløse* (Norwegian Mission among the Homeless). The Storting's Standing Committee on Scrutiny and Constitutional Affairs stated in its letter of 8 June 2000 that the question of an inquiry

commission should be postponed until the Storting had considered the Report to the Storting on national minorities referred to in Proposition No. 1 to the Storting (1999–2000) for the Ministry of Local Government and Regional Development.

When Norway ratified the Council of Europe's Framework Convention for the Protection of National Minorities, the Ministry of Local Government and Regional Development was assigned the specialist responsibility for national follow-up. In 2000, the Ministry submitted Report No. 15 to the Storting (2000–2001) National minorities in Norway – Government policy with regard to Jews, Kvens, Roma, the Romani people and Skogfinns.

The report refers to the Standing Committee's Recommendation No. 39 (1996–97) where the Standing Committee on Justice considered the question of compensation and redress for the Romani people. The majority of the Standing Committee on Justice took strong exception to the injustice done to the group in the past. The committee's majority stated further that any compensation should be granted on a case-by-case basis and in principle within the existing systems in accordance with normal Norwegian rules for damages or through the ex gratia payment arrangement.

However, it is made clear in the report that a moral and historical review must be made in relation to the Romani people (Report No. 15 to the Storting (2000–2001), page 44):

“In the view of the Government, a critical review must be made of the abuses against the Romani people, to follow up the apology given to the Romani people by the former Minister of Local Government and Regional Development Ragnhild Queseth Haarstad on behalf of the Norwegian authorities in February 1998. The Government apologizes for the gross abuses the Romani people were subjected to by or with the active support of the legal Norwegian authorities.

The abuses against the Romani people were particularly gross and seriously affected an ethnic group. Measures to strengthen the culture of the Romani people may be viewed as a form of compensation for the policy of control and norwegianization, particularly for the debilitating effects of this policy on the culture. The Government will therefore propose the establishment of a centre for documentation and dissemination of the culture and history of the Romani people. The centre will be located at the Glomdal Museum at Elverum, and construction is scheduled to start in 2002...”

In the consideration by the Storting of Report No. 15 to the Storting, the Standing Committee on Local Government refers to assertions that the ex gratia payment arrangement does not function satisfactorily in relation to the needs of the Romani people. In the Standing Committee's Recommendation No. 145 (2000–2001), page 18, the committee requests

“the Government, in consultation with Billighetserstatningsutvalget (the Ex Gratia Payments Committee) to review the evidence requirements and the requirements regarding comparability in relation to what was accepted at the time the abuses were committed, and to make an appropriate report concerning this”.

Furthermore, a minority consisting of the Conservative Party, the Christian Democratic Party, the Centre Party and the Socialist Left Party refer to the fact that *“in 1999, Sweden established a separate compensation arrangement for persons unlawfully subjected to coercive sterilization”*. This minority requests that *“the Government consider introducing a similar arrangement in Norway and submit a report on this to the Storting during the next session.”*

In a letter of 13 July 2001, the Ministry of Local Government and Regional Development replied to the Norwegian Association of Romani Peoples concerning the request for appointment of an inquiry commission. The Ministry refers to Report No. 15 to the Storting, where the Government establishes that abuses occurred and that the measures viewed as a whole give a picture of a continuous and severely oppressive policy on the part of society at large towards a vulnerable minority. The Ministry also refers to the authorities' official apology to the Romani people and to the fact that a broad majority of the Storting supported this when the Report was considered by the Storting. The letter concludes that, on this basis, the clarification requested by the association had been provided. Finally, the letter refers to the importance of strengthening and developing the culture, and to the Government's decision to establish a centre for Romani culture at the Glomdal Museum.

During the Storting's Question Time on 17 April 2002, the member of the Storting Ivar Østberg asked the following question:

“Roma and Romani groups maintain that it is too difficult to obtain ex gratia payments. In the Standing Committee's Recommendation No. 145 for 2000–2001, the Standing Committee on Local Government requests the Government to consider the evidence requirements and the requirements regarding comparability. Furthermore, the current government parties as well as the Socialist Left Party and the Centre Party requested the Government to consider introducing a separate compensation arrangement for persons subjected to coercive sterilization. Many Roma and Romani persons who were subjected to abuses are now elderly, and solutions are urgently required.”

In her reply, the Minister of Local Government and Regional Development, Erna Solberg stated, inter alia

“Compensation for coercive sterilization is a matter of major importance to the persons concerned, and the Government attaches importance to clarifying the matter. I will therefore take the initiative to give special attention to this matter in cooperation with the affected ministries, so that we can rapidly consider whether a separate arrangement shall be established and, in such case, how this shall be structured.

I am not currently able to give a time frame for a decision concerning a separate arrangement. This will depend on how long it takes to consider the matter, the possibility of financing such an arrangement and the limitations seen in relation to other issues. However, I am in full agreement with Østberg that the consequence of the current logic behind the existing compensation arrangements – i.e. that, if the policy for this ethnic group was acceptable at the time, it does not provide a basis for

special, individual compensation now – is that the current measures do not reach the group referred to here.

Report No. 15 to the Storting made no reference to such special compensation arrangements or a separate inquiry. It is my impression that a great deal is known about the abuses that took place – considerable research and documentation has been carried out – and I feel that it would delay the process to hold an inquiry before considering a compensation arrangement. Sweden has established a compensation arrangement. The basis of last year’s Storting resolution was that we should examine the Swedish arrangement and consider whether we should implement a similar arrangement in Norway.”

On the basis of a meeting in April 2002 with the Minister of Justice Odd Einar Dørum and the Church of Norway National Council, *Stiftelsen romanifolket/taterne* (the Romani Peoples’/Taters’ Foundation) represented by Supreme Court Advocate Jens Kristian Thune, sent a letter to the Minister of Justice Odd Einar Dørum and the Minister of Local Government and Regional Development Erna Solberg requesting that a fund and a secretariat be established for the Romani people/Taters. The letter stresses that the proposed centre at the Glomdal Museum is far from sufficient and in no way compensates for the abuses to which the Romani people have been subjected. Reference is further made to the fact that, owing to the burden of proof and the criteria and need for legal assistance, neither the damages arrangement nor the ex gratia payment arrangement is a satisfactory solution. The foundation points out that it does not have the necessary funds to assist claimants. In order to remedy this situation, the foundation in its letter puts forward claims that the foundation views as a justifiable form of compensation in view of the authorities’ and the Church’s acknowledgement of abuse.

The letter states that the arrangements proposed in the letter are a minimum of what the organizations can accept on behalf of the Romani people/Taters. It states further that *“This is an attempt to cooperate with the authorities on finding an appropriate solution in order, to some extent, to remedy the abuses against the Romani people, which were particularly gross and had an unreasonably severe effect on an ethnic minority group. Nor shall the arrangements proposed in this request in any way prevent individual persons from pursuing their claims by means of the existing compensation arrangements or the Storting’s arrangement involving ex gratia payments.”*

The foundation refers to the clear acknowledgement of guilt of abuse by the State as this is stated in Report No. 15 to the Storting and states in its letter that *“This acknowledgement of guilt should in our view give rise to quite different financial compensation and redress than that which has been provided to date. (...) It is important to make clear that the Romani people/Taters view the abuses as a collective attack on an entire people. It has been considered and is still being considered whether the minority group through the organizations should institute legal proceedings against the Norwegian State. Compared with the amounts of damages currently awarded by the courts for loss of human rights in many quarters, the claims of the Romani peoples will be considerable. This request is an active attempt to avoid legal conflicts in the future.”*

The letter proposes the following arrangements:

Establishment of a fund of at least NOK 60 million and NOK 3 million to establish a secretariat/meeting place to assist persons in bringing compensation claims, provide advice and guidance and safeguard language and culture.

The questions raised by the foundation have not yet been addressed.

Budget Recommendation S. No. 5 (2002–2003), 4.3 Programme category 13.21 National minorities, 4.3.2. states:

“The committee refers to the fact that the Government is considering a possible implementation of the Swedish model. The committee requests the Government to present its report to the Storting as soon as possible. (page 96)

In October 2002, it was decided that an interministerial working group would be appointed to consider whether a compensation arrangement should be implemented for coercively sterilized Taters, inter alia on the basis of an assessment of the Swedish arrangement. The working group received the following terms of reference:

The working group shall assess the question of compensation arrangements for coercively sterilized Romani persons/Taters. As a basis for this, the group shall conduct an assessment of existing compensation arrangements including the Swedish arrangement for coercively sterilized persons.

The working group shall also assess possible precedence effects in relation to other groups.

The work shall be carried out in contact with the Romani people’s organizations.

The working group is to be chaired by the Ministry of Local Government and Regional Development and shall submit its report before the end of April 2003.

The working group commenced its work on 16 January 2003.

A contact group was established where the following organizations for the Romani people participated: *Romanifolkets Landsforening* (the Norwegian Association of Romani Peoples), *Landsorganisasjonen for romanifolket* (the National Organization for the Romani People) and *Stiftelsen romanifolket/taterne* (the Romani Peoples’/Taters’ Foundation). In addition to this, the Centre for Combating Ethnic Discrimination participated. The working group had two meetings with the contact group.

The working group has received expert assistance from Chief Municipal Executive Leif Persson, the former vice chairman of the Swedish *Steriliseringssättningsnämnden* (Sterilization Compensation Board) and from Professor Bjørn Hvinden, the coordinator of the Research Council of Norway’s projects on the Romani people. Besides written documentation, the working group has based its work on input, issues, views and proposals presented in the meetings with the contact group and from Persson and Hvinden.

In its assessment of Norway's follow-up of the Framework Convention for the Protection of National Minorities, the Council of Europe states in its report of September 2002:

The Advisory Committee finds that Romani claimants have reported difficulties in terms of securing adequate documentation to access the ex gratia payment scheme, which is designed to benefit victims of past injustices. It considers that the authorities should examine additional ways of supporting claimants belonging to national minorities with a view to improving the accessibility of the procedure."

Norway has stated in its comments to the Council of Europe's report on Norway that the question of compensation will be considered in the working group.

3. Coercive sterilization – the working group's understanding of the term

Sterilization is an operation or other intervention designed to remove a person's power of reproduction. As in the Sterilization Act of 1934, sterilization pursuant to the current Act may be carried out at the request of the person concerned, at the request of the person concerned with the consent of that person's guardian or on application by the guardian without the consent of the person concerned (Sterilization Act of 3 June 1977 No. 57). Sterilization without the consent of the person concerned is only permitted in cases where the person is so seriously mentally ill or mentally retarded or mentally debilitated that he or she is unable to make a decision concerning the intervention.

Pursuant both to the Act of 1934 and to the current Sterilization Act, sterilization may thus be carried out without the consent of the person sterilized. If the conditions of the Act are fulfilled, such sterilization may be lawfully carried out, and not be deemed to be coercive sterilization in the sense adopted by the working group in this report.

By coercive sterilization, the working group understands unlawful sterilization in the sense that the sterilization intervention is carried out without genuine consent or is carried out on the basis of an incorrect assessment of whether the person concerned had "particularly retarded development of mental faculties".

By genuine consent, the working group means voluntary and informed consent. If however the consent is "forced" by means of pressure, threats or other undue influence by the authorities' it is not genuine. The sterilization intervention may then be deemed to be coercive sterilization.

In the working group's assessment, coercive sterilization, as defined here, involves abuse that may provide a basis for seeking compensation.

