

**The Forced Sterilization as a Weapon of Bio-Power:  
Human Rights Abuses of Romani Women in Czechoslovakia and  
its Successor Countries**

By: Miljana Čabrilovski

Submitted to Central European University  
Romani Studies Program

*In partial fulfilment for International Interdisciplinary Romani Studies Postgraduate  
Specialization Program*

Supervisor: Pelin Turan

*Budapest, Hungary*

2021

## Copyright notice

I, the undersigned Miljana Čabrilovski, hereby declare that I am the sole author of this thesis. This thesis contains no material previously published by any other person except where proper acknowledgment has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or nondegree program, in English or in any other language. This is a true copy of the thesis, including the final version.

Date: 11th June 2021

Name (printed): Miljana Čabrilovski

Signature:

## Abstract

*My thesis uses a historical, theoretical, and legal perspective to examine the human rights abuses of the forced sterilization of Romani women in former Czechoslovakia and its successor countries: The Czech Republic and Slovakia. It consists of three parts: case study, theoretical framework and legal analysis. Analyses on the three levels supplement each other: situation level - case study, theoretical level - roots of those practices, and legal level - practical level which should protect and guarantee rights. I argue that Czechoslovakian authorities made segregated policies and legislation in order to eradicate the Roma population; therefore Romani women faced injustices and the violation of numerous rights. Although these policies were abolished in 1992, in the Czech Republic and Slovakia, the reality of Romani women remained the same and 'Gypsy origin' was the indicator for the sterilization. Practices of the forced sterilization are examined through the lens of Critical Race Theory and Michel Foucault's theory of bio-power. I examine the social construct of Roma and the racial motives behind those brutal practices. Furthermore, how States used bio-power to 'shape population' and how the bodies of Romani women were object for that. I presented recognition of these abuses in the legal discourse and how that was insufficient solution of human rights abuses and racial injustices.*

## Table of Contents

Copyright notice .....	2
Abstract .....	3
I. Introduction.....	5
II. The History of Subordination: The Forced Sterilization of Romani Women.....	6
III. Human Rights Abuses in the Light of Postmodern Theories .....	8
IV. Legal Aspects of Human Rights Abuses.....	12
V. Conclusion .....	17
Bibliography.....	19

## **I. Introduction**

My thesis is focused on historical, theoretical, and legal investigation of forced sterilization of Romani women in former Czechoslovakia and its successor countries: The Czech Republic and Slovakia. I argue that Romani women faced injustices and violation of numerous rights by authorities of these countries. The thesis aims to prove that the Czechoslovakian authorities made segregated policies and legislation in order to eradicate the Roma population and the State used bio-power to control the Roma minority. Although these policies were abolished in 1992, with the separation of the Czech Republic and Slovakia, the reality of Romani women remained the same. My aim is to prove racist social and legal discourse, the power of legal bodies and authorities and how it affected individual bodies of Romani women. Subsequently, I argue that laws and legal instruments recognized this issue but they did not affect and protect the reality of these women, although they should.

My thesis consists of three parts: case study, theoretical part and legal analyses. The first part will present the historical subordination of Romani women and control of Romani women by State authorities. Furthermore, it will present how reality of forced sterilization of Romani women remained the same, even after legal recognition of these abuses.

In the second part, these abuses will be explained through the lens of two post-modern theories: Critical Race Theory and Michel's Foucault theory of 'bio-power'. Through these theories, my aim is to show racial motives and the social construct of Roma behind these brutal practices. Also, I want to present how it was incorporated in legal discourse and how it affected the oppression of Romani women.

The last part of the thesis will focus on the legal analyses and it will investigate numerous violations of human rights in the case study, in the light of the legal instruments on the different level. I will present which rights were violated, although they were guaranteed by several laws and legal instruments. The efficiency of these instruments will be examined in this part. Although they should protect, they did not protect Romani women.

Finally, my aim is to present and investigate these injustices suffered by Romani women through different perspectives. I will finalize with the fact that Roma were considered as a 'degenerative, poor and dangerous race' and that the social construct of them affected their position in the areas I investigate. Also, States used their power to control bodies of Romani

women. Even after of legal recognition of these abuses, reality did not change. As a consequence, this serious issue needs an extensive solution.