4. Background material

4.1. Introduction

At the beginning of the 1990s criticism was voiced from several quarters concerning the manner in which the Romani people had been treated during a major part of the 20th century. This was raised by persons who were themselves of Romani extraction and by the Norwegian Helsinki Committee, which applied in 1993 to then Ministry of Health and Social Affairs for funds for research into the public measures regarding the Romani people from a human rights point of view. This resulted in the Ministry instead engaging the Research Council of Norway to coordinate a research initiative concerning what was then termed “the vagrancy question”.

The Ministry outlined some relevant research topics, but stressed that it was for the Research Council to decide the final prioritization of the topics and projects. An exception was made in the case of practice pursuant to the provisions of sterilization legislation, where the Ministry earmarked a specific amount for research. This may be viewed in the light of press coverage and television programmes in autumn 1994, where it was alleged that there had been extensive abuse in relation to these provisions.

The Research Council advertised funding for research into this area in autumn 1995. On the basis of the applications received, the Research Council v/ the Programme Board for Welfare and Society granted funds to the project “Sterilization of vagrants 1934–1977” at the Department of History, University of Oslo, with Professor Anne-Lise Seip as project manager and researcher Per Haave as project assistant. Per Haave prepared the project report, which was submitted in autumn 2000: *Sterilisering av tater 1934-1977. En historisk undersøkelse av lov og praksis* [Sterilization of Taters 1934–1977. A historical study of law and practice], Research Council of Norway), see 4.2, below. In addition to this, a smaller interview-based survey was carried out on the experiences and circumstances of persons of Romani extraction affected by sterilization (Hjørdis Fodstad: *Erfaringer fra tvangssterilisering* (Experiences of Coercive Sterilization), K-series 2-99, Department of Criminology, University of Oslo).

4.2. Sterilization of Taters 1934–1977

The research project on sterilization was originally limited to the sterilization practice authorized by statute during the period 1934–1977. It was later extended to include a study of possible medically indicated sterilization¹, which was not covered by the Sterilization Act.

Per Haave’s report provides a broad review of the background for the Sterilization Act of 1934 and the National Lineage Act of 1942. The latter Act was implemented by the Nazi authorities during World War II and remained in force until May 1945 when the Sterilization Act of 1934 was reimplemented. The report focuses on practice

¹ Sterilization on medical grounds required no prior application, and was in principle only appropriate if pregnancy and childbirth might involve a risk to the mother’s life and health.

concerning sterilization of Taters and the role and attitude of the organization *Norsk misjon blant hjemløse* (Norwegian Mission among the Homeless) concerning the question of sterilization of Taters. In addition to extensive study of documents, the report is based on a review of the sterilization archives, The Mission's archives in the National Archives of Norway and in the regional state archives, and a review of records at five hospitals in order to investigate possible medically indicated sterilization.

Law and practice 1934–1977

The Sterilization Act of 1934 allowed sterilization on three possible premises, all based on official authorization.

- 1) Section 3, first paragraph: A person could himself or herself request sterilization if there was a “respectable reason” for the request. Authorization was granted by the Director General of Health.
- 2) Section 3, second paragraph: Persons under 21 years of age, persons with serious mental illness or persons who were mentally retarded or mentally debilitated could request sterilization with the consent of a guardian or curator. Authorization was then granted by a board of experts consisting of the Director General of Health and four other members – the Sterilization Board.
- 3) Section 4: In the case of persons who were seriously mentally ill or severely mentally retarded or severely mentally debilitated, sterilization could be requested by a guardian or curator without the consent of the person concerned. In such cases, sterilization could also be requested by a chief of police or, if the person concerned was detained in an institution under official supervision, by the head of the institution. The consent of the guardian or curator was required. Authorization was also here to be given by the Sterilization Board.

During World War II, the occupying power introduced a new Sterilization Act. The Act of 1934 was criticized for having too stringent conditions for sterilization without the consent of the person concerned. The Nazi authorities wanted further to adapt the Sterilization Act to the notions of biological race that they intended to put into practice. Act No. 1 relating to protection of national lineage entered into force at the end of 1942, and remained in force until the Liberation in 1945, when the Sterilization Act of 1934 was reimplemented.

The report states that, during the period from 1934–1977, the central health authorities processed over 47 000 applications for sterilization with statutory authority. Of these, it is probable that approximately 44 000 sterilizations were authorized and carried out, of which approximately 30 000 concerned women.

Most sterilizations were carried out pursuant to section 3, i.e. at the request of the person concerned, or with the consent of a guardian or curator. The report states that sterilization often seems to have been the last resort in straitened circumstances. The applicants were primarily women with tight economy at the bottom of the social ladder. Although the majority of the women were often recommended sterilization, it cannot be automatically maintained that the application was submitted under pressure

or undue influence. However, one might ask how many women might have chosen otherwise had they been informed of other ways of preventing pregnancy. Several women may also have accepted sterilization in exchange for agreeing to an abortion. Yet others may have allowed themselves to be sterilized owing to their fear that their children would be taken from them and given away for adoption. Haave concludes that the applications submitted, particularly up to the last half of the 1960s cannot therefore to any extent be said to satisfy the ideal requirements regarding voluntariness.

The report also documents a number of cases of unlawful coercion pursuant to section 4 of the Act, which states that sterilization without consent may be carried out if the person concerned is unable himself or herself to address the issue of the intervention. Several persons who resisted were sterilized pursuant to section 4 because they allegedly did not understand how necessary the intervention was.

However, the report states that it has not been proved with certainty that Tatars as a group were subjected to a deliberate sterilization policy by the authorities.

Figures documented in the report

The report *Sterilization of Tatars 1934–1977* states that it was possible to document that 125 persons of Tatar extraction – 109 women and 16 men – were sterilized pursuant to the Sterilization Act of 1934 and the National Lineage Act of 1942. In addition, three women were sterilized on the authorization of the Director of Medicine of the occupying power. In total, this corresponds to 0.288 per cent of all registered sterilization interventions with official authorization during the period from 1934 to 1977. The report furthermore documents that six persons of Tatar extraction were castrated pursuant to the above-mentioned Acts.

The following table shows the distribution of sterilizations by the different types of authority:

| | | |
|---|--|-----------------|
| Act of 1934 Section 3, first paragraph | Requests by the persons concerned themselves | 50 women, 7 men |
| Section 3, second paragraph | Consent of guardian or curator | 18 women, 4 men |
| Section 4 | Request submitted by guardian or curator or chief of police or manager of institution | 26 women, 4 men |
| Act of 1942 | Applications/requests | 15 women, 1 man |
| | Total | 125 |

Haave emphasizes in the report that the figures stated shall not be regarded as absolute, but that they show the number of sterilization cases that the project managed to document.

According to the report, there is almost no difference between “female vagrants” and other women as regards the use of section 3 first paragraph. On the other hand, there is a marked difference as regards sterilization pursuant to section 3, second paragraph, section 4 and the Act of 1942. This means that Tater women classed as “female vagrants” were subjected to more or less coercive sterilization more often than other women.

The report states that Taters who were sterilized did not constitute a homogeneous group. They included both adults and children, mainly female. Some of them were placed in institutions (residential schools, schools for retarded children, mental hospitals). Others were taken into care or put into foster homes. Some were sedentary, others not. Some were sterilized with their own consent, others at their own request. Some wanted to be sterilized themselves, others felt forced to undergo sterilization, not necessarily through external pressure, but because they were in straitened circumstances. Common to all was that they belonged to an ethnic group that had for centuries been looked down upon, persecuted and outcast, but also defined as a group particularly in need of help. They constituted a minority of the population, and they were, particularly during the 20th century, subjected to a heavy-handed assimilation policy. This policy was sanctioned by the central authorities, but was largely carried out under the auspices of the Mission.

As mentioned above, sterilization on medical grounds could be carried out without the authority of the Sterilization Acts. This meant that application or request and authorization by public authorities was not required if the sterilization intervention was lawful on medical grounds. A natural interpretation of sterilization on medical grounds is that pregnancy and childbirth would involve a risk to the woman’s life or health. However, the investigations documented in the report show that purely medical cases were rare. The investigated material is dominated by other considerations, above all social and socio-medical considerations. The records often stated that the intervention had been carried out “on social grounds”.

Investigation of interventions carried out without the authority of the Sterilization Act show that, at one hospital, 13 women of Tater extraction were sterilized on these grounds. In addition, one case has been found in the Mission’s archives. During World War II, three women were sterilized on these grounds by the authorization of the Director of Medicine, although authorization by the central health authorities was not required in this case. On the basis of an overall assessment of the practice followed, it is Haave’s view that *“This may indicate that more than 230 Tater women were sterilized outside the framework of the Act. If we add this to the number of interventions with statutory authority, this means that over 300 Tater women may have been sterilized from 1930 to the 1970s”*

The role of the Mission and the authorities

The conclusions of the report concerning the role of the Mission and the authorities include the following:

- Norwegian sterilization practice presents a complex picture, as regards the persons who were sterilized, the grounds for sterilization, procedures for effectuating interventions, coercion and voluntariness and administrative practice. Against this background, it is not possible to characterize the sterilization practice that took place during the period from 1930 to the 1970s by means of simple descriptions, such as “coercive sterilization on eugenic grounds”.
- A marked feature in the area of sterilization is the disparity between rhetoric and expressed intentions on the one hand and established practice on the other.
- During the first half of the 1930s, the Mission held the view that sterilization would be an important element of the continuing efforts to solve “the vagrancy problem”, and Secretary General Carlsen developed in this connection a particularly vigorous rhetoric concerning sterilization of Taters. Sterilization became a conscious dimension of the Mission’s activities from the middle of the 1930s until the end of the 1940s.
- Although the Mission was heavily involved in many of the sterilization cases concerning Taters, these constituted a small proportion of sterilization cases. The report documents that the Mission was in one way or another centrally involved in 32 sterilization cases with statutory authority.
- In individual cases, the Mission as a rule made considerable efforts to ensure that a sterilization intervention was carried out, and deeply disparaging descriptions were given of the person who was to be sterilized and often also of the person’s parents. Young girls and boys were often forced to give their consent. Protests and resistance were ignored. The Mission also made considerable efforts to push the parents aside in such cases.
- In certain cases where the person concerned had been subjected to undue pressure, the Mission seems to have concealed this from the central health authorities, probably so as not to delay the process or risk rejection of the application.
- During the period when most Taters were sterilized more or less coercively, the Mission’s Secretary General played a major proactive or participatory role.
- Not until about 1950 do we find – not a conscious dissociation from earlier attitudes – but “silence” from the Mission concerning sterilization.

The report discusses in depth the Directorate of Health’s sterilization policy steps after 1945. It can be seen from the documentation that then Director of Health Karl Evang was particularly preoccupied with bringing about a more active application of the Sterilization Act for eugenic purposes in relation to the occurrence of diseases or groups of diseases where there is reason to believe that heredity may play a greater or lesser role. The purpose was to halt the spread of weak heredity factors in the

population. According to Haave, a possible explanation for the consideration of sterilization as a measure of social significance after 1945 is associated with the strict financial priorities of the period of reconstruction following World War II, and their consequences for social assistance measures.

4.3. “Documentation of coercive sterilization in Norway – an orientation”, memorandum by researcher Per Haave

On the instructions of the working group, Per Haave prepared the following memorandum concerning documentation of cases of coercive sterilization of Taters in Norway from 1930 until the 1970s:

“Sterilization pursuant to the Sterilization Act of 1 June 1934

In Norway, the Act of 1934 set out procedures for applications concerning sterilization and guidelines for how such applications should be processed. All sterilization interventions pursuant to the Act required authorization by the Director of Medicine (from 1945, the Director General of Health) or a special board on the basis of an application stating the grounds. Sterilization applications with accompanying documentation (the Sterilization Board’s or the Director General of Health’s assessments on considering the application, etc.) are currently kept in the so-called sterilization archives at the National Archives of Norway.

Applications for sterilization with accompanying documentation will form an important basis for assessing whether the person concerned was coercively sterilized. In a number of cases, it will be clearly revealed by the available information in the sterilization archives that the person concerned was coercively sterilized, including in cases where the person concerned himself or herself had submitted a request for sterilization pursuant to the voluntariness section (section 3) of the Act of 1934. This will be shown partly by the medical certificate that was to be enclosed with the sterilization application and partly by accompanying documentation, primarily from the body or bodies that wished the person concerned sterilized (the Norwegian Mission among the Homeless, residential schools, schools for retarded children, guardianship boards, child welfare committees, etc.).

In other cases, the information available in the sterilization archives is relatively slight, which may make it difficult to decide whether or not the person concerned was coercively sterilized. In some cases, there is no information although the person concerned is registered in the archive’s protocols of sterilized persons. This may be because the records of the person concerned have been loaned to a hospital and not returned. In other cases, it is not known why the records are missing.

In cases where the information is missing or is slight, it will be necessary to seek information elsewhere. An obvious source of information is the archive of the Norwegian Mission among the Homeless (the Mission), which is kept at the National Archives of Norway. In a number of cases, it would be possible to find information concerning the sterilized person either in that person’s record in the Mission’s client archive or in the record(s) of other family members. Besides providing information in cases where the sterilization archives completely lack relevant information, the

Mission's client archive may also provide necessary additional information where the information in the sterilization archives is slight or incomplete. There is another reason why the Mission's client archive is important. In some cases where the persons concerned – on the basis of the documentation available in the sterilization archives – seem to have been sterilized in accordance with their own wishes (section 3 of the Act of 1934), it is clearly apparent from information in the Mission's client archive that the person concerned was in reality subjected to undue pressure. In some cases, such information was deliberately withheld by the Mission, owing to their fear that the application would be turned down if the Director General of Health or the Sterilization Board was made aware of the circumstances surrounding the application.

In some cases, it may be difficult to identify a person in the Mission's archive, partly because he or she has no separate record in the client archive or partly because the his or her record is missing. In such cases, it is necessary to obtain information either from the hospital where the sterilization intervention was carried out and/or from the institution, if any, where the person was placed (residential school, school for retarded children, home for the mentally deficient, mental hospital).

The Act of 1934 was in force after the German occupation in 1940 until the end of 1942, when the Nazi occupying power replaced the Act of 1934 with its own sterilization act (the National Lineage Act of 1942). During this period, there was a relatively considerable growth in the number of sterilizations pursuant to the voluntariness section of the Act. However, a broad examination of practice has shown that many of these interventions were in reality carried out with coercion or undue pressure.

A number of Taters were also coercively sterilized pursuant to the Act of 1942. The documentation is kept the sterilization archives (the National Archives of Norway).

Sterilization outside the framework of the Act

A sterilization intervention could be carried out outside the framework of the Act of 1934 if there were medical grounds for the intervention (medical sterilization), i.e. when pregnancy was assessed as a risk to the woman's life or health. The research conducted concerning sterilization of Taters and other persons shows that there were not always medical grounds for such interventions. In such cases it is difficult to assert that the intervention was carried out lawfully outside the framework of the Sterilization Act.

Since medical sterilization could be carried out without the specific authorization of the Director General of Health or the Sterilization Board, there are in these cases no applications with accompanying documentation in the sterilization archives. Documentation can primarily be found in the patient's medical record at the hospital where the intervention was carried out. In addition, relevant information in a number of cases can be found in the records of the institution, if any, where the person concerned was placed.

In this connection, we would point out that sterilization of Tater women placed in the Svanviken work camp were in several cases carried out outside the framework of the

Sterilization Act. Large parts of the archive of the Svanviken work camp have now been destroyed. However, lists/cards with the names of a large number of work camp residents, and some protocols with brief information concerning some of the families in the camp have been kept at the regional state archive in Trondheim. Information concerning the sterilization interventions can primarily be found at the hospital in Molde.

Application of the research-based knowledge

*Because the specific information may be slight in individual cases and, in a number of cases, may give an incorrect impression of the circumstances surrounding the sterilization intervention, the research conducted concerning sterilization of Taters forms an important basis for assessment of the question of coercive sterilization. Besides providing an account of a number of individual cases, the research report *Sterilization of Taters 1934–1977* provides a historical account of law and practice (2000) showing how persons of Tater extraction were particularly subjected to sterilization during certain periods. This particularly applies to persons who came into contact with the Mission.*

Thirty-seven per cent of the women placed at Svanviken work camp during the period from 1949 to 1970 were sterilized. Only a small number of these sterilizations were formally coercive sterilizations, i.e. intervention without the consent of the person concerned (section 4 of the Act of 1934). Several of the interventions were carried out outside the framework of the Act of 1934. Although the medical records at the hospital in Molde often give an impression of voluntariness, a broader analysis of the Mission, the work camp and the sterilization question shows that very many of the sterilized women at the work camp had been subjected to pressure.”

4.4. “Public measures regarding the Romani people, particularly use of the Sterilization Act and the question of an appropriate compensation arrangement”, memorandum by Professor Bjørn Hvinden

Bjørn Hvinden is a Professor of sociology at the Norwegian University of Science and Technology, and was the research coordinator for the Research Council of Norway’s subprogramme on the Romani people. At the request of the working group, Professor Hvinden has prepared a memorandum including a critical study of sterilization as part of the assimilation policy and the necessary conditions for an appropriate compensation arrangement. In his memorandum, Professor Hvinden writes:

“Is it possible, on the basis of the research, to state that earlier measures implemented against the Taters, including sterilization, can be viewed as part of an assimilation policy directed towards a culture or ethnicity?”

*As discussed in greater detail in the publication *Storsamfunn og minoritet (Society at Large and Minority)*, the modern policy regarding the Romani people was shaped during the 1890s.² In the course of a few years, the essential premises and goals of the next 80–90 years’ official policy were established and the legal and organizational*

2 Cf. summary, annex 1.

instruments for its implementation were designed. The two most important Acts were the Act relating to treatment of neglected children (the Guardianship Boards Act) of 1896 and the Act relating to vagrancy, begging and drunkenness (the Vagrancy Act) of 1900. Other Acts, including the Sterilization Act of 1934, were later additions to these two Acts. It was also the two above-mentioned Acts that provided the basis for the Norwegian authorities' delegation in practice of most of the practical initiatives implemented in relation to the Romani people to the organization that from the 1930s became known as Norsk misjon blant hjemløse (Norwegian Mission among the Homeless). (...)

(...) If we examine the orientation of the activities that took place over approximately eighty years under the auspices of the Norwegian Mission among the Homeless but with the acceptance and financial support of the Norwegian authorities, we see even more clearly that this policy was mainly directed against the Romani people and its particular way of life and culture. By removing children from their parents, the organization attempted not only to destroy social heredity but also to remove what was viewed as a harmful and undesirable cultural influence. The purpose of placing families at the Svanviken work camp was to make them unlearn their traditional way of life and culture in order to prepare them for a life as sedentary and normal Norwegians. The camp management did what it could to prevent residents from speaking Romani and from engaging in traditional crafts. Speaking Romani was also forbidden at the Mission's institutions. The organization's employees communicated that everything associated with the ethnic group's traditional way of life and culture was inferior and shameful.

Just how obvious it was both to the authorities and the Mission that the aim was assimilation of a minority with a different culture was illustrated when, at the start of the 1950s, the Storting debated the proposal for a new Child Welfare Act. It was not viewed as necessary to explain why such assimilation was desirable or necessary. It was almost only a matter of affirming that the ongoing assimilation had to continue, including in the cases where the family was no longer actively nomadic: "The committee concurs with the Child Welfare Committee and the Ministry of Health and Social Affairs that former vagrants should not be put in a class of their own. Every attempt should be made to ensure their assimilation into the community." (from the Recommendation of the Standing Committee on Health and Social Affairs concerning the Child Welfare Act, Innst. O. XVIII 1953: 15–16, cf. Karen-Sofie Pettersen: Forholdet mellom Norsk misjon blant hjemløse og sentrale myndigheter på området barnevern [The relationship between the Norwegian Mission among the Homeless and central government authorities in the area of child welfare], ISS, NTNU 1999).

Taken as a whole, it involved a systematic and publicly sanctioned process to make the Romani people cease to exist as a distinct group with its own way of life, culture and communal identity, i.e. prevent this minority from reproducing itself socially, culturally and with its own distinct identity. This clearly involved what we today understand as discrimination on the basis of affiliation to an ethnic minority" and the opposite of "respect for the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority" or to "create appropriate conditions enabling them to express, preserve and develop this identity" (the Council of Europe Framework Convention for the Protection of National Minorities).

What do the statistics show regarding overrepresentation of Taters/Romani in relation to measures that were implemented?

- *Between one-quarter and one-third of children of Tater extraction born between 1900 and 1960 known to the Norwegian Mission among the Homeless were taken away from their biological parents and placed in institutions or foster homes. This clearly involved a far greater risk of such treatment than was the case for the remainder of the population (cf. Hvinden 2001).*
- *Of known sterilization interventions with the clearest character of coercion, women of Romani extraction seem to have been significantly overrepresented, i.e. far more subject to sterilization than Norwegian women as a whole (cf. Haave 2000). Haave considers that this must largely be attributed to the systematic disparagement to which women of Romani extraction were subjected.*

As already indicated, it cannot be asserted that sterilization and other measures designed to reduce the Romani people's physical reproduction constituted the most important or primary element of the measures by Norwegian society at large to combat what was regarded as an undesirable subculture. However, application of the provisions of the Sterilization Act were an aspect of the negative sanctioning by society at large of a minority way of life and distinctive culture. For those affected themselves and their close relatives this had extremely serious and lasting consequences. Combined with other losses, the loss of reproductive capacity and the circumstances surrounding interventions carried out (coercion and pressure, secrecy, shame, etc.) contributed to traumatization of whole families, which often lasted for several generations (cf. Fodstad 1999).

When persons of Romani extraction maintain today that they themselves or their relatives were sterilized because they were Taters, this is understandable and, in a certain sense, probably correct: a long-lasting publicly supported policy undermined the families' capacity to stand on their own feet and support themselves by means of traditional trades. All things considered, restrictive provisions in the Vagrancy Act, trading legislation, prohibition against the keeping of horses, etc. gave rise to increased rather than decreased dependency. In practice, the Mission's activities resulted in isolation, stigmatization and continued disparagement of the Romani people. When confronted with threats such as having their children taken away from them, the possibility of resisting placement at Svanviken was severely limited. Similarly, it became difficult for women already at Svanviken to resist the pressure to undergo sterilization when this was associated with the possibility of keeping the children they had. Taken as a whole, this meant that many persons of Romani extraction – particularly younger women – were in a vulnerable position. There is reason to believe that sterilization of these persons would have been carried out less often were it not for a long-standing publicly supported policy to combat the way of life and culture of the Romani people.