## **II. The History of Subordination: The Forced Sterilization of Romani Women**

Forced sterilization presents the non-consensual removal of a person's ability for reproduction, often by surgical procedure, known as a tubal ligation.<sup>1</sup> Forced sterilization is a human rights abuse suffered predominantly by women. Such inhumane practices concerning the reproductive rights of women have been reported worldwide. In the words of the International Justice Recourse Centre, forced sterilization is a human rights abuse and can be claimed as 'an act of genocide, gender-based violence, discrimination and torture.'<sup>2</sup> Although the United Nations (hereafter UN) condemned these practices and provided recommendations to prevent forced sterilization, many cases have been reported in Europe, North and South America, Asia and Africa.<sup>3</sup> The reported countries include Canada, Estonia, Iceland, Finland, Japan, Sweden, and the like. These States enacted laws which enabled forced sterilization of certain groups. The targeted groups were mainly women, who had mental disabilities, who belong to racial minorities, who were alcoholic and who had specific illnesses.<sup>4</sup> As UN Human Rights Council interpreted, these women were considered as 'unworthy of reproduction.'<sup>5</sup>

In the case of Europe, the focal points of these practices have been former Czechoslovakia and its successor countries: the Czech Republic and Slovakia. In these countries women who suffered by these practices were Romani women. Historically, former Czechoslovakia introduced various legislations which were connected with women's body and the human rights of women. Through these legislations the State introduced standards to determinate who is a 'suitable' subject to reproduce.<sup>6</sup> In the words of Victoria Shmidt, sterilization

---

<sup>1</sup> International Justice Resource Centre, 'Forced Sterilization as a Human Rights Violation' <[<sup>2</sup> \*ibid.\*](https://ijrcenter.org/forced-sterilization/#:~:text=Forced%20sterilization%20is%20the%20involuntary,viole%2C%20discrimination%2C%20and%20torture.>.</a></p></div><div data-bbox=)

<sup>3</sup> UN Human Rights Council, 'Violence against Women (Addendum): Policies and Practices That Impact Women's Reproductive Rights and Contribute To, Cause or Constitute Violence against Women' (1999) Report of the Special Rapporteur on Violence against Women.

<sup>4</sup> Priti Patel, 'Forced Sterilization of Women as Discrimination' [2017] Public Health Reviews <<https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0060-9>>.1.

<sup>5</sup> UN Human Rights Council (n 3).2.

<sup>6</sup> Radka Dudova, 'Regulation of Abortion as State Socialist Governmentality: The Case of Czechoslovakia' [2012] Institute of Sociology, Czech Academy of Sciences.

policies were made ‘in the name of the nation’.<sup>7</sup> State authorities wanted to ‘shape population’, and sterilization was the ‘instrument’ to achieve this goal.<sup>8</sup>

From the historical perspective, sterilization of Romani women were reported for the first time in 1978 in Czechoslovakia, even though it became officially acknowledged in 2005, twenty-seven years later.<sup>9</sup> During the communist era in former Czechoslovakia, several measures and social benefits promoted sterilization among Romani women. Social workers offered women financial inducement to undergo sterilization. Some women chose to be sterilized on their own will, while others were forced or misled into doing that.<sup>10</sup>

Providers of health care forcibly sterilized women during other gynaecologist services or surgeries.<sup>11</sup> Hundreds of women were sterilized without their choice or prior informed consent.<sup>12</sup> The state responsibility in these practices has not been resolved yet.<sup>13</sup> With the transition to democracy and the division of the country into two parts in 1992, financial inducements for sterilization ended formally, but health care providers continued to sterilize women without consent during other surgeries in the 21<sup>st</sup> century.<sup>14</sup> Even after political changes in geographical and political scene in Czechoslovakia, these practices continued.<sup>15</sup>