The question of appropriate and relevant forms of compensation

It may appear obvious that persons of Romani extraction who were subjected to sterilization under coercion or pressure should be able to apply for compensation under the general ex gratia payment arrangement. However, there are a number of

important considerations that contraindicate this as a satisfactory solution. Some members of the Romani people have pointed out that the ex gratia payment arrangement is not as simple and flexible as it may seem to the public administration. Many claimants have met with unreasonable extensive demands for grounds for claims and documentation of what they have been subjected to in a manner that unnecessarily opens up old wounds and adds to their burdens. Not infrequently, there is disappointment over the amount of compensation. Many people certainly feel that being referred to the ex gratia payment arrangement does not entail a satisfactory acknowledgement by the State that they have been subjected to an unlawful treatment enabled through a deliberate, planned and publicly supported policy. The question is thus whether a special compensation arrangement can be envisaged for persons who have been sterilized (or castrated) on the basis of their ethnic affiliation, for example Romani or Tater extraction. In such case, it must be important not to impose unnecessarily strict requirements regarding documentation of sterilization (or castration) pursuant to the provisions of the sterilization legislation permitting forced sterilization, since there are reasons why many other persons did not feel that they had genuine freedom of choice, given the situation they were in (for example, as residents of Svanviken). Furthermore, there must be flexible and simple arrangements for establishing the probability that the person concerned belongs to an ethnic or national minority, for example by being of Romani, Tater or Traveller extraction.”

4.5. The Romani people, a minority with a new status – International instruments and the view of the Government

Renewed focus on ethnicity and greater awareness regarding this both among the groups themselves and in society at large arose in connection with the discussion concerning whether Norway should ratify the Framework Convention for the Protection of National Minorities.

There has been a gradual increase in ethnic self-organization among the national minorities, including the Romani people. Mobilization by the groups themselves, a new ethnic and cultural awareness and new human rights instruments such as the Framework Convention have resulted in more discussion concerning rights and the preconditions for maintenance of identity and culture. Much of the work in the organizations concerns self-help and rights associated with status.

A central issue, both for the organizations and for private individuals, is that redress and compensation must be given for past abuses as an indication of recognition by society at large of the new status of national minority.

However, none of the international human rights instruments³ place any obligation on the State to settle old injustices, regardless of whether or not they were committed

³ The UN Universal Declaration on Human Rights; the UN Convention on Civil and Political Rights; the UN Convention on Economic, Social and Cultural Rights; the UN Convention on the Elimination of all forms of Racial Discrimination (ICERD); the European Convention for the Protection of Human Rights and Fundamental Freedoms ; the European social charter (revised); the UNESCO Convention against Discrimination in Education; the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation; the Council of Europe Framework Convention for the Protection of National Minorities.

pursuant to statute. On the other hand, several of the instruments encourage dialogue in efforts to combat racism and discrimination, and encourage states to create the conditions necessary for such dialogue. The Council of Europe Framework Convention for the Protection of National Minorities emphasizes the right of national minorities to effective participation in matters affecting them, article 15.

According to the Framework Convention, it is the State's responsibility to create appropriate conditions enabling the groups and individuals to preserve their identity and culture and to participate in matters affecting them.

Observance of these obligations is consistent with the Government's policy as stated in the Sem declaration:

"The coalition government will pursue an active human rights policy both at home and abroad.

The coalition government will pursue a policy that safeguards the right of and enhances the respect for being different and thinking differently. The coalition government will therefore pursue a culture and knowledge policy that enhances people's confidence in their own personal and cultural identity and that of other people."

During the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, one of the main topics of the discussion concerning methods in the efforts to combat racism and discrimination concerned mutual trust between majority and minority and the preconditions for this. Regardless of whether actions now perceived as abuses were carried out pursuant to statute and to the ethics of the day, the need was emphasized during the conference to put behind us the negative circumstances of the past and make progress in finding binding solutions acceptable to all parties.

During the conference it was pointed out that unless such past abuses are admitted, the work against racism and discrimination will be more difficult. In addition to apologies from their governments, the States are encouraged in the conference's final document to find other appropriate means of reconciliation and compensation for past abuses.

5. Existing compensation arrangements

5.1. Introduction

The Norwegian State can be held liable pursuant to the general statutory provisions governing compensation, i.e. when the Government is liable in connection with censurable conduct or hazardous activities. Outside the framework of the general law of tort some special public compensation arrangements have been established (for example, criminal injuries compensation and compensation for injuries to patients). The Storting also has an ex gratia payment arrangement whereby individuals who suffered particularly severely can apply for discretionary financial compensation. In

addition to these permanent compensation arrangements, ad hoc compensation arrangements for specific groups have been established on several occasions.

5.2. General law of tort

Persons who have been subjected to abuses by the public authorities may on different grounds be entitled to compensation pursuant to the general statutory provisions governing compensation. These are the conditions that must be met in order that the causer of the damage may be held liable. The general conditions for compensation are that there must be a basis of liability, a financial loss and a proximate cause of the loss. On certain conditions, redress may also be granted for non-financial loss. If the causer of the damage fails to acknowledge liability and to pay voluntarily, it is up to the courts to decide the question of compensation. In the civil law of tort, injured parties are also required to state their claims within certain time limits. This is in order to allow the causer of the damage to put the matter behind him and after a time to be able to assume that he will not be subjected to further claims. However, if it is the State that is the causer of the damage and the conditions for compensation are met, the State is free to waive the statutory limitations.

5.3. The ex gratia payment arrangement

Ex gratia payments may be granted to persons who through no fault of their own suffered particularly severely compared with other persons in the same situation, and who consider that they thereby, through no fault of their own, have suffered a financial or non-financial loss that is not covered by the general provisions concerning compensation or by social security or insurance arrangements. There are in principle no restrictions relating to the types of matter for which one can seek compensation. The ex gratia payment arrangement is the Storting's own compensation arrangement, which has its origin in the notion that the Storting can remedy unreasonable consequences for individuals. The authority for granting such compensation lies in the Storting's authority to allocate funds, pursuant to article 75d of the Norwegian Constitution. Today, claims for ex gratia payments are no longer dealt with by the Storting itself. The decision-making authority is delegated to committees appointed by the Storting, which consist of a Supreme Court judge and two members of the Storting. In 2000, the right of appeal to the Storting was removed, so that the decisions of the Ex Gratia Payments Committee are final. However, matters of a political and fundamental nature shall still be decided by the Storting, and the Storting keeps itself informed of the development of the arrangement by means of annual reports from the Ministry of Justice, which functions as the secretariat for the arrangement.

The ex gratia payment arrangement is based on established practice dating from 1814, and is not subject to formal rules. This entails, among other things, that no-one has a legal right to ex gratia payments. Compensation is granted on the basis of a purely discretionary assessment in each case, where due consideration is paid to practice in comparable cases. In practice, significant emphasis is placed on whether the public authorities can be blamed for the damage that has occurred, regardless of whether this results from negligence giving entitlement to compensation.

According to practice, the ex gratia payment arrangement excludes the consequences of general social problems affecting a large number of persons in the population. This entails that ex gratia payments are not granted on grounds of difficult conditions during childhood and adolescence or illness unless the public authorities have influenced the events and can be blamed.

Ex gratia payments may be granted if it is deemed to be sufficiently substantiated that the events referred to have taken place, and it is substantiated that this has inflicted on the claimant suffering/loss of a certain extent. The assessment is subject to free evaluation of evidence, and the decision is made on the basis of the documents of the case. Since the ex gratia payment arrangement has no rules of statutory limitation, the grounds for the claim may lie far in the past. This may complicate consideration of the case, and problems arise particularly in connection with retrieval of documentation. If the public authorities have destroyed relevant archive materials, the requirements regarding documentation will in some cases be relaxed. However, in some cases the passage of time may make it less reasonable to grant compensation.

The claims are considered in relation to what was professionally and politically accepted at the time that the alleged damage or disadvantage arose. The fact that, in the light of subsequent experience and knowledge, earlier legislation, political measures, forms of treatment or the like would be assessed differently may not therefore generally form a basis for compensation.

Ex gratia payments are as a general rule granted to individual persons, and only to those who themselves have suffered. Only exceptionally is compensation granted to relatives/surviving relatives, provided that these persons have themselves suffered a financial loss.

The ex gratia payments are not intended to cover the claimant's total financial loss. The payment is intended to be a symbolic amount, and is calculated on the basis of a discretionary assessment. As a general rule, the Ex Gratia Payments Committee has the authority to grant payments up to a maximum of NOK 200 000. Amounts in excess of this must be considered by the Storting.

5.4. Special ad hoc compensation arrangements

On a number of occasions, ad hoc compensation arrangements have been established for specific groups. This applies to people who have a common experience that they believe entitles them to compensation, when such compensation is difficult or impossible to obtain by means of ordinary court proceedings. The initiative for these compensation arrangements has varied, and they have been handled in different ways. The investigations and the administration of the various arrangements have been placed under the ministry where they naturally belonged. Injuries resulting from radiation treatment at the Norwegian Radium Hospital were thus placed under the then Ministry of Health and Social Affairs, the compensation arrangement for persons subjected to lobotomy was placed under the Ministry of Health and Social Affairs and the compensation arrangement for wartime seaman was placed under the Ministry of Trade and Industry. A special compensation arrangement has been decided for pioneer divers in the North Sea, which is administered by the Ministry of Labour and

Government Administration. The Ministry of Justice has dealt with the compensation settlements to Jews and to Norwegians imprisoned by the Japanese during World War II, since it was not natural to place these compensation settlements under any other ministry. The Ministry of Justice and the Ministry of Health and Social Affairs are currently investigating alternative compensation arrangements for the Norwegian “war children” (persons born during the German occupation of Norway during World War II to a Norwegian mother and a father who was a German soldier), who were subjected to particular suffering, losses and unfair treatment as a result of their being “war children”. Accounts of some of these ad hoc compensation arrangements are given below:

Persons injured by radiation therapy

In the Standing Committee’s Recommendation No. 41 (1998–99), the Storting proposed that compensation be granted to persons injured by radiation therapy resulting from treatment at the Norwegian Radium Hospital during the period 1975–1986. During this period 1496 women were treated with radiation therapy for breast cancer using a new treatment pattern that later proved to give rise to extensive delayed injuries. This matter originated in an ordinary compensation claim brought by two women on grounds of wrong treatment. The outcome of these cases was that the State admitted liability and settled the claims in respectively 1993 and 1994. In 1996, the then Minister of Health requested the Norwegian Radium Hospital to review all cases and conduct follow-up examinations of the patients, which resulted in the confirmation of adverse reactions to the therapy in the case of most of the surviving women. A committee was appointed to consider the extent of liability in damages. The committee concluded that it had not been irresponsible to begin using the treatment in 1975, but that continuation of the treatment after approximately 1983 amounted to negligence giving entitlement to compensation. In Proposition No. 3 to the Storting (1998–99), the Government recommended that the women who had been treated with this form of radiation therapy during the period from 1982 to 1986 should be offered an ordinary compensation, while those who had been treated during the period from 1975 to 1981 should be offered an ex gratia payment. For both groups, consideration of the case was entrusted to a special compensation committee for radiation injuries. Independent assessments were carried out of the extent of the injuries.

Persons subjected to lobotomy

Two arrangements were made for persons subjected to lobotomy. They were paid a standard compensation amount of NOK 100 000 within an extraordinary provision via the budget of the Ministry of Health and Social Affairs. In addition those who suffered particularly severely compared with other persons subjected to lobotomy, were compensated in excess of this by means of the ex gratia payment arrangement. Lobotomy was an accepted form of psychiatric treatment during the 1940s and 1950s, but this method has been strongly criticized since then. For a long time, it was standard practice to reject claims for ex gratia payments on these grounds, since the treatment was regarded as responsible when it was in use. Following a public enquiry into lobotomy (NOU 1992:25), the Storting changed its view on this matter, with a consequent change in practice (cf. Proposition No. 44 to the Storting (1994–95 and the Standing Committee’s Recommendation No. 205 (1994–95)). In connection with consideration of appeals concerning the size of the amounts, the Standing Committee

on Justice stated in the Standing Committee's Recommendation No. 205 (1994–95) that *“since lobotomy was a controversial method and because the treatment is now regarded as wrong and brutal, the question of whether general support arrangements shall be deemed justifiable for everyone who has been treated with lobotomy lies, in the view of the committee, outside the ex gratia payment arrangement”*. A committee was then appointed to review the question of whether all persons subjected to lobotomy should receive compensation because the method had been controversial when it had been in use and has since been regarded as particularly brutal. The outcome was that all persons subjected to lobotomy were granted a standard “basic compensation” of NOK 100 000 each via the budget of the Ministry of Health and Social Affairs, as mentioned above.

Pioneer divers in the North Sea

The first divers in the North Sea began diving around 1965. Diving was necessary for petroleum activities. It has later proved that former North Sea divers may (according to the information we have today) have been subjected to particular stresses and strains the delayed effects of which we were not previously sufficiently aware. An organization called the North Sea Divers Alliance ensured that their situation came to the attention of the politicians and it was decided in the Revised National Budget for 2000 that those who had dived in the North Sea during the period from 1965 to 1990 (the pioneer period) and who had suffered permanent damage to their health as a result would receive NOK 200 000 in compensation (Proposition No. 61 to the Storting (1999–2000) and the Standing Committee's Recommendation No. 220 (1999–2000)), without the matter of formal liability being addressed. The arrangement entered into force on 1 July 2000, and it was required that claims be brought within three years from this date. Following a private members bill in spring 2000, the Storting decided to appoint an inquiry commission to assess all matters associated with diving in connection with petroleum activities in the North Sea, including any liability in damages. The Commission submitted its report on 31 December 2002, which was issued as NOU 2003:5. The Ministry of Labour and Government Administration have followed up this matter by Report No. 47 to the Storting (2002–2003), which is to be considered by the Storting in autumn 2003. In 2001, Statoil set up an arrangement involving a maximum payment of NOK 750 000 and a total payment of approximately NOK 75 million.

The Jewish property settlement

In spring 1999, the Storting decided what was referred to as the Jewish property settlement. The background for the settlement was an official report (NOU 1997:22) concerning the confiscation of Jewish property in Norway during World War II. This was followed up by a Proposition to the Storting (Proposition No. 82 to the Storting (1997–98)), and authorized by decisions resulting from this (the Standing Committee's Recommendation No. 108 (1998–99)). The settlement was “a historical and moral showdown concerning the treatment in Norway of the economic liquidation of the Jewish minority during World War II”. It was intended as an acknowledgement and an apology from the Norwegian state to surviving Norwegian Jews and surviving relatives for the injustice committed against them and their families by the Norwegian state during World War II. The Jewish property settlement consisted of compensation to individuals and a three-part collective settlement. The individual settlement consisted of a standard compensation of NOK 200 000 to those who were themselves

entitled to compensation or distributed between their surviving relatives. All Jewish families and individuals born before the end of 1942 who were subjected to confiscation orders or whose property was actually confiscated were entitled to compensation. The conditions were largely the same as for the ex gratia payment arrangement. The collective settlement consisted of NOK 250 million distributed between a fund for safeguarding of Jewish culture and future in Norway, a foundation for safeguarding of Jewish culture outside Norway and a resource centre for studies of the Holocaust, etc.

Norwegians imprisoned by the Japanese during World War II

In spring 2001, the Storting adopted a compensation settlement for Norwegians imprisoned by the Japanese during World War II. Four members of the Storting had submitted a private proposal in Document No. 8:23 (1999–2000). This was followed up by a Proposition to the Storting (Proposition No. 67 to the Storting (2000–2001)) and authorized by a decision resulting from this (the Standing Committee's Recommendation No. 255 (2000–2001)). The settlement consisted of an individual standard compensation of NOK 100 000 to those who had themselves been imprisoned by the Japanese, or distributed between their surviving spouse/children.

5.5. The Sami Peoples' Fund

The Sami people were granted collective compensation for the damage inflicted on them by the norwegianization policy. NOK 75 million was allocated to the Sami Peoples' Fund, which is to be at the disposal of the Sami Parliament. The Storting majority decided that the yield from the Fund should not be used for individual compensation. The Sami Parliament did not wish to utilize the fund unless

- the Government in cooperation with the Sami Parliament initiates work on developing new forms of collaboration
- the Government inaugurates efforts to solve the problem of persons who suffered a loss of education owing to World War II

The yield of the Sami Peoples' Fund has therefore not yet been applied.

5.6. The ex gratia payment arrangement and the Romani people/Taters

In the course of the years, many claims have been brought by Taters concerning ex gratia payments on grounds of loss of education. It has been maintained that the lack of reading and writing skills has hampered the claimants in the labour market and has caused them psychological problems. Until 1997, no compensation was granted to Taters on these grounds, since the cause of their loss of education was the travelling activities and constant moving of their parents. It was thus difficult to reproach the authorities in these cases. The question was raised for discussion in principle in Proposition No. 89 to the Storting (1995–96) with a consequent change in practice. The majority of the Standing Committee on Justice (the Standing Committee's Recommendation No. 75 (1996–97)) found it reasonable to compare vagrant children with other Norwegian children (rather than other vagrant children), and that all children have an individual right to attend school. Thus, the public authorities may not

disclaim the responsibility for ensuring that vagrant children receive schooling even if it was their parents' travel activities that was the main reason why their children received no schooling. Today, Taters who forfeited their schooling generally receive NOK 60 000 in compensation via the ex gratia payment arrangement when the reason for their lack of schooling was their traditional way of life. The claims are processed on an individual basis, so that some Taters have received more than NOK 60 000 and some have received less, dependent on the magnitude of the subsequent consequences of their lack of schooling. If in addition the authorities have been responsible for other circumstances, for example child welfare matters, compensation has also been granted for this, subject to a general assessment by the Ex Gratia Payments Committee.

The Ex Gratia Payments Committee has also processed claims for ex gratia payments on the basis of allegations of coercive sterilization from both Taters and other Norwegians.

In a letter of 27 February 2003, the Ex Gratia Payments Committee was asked to assess whether the ex gratia payment arrangement could be used in relation to Taters who have been coercively sterilized, and, if so, how this could be done. In a letter of 28 March 2003, Arne Christiansen, the chairman of the Ex Gratia Payments Committee, replied as follows:

“The Ministry of Justice’s letter states that a working group has now been appointed to assess the question of compensation arrangements for coercively sterilized Taters/Romani persons. The Ministry particularly wishes to know whether the ex gratia payment arrangement can be used in this connection.

The committee begins by informing that it is not familiar with the Swedish compensation arrangement referred to or the background for this. In Norway, as is well known, the ex gratia payment arrangement also covers in principle all forms of physical and psychological abuse without statutory limitations (however, in the case of abuses after 1 January 1975, the compensation arrangement for criminal injuries applies, cf. the Compensation for Victims of Violent Crime Act of 20 April 2001).

In its activities, the committee has therefore also processed claims where the grounds for compensation have been claims of coercive sterilization – from both Taters and other Norwegians (as far as can be remembered, the claimants have without exception been women). After obtaining a statement from the competent authorities, the claims are decided and a reasoned decision provided.

Very few such claims have succeeded. In most cases, there has proved to be consent from the claimant or guardian and evidence to substantiate that the consent was genuine, for example that the claimant has expressed that she cannot manage to look after any more children. The committee has not only assessed whether the sterilization was formally in compliance with the conditions of the Act then in force (the Act of 1 June 1934 No. 2). See the information in the committee’s letter of 7 August 2001 to the Ministry of Justice, concerning a young Romani woman who was granted an ex gratia payment although the sterilization decision had been formally in compliance with the requirements of the Act because, after closer investigation, the decision was found to have a primarily ethnic ground.

The committee has kept no statistics of the number of claims received containing the above-mentioned allegations, but there were not many. As regards the attention recently given to such abuses, the committee's members have therefore been surprised at the number of cases referred to by the media, cf. particularly the figures given to Aftenposten by the National Association for Justice for Losers on 21 January 2001 (59 women, of which 48 Taters, were said to have received ex gratia payments for wrongful sterilization, and the Norwegian Board of Health was said to have 64 cases under consideration). The committee therefore found it necessary to investigate this question more closely at the Norwegian Board of Health and the Ministry of Justice. It proved that these authorities were not able to confirm the Losers' Association's figures either, cf. the letter of the Ministry of Justice to the committee of 1 March 2001 (ref. 01/01390 A-AK (GMØ)). The Ex Gratia Payments Committee informed the Minister of Health and Social Affairs of the result of our investigation, see Minister of Health Tønnes reply of 5 April 2001 (ref. 01/01803 SAJ/INR). The committee has heard no more about the matter from the Losers' Association.

In view of this, it seems necessary for the now appointed committee also to assess the actual extent of the matter that was raised."

6. The Swedish "Act relating to compensation to sterilized persons in certain cases (1999:332)" of 1 July 1999

During the period from July 1999 to the end of 2002, Sweden had a special Act concerning compensation to persons subjected to sterilization during the period 1934–1975. Of 2113 claims received, 1564 persons were granted compensation. A total of SEK 280 million was paid out. The arrangement is currently under reconsideration.

In 1997, earlier Swedish sterilization practice received considerable bad press, both in Sweden and abroad. Swedish authorities acknowledged that the Sterilization Acts and the practice of them prior to 1976 had been characterized by a view that is now deplored. On these grounds, the Swedish government on 4 September 1997 appointed a special committee to conduct a broadly based review of all aspects of the Swedish sterilization legislation from the 1930s until the current sterilization legislation entered into force in 1976. During the period from 1934 to 1975, Swedish sterilization legislation was regulated by "Lag om sterilisering av vissa sinnesjuka, sinneslöa eller andra som lida av rubbad själsverksamhet" (the Act relating to sterilization of certain mentally ill, mentally deficient or other mentally impaired persons) of 1934. The Swedish "Act relating to sterilization" of 1941 replaced the Act of 1934.

The committee was requested to assess the roles of politicians, the public administration, researchers and the medical profession in connection with the establishment and practice of the legislation during this period. In addition, it was requested to survey the extent of the sterilization and basis for carrying it out. The committee was also requested to put forward proposals for criteria for compensation, to propose the amount of compensation and how a compensation arrangement should be organized. The committee was not requested to consider whether a special compensation arrangement should be established. In Sweden, there is moreover no ex

gratia payment arrangement, and no special compensation arrangements have previously been established.

In 1999, on the basis of the recommendations of the committee, the Swedish Riksdag adopted the Act “relating to compensation to sterilized persons in certain cases”. This compensation arrangement derogated from the current legal principles governing compensation, and had a primarily symbolic function. Proposition 1998/99:71 establishes that: “The proposal regarding compensation presented here involves a considerable departure from current principles of the law of damages regarding general liability. The proposal may not therefore in the future be invoked by other groups claiming damages from the State”.

It is important to note that the word “*tvang*” (force) is not used in the Swedish Act, but that the Act applies to sterilization as specified by the Act.