The Czech Republic and the public authorities denied charges and lawsuits until 2005, when Ombudsman’s investigation recognized these crimes and referred to the ‘eugenic motives behind them’.<sup>16</sup> Recognition happened also in front of the European Court for Human Rights (e.g. *Helena Ferickova v. the Czech Republic* and *I.C. v. the Czech Republic*), and after 2005 the number of reported cases increased.<sup>17</sup> The Czech Government accepted its failures in 2012, specifically in *R.K. v. the Czech Republic*, in which the dispute was resolved by friendly settlement.<sup>18</sup> Friendly settlement presents a way of inter-state solution, usually providing

<sup>7</sup> Victoria Shmidt, ‘Race Science in Czechoslovakia: Serving Segregation in the Name of the Nation’ [2020] University of Graz, SOEGA/SEEHA Center of Southeastern European History and Anthropology.

<sup>8</sup> *ibid.*

<sup>9</sup> Sarah Marks, ‘The Romani Minority, Coercive Sterilization, and Languages of Denial in the Czech Lands’ [2017] History Workshop Journal 128 <<https://academic.oup.com/hwj/article/doi/10.1093/hwj/dbx033/4084268>>.

<sup>10</sup> Gvendolyn Albert and Marek Szilvasi (n 8)4.

<sup>11</sup> Public Defender of Rights, ‘Final Statment of Public Defender of Rights in Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures’ (2005) <[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CZE/INT\\_CERD\\_NGO\\_CZE\\_70\\_8507\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CZE/INT_CERD_NGO_CZE_70_8507_E.pdf)>.

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> Gvendolyn Albert and Marek Szilvasi (n 8)4.

<sup>15</sup> Sarah Marks (n 9).

<sup>16</sup> *ibid.*

<sup>17</sup> Gvendolyn Albert and Marek Szilvasi (n 10).

<sup>18</sup> *ibid.*

monetary compensation to the victim.<sup>19</sup> Nevertheless, negotiations can take years and they are not available to the public.<sup>20</sup> Hence, it does not raise awareness to protect other victims and it does not solve any human rights issues.<sup>21</sup>

The situation in Slovakia was similar. The ‘atmosphere of racism and the social fear’ from the Romani population was present in the public health institutions.<sup>22</sup> Hence, doctors continued the long-established practices of sterilization.<sup>23</sup> The reported cases were not recognized by the Slovakian authorities, even though some of them were in front of ECtHR: (e.g. *V.C. v Slovakia*, *N.B. v Slovakia*, and *I.G. and others v. Slovakia*). Despite the verdicts of the ECtHR, the Slovakian authorities denied the State responsibility of forced sterilization of Romani women, and they acknowledged just the ‘individual failures’ of doctors, and the like.<sup>24</sup>

These facts clearly point out that in Czechoslovakia and its successor countries, public and science discourse put Romani women into an inferior position. That position was based on and caused by the social construction of Romani identity. Thus, I will explore and explain the race-related motives behind these inhumane practices addressed to the Romani population through the postmodern lens of Critical Race Theory and Michael Foucault’s theory of bio-power.

### III. Human Rights Abuses in the Light of Postmodern Theories

The first postmodern theory which will be used to explain the case study is the Critical Race Theory (hereafter CRT). CRT is an interdisciplinary theory, which ‘works toward end of all form of racial oppression as a part of broader goal, eliminating all forms of oppression’.<sup>25</sup> As some of the founders clarify, CRT is ‘grounded in the particulars of a social reality that is defined by our collective historical experience.’<sup>26</sup> This theory has its roots in American reality. In the ‘60’s Civil Right Movements had a halt and could not provide racial justice.<sup>27</sup>

<sup>19</sup> Nicola Wenzel, ‘Rethinking Friendly Settlements under the European Convention on Human Rights: Why We Should Design a New Friendly Settlement Procedure for Inter-State Cases’ (*Völkerrechtsblog*, 28 April 2021) <<https://voelkerrechtsblog.org/rethinking-friendly-settlements-under-the-echr/>>.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

<sup>22</sup> Journeyman Pictures, *Forced Sterilization of Romany Women in Slovakia* (2003)

<[https://www.youtube.com/watch?v=IxCS\\_QOtKRc](https://www.youtube.com/watch?v=IxCS_QOtKRc)>.

<sup>23</sup> *ibid.*

<sup>24</sup> Gwendolyn Albert and Marek Szilvasi (n 10).

<sup>25</sup> Mari J. Matsuda and others, *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (1993).

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*



Importantly, individual law students and teachers dedicated to racial justice in diverse methods.<sup>28</sup> They started to write and talk in order to create political action. Based on this, CRT started as a political movement and developed into a legal theory.<sup>29</sup> Yet, CRT criticizes the liberal order introduced by the Civil Rights Act. Intellectual agenda of CRT were made in ‘oppositional relation to vision of race, racism and laws’. CRT clarifies deep social and psychological roots of racism and how they affect each area of life (e.g. health, political representation, education, and the like.)<sup>30</sup> The main aim of CRT is to investigate and to present racism in the institution and the laws through collective historical experiences.<sup>31</sup> Hence, CRT analyses and proves white supremacy, social construction of race and the oppression of minorities and how that affects legal order and each aspect of the lives of minorities.<sup>32</sup>

Social constructionism and material determinism present two of the main tenets of CRT which are applicable on the case study for sterilization of Romani women. These tenets point out racial motivation behind injustice and the violation of human rights of minorities. In other words, they clarify how the construction and hierarchies of race affect legal status and social position of racial minorities.<sup>33</sup> Through these tenets, CRT identifies oppression, inequality and position of minorities and economic reasons behind these during the history.<sup>34</sup> This theory serves as a tool for deconstruction of dominant legal and social reality; it recognizes our deep, unconscious pictures and stereotypes and how they impact the society.

In respect to the European reality, race is socially constructed as ‘ethnicity.’<sup>35</sup> Hence, this theory is applicable on the Roma reality, because Roma represent a historically marginalized and oppressed ethnic minority in Europe. CRT’s Social constructionism tenet claims that ‘races are social products, by thought and relations.’<sup>36</sup> They do not have biological reality; they are created and manipulated by society and culture, which gives them ‘pseudo-permanent characteristics.’<sup>37</sup> Similarly, racial stereotypes about Roma portray them as an

---

<sup>28</sup> *ibid.*

<sup>29</sup> Richard Delgado and Jean Stefancic, ‘Critical Race Theory: An Introduction’ (New York University Press 2001).

<sup>30</sup> Mari J. Matsuda and others (n 25).

<sup>31</sup> Mari J. Matsuda and others, *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (1993).

<sup>32</sup> Richard Delgado and Jean Stefancic (n 29).

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> Mark Bell, *Racism and Equality in European Union* (Oxford University Press 2008).

<sup>36</sup> Richard Delgado and Jean Stefancic, ‘Critical Race Theory: An Introduction’, *Critical Race Theory: An Introduction* (New York University Press 2001).

<sup>37</sup> *ibid.*

ethnic group that live in poverty. This construct causes serious human rights abuses and injustices. It leads to derogatory racial profiling that leads to the violations of human rights.<sup>38</sup>

In the social reality in Czechoslovakia and its successor countries, the Roma identity was socially constructed as an inferior one. As one of the human right lawyers claims, social fear toward Roma is even present in health institutions.<sup>39</sup> In one of my sources<sup>40</sup>, doctors and employees in health institutions in Slovakia claimed that ‘Romani women do not have mother instincts.’<sup>41</sup> In the case study, this social construct had an impact on the laws and practices in the health institutions. Romani women were forced sterilized because they were Roma.<sup>42</sup> Thus, through the lens of CRT we can see how social reality and construction of race affected legal reality, public discourse about Roma and particularly the position of Romani women. Also, it affected their subordination and the violation of their rights. All of that maintained present eugenic motives which were justified in the name of nationalism.<sup>43</sup>

The second tenet of CRT which is applicable to the case study is material determinism. Further dimension is added by material determinism: ‘Racism strengthens the materialistic interests of white elites, and as a consequence, white elites do not have enough incentives to end racism’.<sup>44</sup> Roma were considered as a poor ethnic population, so ‘eradication’ of them with sterilization was the instrument against poverty in the society. Furthermore, from the perspective of the State authorities, they had economic reasons to ‘shape population in the name of the nation.’<sup>45</sup>

Throughout history the majority made distinction toward minority groups: WE versus THEM. In this kind of distinction the majority consider themselves as superior and dominant. Moreover, dominant and majority group held political power. Therefore, the Roma population was a target group for implementation of their power. But Romani women suffered because of their biological predisposition and they were subject to extreme brutality from the State authorities. Michael Foucault’s theory of bio-power helps to explain this situation, and how the State used its power to control individual bodies of Romani women.