Section 1 of the Act regulates who may receive compensation:

Section 1 This Act applies to compensation by the State to persons sterilized

1. *pursuant to the Act (1934:282) relating to sterilization of certain mentally ill, mentally deficient or other mentally impaired persons,*
2. *pursuant to the Act (1941:282) relating to sterilization, or*
3. *prior to 1976 with the participation of the State but not authorized by statute.*

The Act provides five objective conditions and one subjective condition that may entitle compensation, cf. section 2:

Section 2 A person sterilized pursuant to section 1 is entitled to compensation if he or she

1. *neither signed an application for sterilization nor gave written consent to sterilization,*
2. *on the date of application for sterilization or when the sterilization was carried out was without legal capacity or under the age of majority,*
3. *on the date of application for sterilization or when the sterilization was carried out was resident in a mental hospital, nursing home or similar institution,*
4. *sterilized on the ground that he or she was diagnosed as mentally ill, mentally deficient or epileptic,*
5. *pursuant to an explicit order by the public authorities, sterilized in order to obtain dispensation to marry, to undergo abortion or to obtain maternity benefit or other state or municipal support, or*
6. *is deemed to have consented to the sterilization because an authority has exercised undue influence or has shown negligence.*

The conditions were worded in such a way that all persons subjected to undue pressure or coercion in connection with sterilization interventions should be able to seek compensation. If the intervention had been carried out while the person concerned was resident in a mental hospital or other institution, it was not necessary to document undue pressure or coercion in order that compensation could be paid. The Act applied to all persons sterilized during the stated period. There was therefore no discussion or investigation specifically concerning the situation of the Romani people/Taters.

Pursuant to *the Swedish Government Official Report SOU 2000:20*, just under 63 000 persons were sterilized in Sweden during the period from 1935 to 1975. Over 90 per cent had signed applications for sterilization. Ninety-three per cent of the sterilized persons were women. Thirty-one thousand sterilizations were carried out on the initiative of the person concerned, and were deemed to be voluntary. Approximately 21 000 of the sterilization interventions were carried out without the consent of the person concerned or in circumstances resembling coercion. Approximately 6 000 of the sterilization interventions were carried out following persuasion or pressure. Approximately 4 000 of the sterilizations could not be placed in the categories coercion or voluntary.

A number of different reasons have been given for the interventions. Examples are family planning motives, socio-medical motives and motives associated with racial hygiene and eugenics. Sterilization could be a condition for the granting of abortion, discharge from an institution or dispensation to marry.

The motives for sterilization varied over time. Coercive sterilization was primarily carried out during the 1930s and 1940s. From the 1950s onwards, the motives stated were primarily socio-medical and family planning. During the 1960s and 1970s, sterilization was mainly voluntary.

With one exception, that of Taters, there is no clear statistical evidence that ethnic minorities were more subjected to sterilization than the remainder of the population. In the survey conducted in connection with the investigation, 22 cases were found where the sterilization seems to have been carried out on the ground that the persons concerned were Taters. If this figure is representative, it indicates that between 600 and 700 persons involved in sterilization applications are stated as being Taters. Most are from before 1955. Owing to the limited size of the sample, there is considerable uncertainty regarding the statistics. However, the conclusions of the investigation resulted in a public apology from the Swedish government for the injustice meted out by Swedish society in earlier times to the people who call themselves Taters and Travellers. (SOU 2000:20, page 17)

In section 3 of the Act, a standard compensation of SEK 175 000 was set for persons who fulfilled the requirements of section 2 of the Act.

The compensation amount was granted on the basis of an overall assessment of the type of intervention, input from the group itself, other foreign compensation arrangements, limited financial resources among the persons concerned and the fact that many of the persons concerned were now elderly.

Since the compensation arrangement was statutory, it was to be regarded as a civil right. Persons claiming such rights are entitled to have their claims considered by a court of law. The claims were to be considered by a board, cf. section 5 of the Act. It was a requirement that the chairman and vice chairman should be judges. This requirement was established in order to fulfil the requirement of the European Convention on Human Rights regarding hearing by a court, cf. article 6.1 of the Convention (4 November 1950). In the view of the legislators, the board was equivalent to a court, and thus fulfilled the requirements regarding impartiality and independence laid down by the Convention.

The Swedish background material for consideration of the claims was good. A central archive provided access to case documents for most of the cases. On the basis of the case documents, it was relatively easy for the board to assess whether or not the claimant satisfied the conditions for compensation. However, in some cases complete files were missing and in some cases information was missing. This was one of the reasons why there were no strict requirements regarding documentation.

A total of 549 claims for compensation were rejected. In approximately half of these cases, it could not be documented that intervention had been carried out. In some cases, operative interventions for other conditions had resulted in sterility. Claims were also rejected in cases where it could be documented that an intervention was voluntary or was carried out following persuasion, but no undue pressure from the authorities was involved.

In connection with implementation of the compensation arrangement, Swedish confidentiality legislation was amended in order to safeguard the necessary discretion.

The Sterilization Compensation Board, which processed the claims, commenced its activities in July 1999 and completed its work in summer 2003. The Board will issue a final report documenting statistics and the experience of the Board.

7. Views of affected groups regarding the compensation arrangement in connection with coercive sterilization

7.1. The Romani people

The representatives of the Romani people in the working group's contact group have provided the following views during the meetings:

- Coercive sterilization should be viewed in connection with other abuses and it may be inappropriate to view this abuse in isolation.
- Haave's report does not give a complete picture of coercive sterilization. There are considerable dark figures. Sterilization is contrary to the culture of the Romani people, which views children as particularly precious. This indicates that few Romani people would voluntarily agree to sterilization. They have either been put under pressure (threats to take their children away from them, be sent to Svanviken, etc.), have not been informed of the type of intervention that would

actually be carried out and/or have been given other medical grounds for the intervention. This must be taken into consideration in the choice of compensation arrangement and criteria for compensation. The organizations neither can nor will estimate the number of possible claimants.

- The ex gratia payment arrangement does not function in relation to the Romani people's needs, and a new arrangement must be established. A new arrangement must be as little bureaucratic as possible with a simple or reversed burden of proof.
- The question of coercive sterilization is so sensitive that only experts and organizations that have confidence among the Romani people would be able to assist potential claimants concerning compensation. The organizations must be equipped to assist claimants. Claimants must be guaranteed full anonymity. The Romani people's interests are primarily associated with their own group, but they do not view it as a problem that a compensation arrangement may include all persons who have been coercively sterilized.
- The compensation amount must be large enough not to appear derisive. It should consist of a basic amount and a discretionary individual supplement.
- One proposal for composition of a board: a psychologist selected by the Romani people, two representatives of the Romani people, one politician and one public official.

7.2. The Centre for Combating Ethnic Discrimination

On the basis of the meetings, the Centre for Combating Ethnic Discrimination has consolidated its input in its letter of 10 April 2003 to the Ministry of Local Government and Regional Development, cf. annex 1. In the letter, the Centre asks whether a compensation arrangement for coercive sterilization of Travellers is sufficient, and questions whether it is equitable to include only one group of persons on ethnic grounds and whether it is sufficient to single out coercive sterilization among the abuses suffered by the Romani people. The Centre for Combating Ethnic Discrimination states further:

“Coercive sterilization is a serious abuse regardless of who is affected. In Sweden, the arrangement includes all persons who have been coercively sterilized. However, the Centre for Combating Ethnic Discrimination regards it as particularly negative that this form of sterilization was carried out in a eugenic context, aiming to limit a specific ethnic group because it was regarded as “inferior”. We are not aware of any documented cases of coercive sterilization for eugenic purposes of indigenous peoples or other national minorities. If it should come to light that more groups were affected on these grounds, an arrangement would be needed including these too.

We wish nevertheless to warn against associating the compensation arrangement too closely with persons affected only because of their ethnic affiliation. In all cases this will be extremely difficult to document, because different grounds have been used in different periods. We assume that plainly eugenic arguments have become less

legitimate since the end of World War II, and that socio-medical terms have been used even in cases where an ethnic group was specifically affected.”

In its letter, the Centre for Combating Ethnic Discrimination also states the view that the compensation arrangement must be adapted to the following:

- The need for legal aid is great among persons of Traveller extraction.
- Provision of needs-adapted guidance should be considered in connection with the establishment of a compensation arrangement by assigning an extended guidance arrangement to the body that is to receive claims or by providing an existing legal aid scheme, organization or institution with specific resources to ensure that adapted guidance is provided.
- (Older) claimants with reduced confidence in the public authorities would find it easier to seek help outside the system set up to process claims, i.e. the second of the above alternatives would be preferable.

8. The overall assessments and proposals of the working group

It is the view of the working group that coercive sterilization, as defined in the report, is an abuse which may constitute grounds for compensation pursuant to the general statutory provisions governing compensation. However, these provisions set out general conditions for compensation, which may be difficult to fulfil in the case of the Taters who allege that they were subjected to coercive sterilization. Compensation claims for coercive sterilization committed during the period 1934–1977 will also be time-barred pursuant to section 9 (2) of the Act relating to the limitation period for claims as this was prior to the amendment of 5 January 1996 No. 1. (absolute limitation period: 10 years). This entails that all injuries that occurred prior to 5 January 1986 will be time-barred. The Government has the power to waive statutory limitations, but this normally only occurs if the remaining conditions for compensation are undoubtedly met. In the view of the working group, the Taters’ potential for success in legal claims pursuant to the general law of tort is therefore limited, and other arrangements should be considered.

In its final proposals and assessments, the working group has emphasized that coercive sterilization of Taters must be viewed in a context that gives these cases a particularly ethnic dimension, and thereby must also be given special consideration in relation to the obligations and intentions of the Government vis-à-vis minority groups that have been subjected to negative treatment. This would, in itself, entail that other ethnic groups or indigenous peoples able to invoke that they had been subjected to the same treatment would have a reasonable claim to be dealt with in the same way. However, there do not appear to be any such groups. The research shows that coercive sterilization has affected weak groups in the community, but probably not according to any ethnic dividing lines – with the exception of the Taters. This must probably be viewed in connection with the expressed policy towards the “vagrancy problem”, and the reinforcing role that came to be played by the Norwegian Mission among the Homeless in implementing the policy in relation to the group. In Sweden the ethnic

dimension and the discussion were not nearly so clear, although there was a slight overrepresentation of Taters in the material.

Establishing simpler compensation arrangements for these matters is a desirable stage in a reconciliation process that began with the acknowledgement that abuses against the Taters actually took place and with the Norwegian Government's apology for these matters. It is the responsibility of the Government to rebuild confidence and dialogue in relation to the Romani people. A simpler arrangement for individual compensation would be a firm expression of apology and redress. This would have a powerful symbolic effect, and be a way of putting the past behind us – for both parties. From a legal point of view, the Government may not be obliged to grant individual compensation for these matters, nor be required to do so on the basis of the international instruments in the human rights area that Norway has acceded to in recent years. But the basic tone, both of these instruments and of the human rights views of the various governments, emphasizes the importance of reconciliation and dialogue with minority groups in society that have been subjected to abuse, injustice or discrimination. An important stage of such a process is to acknowledge and to seek to remedy the personal and material stresses to which individuals in the group have been subjected.

The working group sympathizes with the fact that the circumstances surrounding coercive sterilization are associated with considerable feelings of shame and guilt, and that this – in addition to bureaucratic and cultural factors – makes it difficult for the affected persons to bring compensation claims and follow them up. In this connection, the working group has noted the wish for a strengthening of the provision of information, guidance and advice to affected persons in such cases.

The working group has registered the view held by representatives of the Taters that the ex gratia payment arrangement is not currently satisfactory. The working group perceives that this is largely owing to the fact that the arrangement is a general arrangement with little material or symbolic effect in relation to the specific abuses suffered by the Taters, and is an arrangement where it appears to have been difficult to succeed in claims. Their impressions seem to be that burden of proof is stringent, that it is difficult to substantiate the coercion aspect, and that the compensation amount is unsatisfactory. It has also been asserted that it is difficult to find documentation, among other reasons, because parts of the Mission's archive have been destroyed. The view of the working group in the light of the information obtained is that it must, by and large, be possible to find documentation that interventions have been carried out in central or local archives/records. However, it is not certain that the material will be sufficiently clear as regards, for example, substantiating that consent to intervention was in reality directly or indirectly given following pressure or undue persuasion.

The working group has assessed the Swedish arrangement, but will not recommend the adoption of a similar model in Norway. Although there are historical parallels in the design and implementation of the legislation concerning sterilization, both the background for the compensation arrangement in Sweden and the general handling of compensation cases differs from that in Norway. Sweden has no arrangement corresponding to the ex gratia payment arrangement and nor does it have a tradition for special compensation arrangements for past abuses/errors beyond that provided by

the normal law of tort. The compensation arrangement for coercive sterilization is an exception. Moreover, the Swedish Act does not apply exclusively to sterilization of Taters. Nor is it easy to find close parallels particularly regarding the Taters. The systematic policy in relation to the “vagrancy problem” was not so clear in Sweden as it was in Norway, where the role of the Norwegian Mission among the Homeless also contributed to the exceptional situation of this group. However, in the further work on these matters in Norway, the working group considers that we can make use of part of the conceptual basis of the Swedish compensation arrangement. This particularly applies perhaps to the criteria for granting compensation and to the question of information and access to the arrangement.

The working group does not recommend the establishment of a separate compensation arrangement for coercively sterilized Taters (or, for that matter, for coercively sterilized persons in general). In the view of the working group, a separate arrangement would result in increased pressure for special arrangements from other groups who feel themselves violated or discriminated. There are already claims that that have not yet been addressed.

The general view of the working group is that questions of compensation concerning various groups who feel themselves subjected to abuses or errors by the Government which cannot be resolved satisfactorily by means of the normal law of tort, should as far as possible be dealt with by means of a more flexible common arrangement, and not by means of a number of special arrangements. It is the view of the group that the *ex gratia* payment arrangement should primarily be used, but that the guidelines for the arrangement should to some extent be developed and adapted to the special factors associated with the groups of claimants concerned. In such case, it is the Storting that must provide such guidelines.

In the view of the working group, Taters who have been subjected to coercive sterilization should be instructed to seek compensation through the *ex gratia* payment arrangement. The criteria for granting compensation and the requirements regarding documentation/evidence should be adjusted and simplified on the basis of the assumption that Taters who were sterilized while they were registered at the Norwegian Mission among the Homeless, in health institutions or social welfare institutions, or as clients of the child welfare authorities, social services or the like, may in all probability have felt pressure to undergo the intervention (cf. the criteria of the Swedish arrangement). Such special processing rules would also constitute a clearer symbolic expression of the Government’s apology for the abuses against the Taters. There are already guidelines in *ex gratia* payment arrangement allowing relaxation of the evidence requirements in certain cases. The Storting may in this case instruct the Ex Gratia Payments Committee to include special presumptions in the assessments consistent with the above in relation to Taters who allege that they have been subjected to involuntary sterilization.

The working group refers to the request by the Romani Peoples’/Taters’ Foundation that the Government establish a fund as an expression of collective compensation and a secretariat/meeting place that can provide counselling and assistance to members of the group, in cases concerning individual compensation for abuses, coercive sterilization, etc. The group has also noted that the Centre for Combating Ethnic

Discrimination has been preoccupied with the need to establish a needs-adapted guidance arrangement in connection with a compensation arrangement. Without addressing the specific matter raised by the Romani Peoples'/Tatars' Foundation, the working group holds the view that an adaptation of the ex gratia payment arrangement to cases concerning coercive sterilization should be accompanied by financial support from the Government for a form of information, counselling, and dissemination activity in relation to the Romani people/Tatars and potential compensation claims from persons belonging to this group. The working group has not addressed the question of whether such support should be given to the Romani people's organizations, to the Romani Peoples'/Tatars' Foundation or to bodies specially established for the purpose.

Viewed as a whole, the arrangement proposed by the working group could be established at a lower cost and with less possibility of precedential effects than in the case of a special (and rather narrow) compensation arrangement. The ex gratia payment arrangement is an established arrangement with developed secretariat functions and routines, and an amendment of the Ex Gratia Payments Committee's guidelines would not in itself involve any costs. Costs associated with any further claims granted or larger compensation amounts would not be any different than in the case of a special arrangement. Financial support for a guidance function could be carried out within a relatively modest financial framework. The solution proposed by the working group could be rapidly established if so desired by the Storting. This is especially relevant since the small number of surviving persons who have been affected are now elderly.

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Annex 1, Letter of 10 April 2003 from the Centre for Combating Ethnic Discrimination to the Ministry of Local Government and Regional Development

Ministry of Local Government and Regional Development

Postboks 8112 Dep

0032 Oslo

Our ref.

Your ref.

Date

10 April 2003

The views of the Centre for Combating Ethnic Discrimination regarding compensation for coercive sterilization

We refer to meetings at the Ministry of Local Government and Regional Development on 18 February and 3 April concerning the above matter. At the latter meeting, we were requested to present our views by Friday 11 April.

By way of introduction we wish to stress that we endorse provision of a compensation arrangement for coercively sterilized Travellers/Romani persons. We view it as desirable that victims of coercive sterilization receive rapid compensation, and that the amount they receive is commensurate with the seriousness of the abuse. In the following, we examine critically some aspects of the envisaged arrangement on the basis of our experience and what we know about the Swedish arrangement.

Background

After the Report to the Storting on national minorities was issued in December 2000, the Centre for Combating Ethnic Discrimination approached the Standing Committee on Local Government in a letter dated 19 January 2001. We put forward the view that there was a need for a compensation arrangement, and pointed out a number of weaknesses of the current *ex gratia* payment arrangement that particularly affect Travellers.

- It is difficult to find relevant documentation, *inter alia*, because the Mission among the Homeless destroyed important archive materials, and it is thus difficult to fulfil the evidence requirements. This requires that the Government today assume liability for the abuses without setting out requirements regarding documentation, which would in practice be impossible to fulfil.

- When considering ex gratia payments, the claimant must be compared with other persons who have received the same treatment or other claimants with persons corresponding experience. Many persons of Romani/Traveller extraction have been subjected to the same historically unique abuses, and this has been grounds for rejecting ex gratia payments.

The Centre for Combating Ethnic Discrimination concluded that a compensation arrangement should be devised that “can provide a financial redress to individuals who have been subjected to abuses owing to their ethnicity.”

The Storting decided that the Ministry is to consider a compensation arrangement for Travellers/Romani, and also wishes an assessment to be made of the Swedish compensation arrangement.

Consent versus coercion

In our view, there is reason to question whether it is possible to fully determine whether coercion, pressure or different forms of influence have occurred solely by examining the documents of the case. Consent may have been associated with conditions not stated in the case documents.

Owing to the considerable difference between the power of the personnel of the responsible institutions and individuals of Romani extraction during the period concerned, there is also reason for doubt in cases where the person concerned appears to have consented to undergo sterilization. It is conceivable that records and other relevant documents refer to voluntariness while the persons concerned felt under pressure to give their consent, and that sterilization was associated with other factors – removal of children, internment at work camps, deprivation of liberty or discharge from psychiatric institutions.

The existence of such factors may indicate that consent cannot be said to have been freely given.⁴

What are the implications of the Swedish experience?

In Sweden, 63 000 persons were sterilized with statutory authority during the period from 1935 to 1975. The eugenic factor in relation to coercive sterilization was not as salient and decisive in Sweden as it was in Norway during this period. Very good documentation was available in Sweden – there were case files/medical records in a central register in almost all cases. A sample investigation of 3000 case files was conducted, which revealed indications of coercion in approximately half of the cases.

On the basis of our experience of documentation retrieval in cases concerning Travellers, it is unlikely that records are equally easily available in Norway. The situation is complicated by the destruction of archives by the Norwegian Mission

⁴ In Sweden, the board that investigated cases of coercive sterilization found there to be certain objective criteria indicating that sterilization had been carried out under coercion – young age, that the persons were sterilized while resident in mental institutions and in cases of epilepsy and mental retardation. In addition, the board concluded that persons who failed to meet these criteria should be assumed to have been involuntarily sterilized if it could be assumed that undue influence was had had led to the sterilization.

among the Homeless. This has implications for retrieval of information when considering compensation claims. We see that this will place a heavy burden on victims of coercive sterilization, and will strongly recommend that an arrangement is found that pays due regard to this.

As we understand the Swedish experience concerning compensation for coercively sterilized persons, the topic is tabooed. Many persons are reluctant to seek compensation, and a number of persons who were granted compensation chose finally not to accept it because they did not wish to let it be known that they had been subjected to the intervention. As far as we are aware, the number of people who wrongfully claimed compensation in Sweden was relatively small.

This knowledge has the following implications among others:

- there is little reason to believe that there will be a large number of wrongful claimants in Norway
- there is little reason to believe that the topic is less charged in Norway than in Sweden. Victims therefore feel this as a major obstacle to claiming compensation.

Access to written documentation

In Sweden, the burden of documenting and claiming compensation for coercive sterilization was dealt with as far as possible by referring to, publicly available written archive materials and medical records. This may not be possible in Norway. However, if the overriding consideration is to spare the victims and avoid subjecting them to humiliating interrogations, procedures must be found that combine the use of existing written sources, where these exist and individual persons' written accounts of their experience of coercion when they were sterilized. For the Government, this may involve some borderline cases, and some persons who were not in fact coercively sterilized may receive compensation. However, the Swedish statistics give reason to believe that there will be few claimants, and that this is not an arrangement that encourages abuse because the strain of disclosing such private matters is so great.

Guidance to claimants

The Centre for Combating Ethnic Discrimination has experienced that the need for legal aid is great among persons of Traveller extraction that we have met through our cases. The Ministry should consider providing needs-adapted guidance in connection with establishment of a compensation arrangement. One alternative is to assign an extended guidance arrangement to the body that is to receive claims. Another is to provide an existing legal aid scheme, organization or institution with specific resources to ensure that adapted guidance is provided.

On the basis of our experience, we believe that (older) claimants with reduced confidence in the public authorities would find it easier to seek help outside the system set up to process claims, i.e. the second of the above alternatives would be preferable.

Is a compensation arrangement for coercive sterilization of Travellers adequate?

This question has two dimensions:

- Is it equitable to include only one ethnic group?
- Is it adequate to restrict claims to coercive sterilization?

Coercive sterilization is a serious abuse regardless of who is subjected to it. In Sweden, the arrangement applies to **all** persons who have been coercively sterilized. However, the Centre for Combating Ethnic Discrimination regards it as particularly negative that this form of sterilization was carried out in a eugenic context, aiming to limit a specific ethnic group because it was regarded as “inferior”. We are not aware of any documented cases of coercive sterilization for eugenic purposes of persons belonging to indigenous peoples or other national minorities. If it should come to light that more groups were affected on these grounds, an arrangement would need to include these too.

We wish nevertheless to warn against associating the compensation arrangement too closely with persons affected only because of their ethnic affiliation. In all cases this will be extremely difficult to document because different grounds have been used in different periods. We assume that plainly eugenic arguments have become less legitimate since the end of World War II, and that socio-medical terms have been used even in cases where an ethnic group was specifically affected.

This leads to another question:

Is it correct to provide compensation for coercive sterilization, when this form of abuse was part of a larger set of measures affecting the Romani people?

This is illustrated by a quotation from the magazine *Aktuell* in 1963, given in Hedda Giertsens doctoral thesis.⁵

“What we are doing is to deliberately wipe out the distinctive character of a people. We are attempting to *sever their links with the clan* to which they feel they have strong ties. We are attempting to provide them with property and commitments, habits and needs that are incompatible with the life of vagrancy they have been used to and which has been lived by their ancestors for centuries.” (our italics)

The above quotation can be related to a practice where internment in work camps, removal of children and coercive sterilization were part of a larger context, whereby the Mission among the Homeless, local authorities, etc. planned to destroyed people’s family ties.

⁵ Hedda Giertsens. *K og måter å forstå drap på* [K and Ways of Understanding Homicide]. Department of Criminology, University of Oslo, UiO 2000.

Conclusion

- The compensation arrangement for coercive sterilization is justifiable, and should be of a size consistent with the seriousness of the abuse.
- The Government should also consider whether it is right to single out coercive sterilization, or whether a compensation arrangement should compensate for more types of abuse.
- The Government should not wait for many years before implementing further forms of compensation for other types of abuse. The worst affected are now old, and should receive compensation quickly.
- Resources should be set aside for extended guidance and legal aid during the period when it is possible to claim compensation.

Yours sincerely

Guro Fjellanger

Director

Ella Ghosh

Adviser

Annex 2 Excerpts from *Society at Large and Minority* (by Professor Bjørn Hvinden, Research Council of Norway, 2001)

Measures designed to reduce fertility and reproduction

It has been documented that 128 persons of Tater extraction were sterilized with public authorization during the period from 1934 to 1977. On the basis of an investigation of the practice at five hospitals, it has in addition been documented that 17 Tater women were operated on without the authority of sterilization legislation⁶. In the case of the interventions with official authorization most clearly characterized by coercion, Tater women appear to have been significantly overrepresented, i.e. they were more vulnerable to coercive sterilization than women as a whole⁷. Representatives of the Norwegian Mission among the Homeless played an active role as prime movers for sterilization of Taters. The organization participated in approximately 40 per cent of coercive sterilizations of Taters that were carried out with official authorization⁸.

Two of the projects have specifically investigated the use of sterilization in relation to members of the Romani population:

- Haave (2000) conducted a broad historical study of Norwegian sterilization policy and practice from 1930 to the 1970s. He describes the trends of thought and ideologies during the first decades of the century that led up to the adoption of the Sterilization Act of 1934. He then analyses the practice pursuant to this Act on the basis of the information to be found in the central sterilization register. In a supplementary study, he investigates the sterilization carried out during the same period outside the framework of the Act, i.e. sterilization on so-called medical grounds, where central authorization of the intervention was not required. Against the background of this general review of policy and practice, Haave specifically investigates matters relating to the Taters. He discusses the extent to which and by whom the Taters were designated as a special target group for fertility-limiting measures. He shows what proportion of the sterilizations carried out affected Taters during various periods and on what grounds Taters were sterilized.

- Fodstad (1999) seeks in her study to communicate experiences and reflections in connection with coercive sterilization of the persons affected and other persons who were involved in various ways. She conducted personal interviews with persons who had themselves been coercively sterilized and with their closest relatives. A total of 15 persons of Tater extraction were interviewed. Fodstad also interviewed 20 former employees of the bodies in various ways involved in sterilization cases, primarily as initiators. They included persons associated with the Mission, residential schools, care of the mentally retarded and the health service.

6 Haave (2000: 389).

7 Haave (2000: 168-169).

8 Haave (2000: 389) viser til at representanter for Norsk misjon blant hjemløse medvirket i 32 saker med hjemmel i 1934-lovens § 3 annet ledd, 1934-lovens § 4 eller 1942-loven. I alt har Haave dokumentert 80 slike saker som gjaldt tatere (Haave 2000: 166-167).

These two reports throw light on different topics and issues within this broad field, and thus supplement each other. In essential areas, the two accounts support each other, but there are also some major contrasts, for example between the involvement of the Mission in case of coercive sterilization documented by Haave and the statements of the former leaders of the Mission presented by Fodstad concerning the role of the organization in relation to such cases.

The preceding debate

Haave shows how active participants in the debate on social issues early in the 20th century maintained that eugenic measures were necessary in order to prevent a gradual deterioration of genetic material in the population. One of the leading debaters was the doctor Johan Scharffenberg, who, with a basis in such theories, proposed an extensive coercive sterilization of Tatars. After first rejecting the use of sterilization as an appropriate measure in relation to this ethnic group, the Mission's leaders gradually adopted the view that sterilization should be used in cases where environmental measures were not successful. The Mission's leaders, particularly the Secretary General of the day Ingvald B. Carlsen, endeavoured to devise a Christian basis or justification for eugenic measures against the Tatars.

The Sterilization Act of 1934

In accordance with the Sterilization Act that was adopted in 1934, there were different possible grounds for sterilization:

- According to the provisions of section 3, *first paragraph*, the person concerned should have reached the age of majority and be normal or almost normal, and the intervention could only be carried out when applied for by the person concerned.
- According to section 3, *second paragraph*, the intervention was formally voluntary in that authorization for sterilization required a request from the person concerned. However, since this provision concerned persons who were “mentally ill”, persons with “retarded development of mental faculties or minors, the consent of the guardian or curator of the person concerned was also required.
- The provisions of section 4 concerned sterilization of “mentally ill persons” and “persons with particularly retarded development of mental faculties”, who could neither be deemed to have an awareness of their own circumstances of life or of the nature and consequences of the intervention. In these cases, sterilization could be carried out at the request of a guardian or curator or at the request of another person with the consent of the guardian or curator, but without the consent of the person concerned.

Furthermore, a medical certificate was to be enclosed with all applications as well as a declaration of consent by the spouse where appropriate.

On the basis of an overall assessment of the requirements laid down in the provisions and the situation that the affected person must be assumed generally to have been in, both section 3, second paragraph, and section 4 are seen to be provisions involving little real freedom of choice for the person concerned. What is commonly simplified as “coercive sterilization” is therefore normally sterilization pursuant to these provisions.

At the same time, the possibility cannot be ruled out that persons who formally requested sterilization themselves pursuant to section 3, first paragraph, had in practice been subjected to various forms of pressure by those around them. Such pressure may for example have consisted of presenting the person concerned with other undesirable consequences of not undergoing sterilization “voluntarily”.

Documented cases of sterilization of Taters

Haave documents in his report that 57 Taters (50 women and 7 men) were sterilized pursuant to section 3, first paragraph, 22 (18 women and 4 men) pursuant to section 3, second paragraph, and 30 (26 women and 4 men) pursuant to section 4 of the Act of 1934. In addition, he finds that 15 women and one man were sterilized pursuant to the occupying power’s Act of 1942, and that three women were sterilized on the authorization of the Director of Medicine of the occupying power. This constitutes a total of 128 sterilization interventions with official authorization during the period 1934–1977.

Coercive interventions peaked during World War II, when 24 per cent of them were carried out.

Were Tater women more subjected to sterilization than women as a whole?

Haave asks whether Taters were overrepresented among those who were sterilized. He finds that, of the women classified as “vagrants” by the Mission, 3.1 per cent were sterilized during the period 1934–1977, while the proportion of women as a whole sterilized during the same period was 1.8 per cent. Although there is necessarily a degree of uncertainty in such estimates, there is thus reason to conclude that Tater women were more subjected to sterilization than Norwegian women as a whole.

Closer analysis shows there to be no difference between the proportion sterilized pursuant to section 3, first paragraph, (“voluntary sterilization”) of women registered as “vagrants” and of other women. On the other hand, there were marked differences in the proportions sterilized pursuant to section 3, second paragraph, (respectively, 0.6 and 0.1 per cent) and pursuant to section 4 (respectively, 0.84 and 0.05 per cent). On this basis, it seems clear that Tater women were more subjected to coercive sterilization than other women.

Very many of the Taters sterilized under the provisions of section 3, second paragraph, and section 4 were very young and below the age of majority.

Haave finds furthermore that 10 Taters, five women and five men, were castrated during the period 1934–1977, pursuant to the Act of 1934 and the Act of 1942.

Haave also investigated the extent of sterilization outside the framework of the Sterilization Act, and presents the findings of a review of medical records. This concerned sterilization on so-called medical grounds. Taken as a whole, more women were probably sterilized outside the framework of the Sterilization Act than pursuant to the Act of 1934.

It is difficult to estimate with any certainty how many women of Tater extraction were sterilized outside the framework of the Act. Haave’s study is only able to establish that such sterilization of Tater women took place at one of the five hospitals. In

addition, a few cases of sterilization on medical grounds have been identified through the central archives. Altogether 17 Tater women were documented as operated on without the authority of sterilization legislation. On the basis of what is generally known about the ratio between sterilizations outside and within the framework of the Act, Haave suggests that more than 230 Tater women may have been operated on outside the framework of the Act. This would in such case indicate that a total of over 300 Tater women were sterilized from 1930 until the 1970s.

The Mission's role in the sterilization cases

Haave thoroughly investigated the extent and form of the Mission's leaders involvement in cases concerning sterilization of Taters. Hardly a single example is found where the Mission's leaders opposed or attempted to prevent a proposed sterilization of persons of Tater extraction. On the other hand, Haave has documented that the Mission's leaders were involved in many of the cases, either taking the initiative or in other ways. The leaders' involvement in cases concerning coercive sterilization was particularly strong. Here, the Mission's leaders were involved in approximately 40 per cent of the cases. As we will discuss in greater detail in the next part, the leadership of the Svanviken work camp seems also to have taken an active role in expediting sterilization of female residents.

The experiences of the sterilized persons and their close families

Fodstad (1999) provides in her report insight into the experience and thoughts of persons who were themselves coercively sterilized or castrated and their close families. Seven of the persons interviewed had themselves been coercively sterilized or castrated. She shows that, for several persons, the loss of fertility was one of a number of painful losses. As mentioned, several of them had lost parents and siblings by being taken into care early in their lives, and had suffered humiliating and traumatic experiences at the Mission's institutions and in foster homes. Similarly, several of them told that their own children had been taken away from them.

Secrecy concerning sterilization

In the case of Fodstad's informants, the specific circumstances of the sterilization had varied. Some had been attending residential schools. Others were in other types of institution or at the Svanviken work camp. However, certain features recur in several of the life stories: the coercive intervention had been carried out in connection with another intervention, for example in connection with childbirth, abortion or another operation. A long period might elapse before the sterilized person realized what had happened. When the affected persons were informed of what they had been subjected to, it was usual that they kept it to themselves. This experience had been a heavy and lonely burden, and they tell of feelings of shame, grief, powerlessness and anger. In various ways this resulted in coercive sterilization being kept secret.

Resistance

Fodstad's informants also tell of various forms of resistance, coping and survival strategies in the vulnerable situations they found themselves in. Some of her informants had defied strong pressure to undergo sterilization from the Mission's employees, health personnel and others, and had succeeded in averting it.

The views and experience of the initiators

The interviews with former employees of the Mission, various institutions, the health service and other bodies shows a considerable range of views on the use of sterilization and the role this played in practice. A number of those interviewed expressed clear support for sterilization of Taters and told of their own involvement in this, but most of them seem to have been reserved about expressing clear and unequivocal views on the question and/or toned down their own involvement with such cases. Some, such as psychologists at the institutions had attempted to counteract sterilization of the residents, and attention is drawn here to the central role of intelligence measurement as a means of identifying persons who could be sterilized.

In an interview with Fodstad, a former Secretary General of the Mission expresses the view that, had it not been for the Mission, there would have been large-scale public coercive sterilization of this ethnic group – “in order to solve the Tater problem”. Considering the documentation provided by Haave of the strong and active involvement of the Mission’s leaders in the pressure for introduction of a Sterilization Act providing greater access to coercive sterilization, and in expediting individual cases where sterilization was proposed, this statement has little credibility.