---

<sup>38</sup> Mathias Moschel, *Racial Stereotypes and Human Rights* (Intersentia 2016).

<sup>39</sup> Journeyman Pictures (n 22).

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> Richard Delgado and Jean Stefancic (n 36).

<sup>43</sup> Victoria Shmidt (n 7).

<sup>44</sup> Richard Delgado and Jean Stefancic (n 36).

<sup>45</sup> Victoria Shmidt (n 7).

The term 'bio-power' is an instrument for expressing power which focuses on population and individuals.<sup>46</sup> This power has impact on the legal and political sphere in the society.<sup>47</sup> According to Foucault, the use of bio-power started in the 18<sup>th</sup> century, with capitalism.<sup>48</sup> In this century, the state power started to have an impact on the population. Furthermore, it affected the individual bodies of people, when 'possibility of controlling and modifying bodies increased.'<sup>49</sup> His concept of bio-power, notoriously coined a discourse that discusses 'human society as easily comprehended, organized units.'<sup>50</sup> By using bio-power, the State executes full control over the biological aspect of society by regulating population.<sup>51</sup> According to Foucault's theory, power and its use became the new focus of the political and economic fields and strategies of the states.<sup>52</sup> The human body became the object of 'disciplinary power', which focuses on controlling and curtailing its reproductive possibilities.<sup>53</sup> After health care, this discourse is present in private and sexual life.<sup>54</sup> By this way it transforms sexuality and reproduction into another resource of production, which serves the state.<sup>55</sup>

By using bio-power, the State segregates, what they consider as 'biologically degenerate groups', from the rest of the society in order to control or to eliminate them.<sup>56</sup> This kind of approach emerged racism, which Foucault postulates as 'war-like relationship in the society.'<sup>57</sup> It serves as a method of organizing societal hierarchies according to the threat of 'degeneration' and modern state identifies and controls 'degenerate groups'.<sup>58</sup> Therefore, State authorities had motivation 'to shape population in the light of nationalism.'<sup>59</sup> Similarly, the forced sterilization of Romani women in Czechoslovakia and its successor countries presents an example of intervention by the modern state to control populations and to limit reproductive strategies. Romani women were the keepers of Roma society and because of that they were the target group for silent genocide. Hence, Romani women suffered because of their biological predisposition and they were the main object of oppression.

---

<sup>46</sup> Katia Gene, 'The Question of Biopower: Foucault and Agamben' [2006] *Rethinking Marxism* 43.

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.*

<sup>50</sup> Foucault (n 1).

<sup>51</sup> *ibid.*

<sup>52</sup> Maurizio Lazzarato, 'From Biopower to Biopolitic' [2002] *Pli: The Warwick Journal of Philosophy* 13.8.

<sup>53</sup> Foucault, *Society Must Be Defined: Lectures at the College de France 1975-1976* (New York: Picador 2003)242.

<sup>54</sup> *ibid.*

<sup>55</sup> Gwendolyn Albert and Marek Szilvasi (n 10).

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> Foucault (n 7)255.

<sup>59</sup> Gwendolyn Albert and Marek Szilvasi (n 6)3.

In the following part, these injustices and inequality will be analysed through legal instruments. Hence, it will be described gradually how legal changes in the countries affected the recognition of these violations of human rights; also, which rights were violated.

#### IV. Legal Aspects of Human Rights Abuses

Forced sterilization presents brutal human rights abuse that leaves lifelong consequences and deprives the possibility of offspring. Based on that, the analysis of the legal framework is highly significant after examining of the historical and theoretical perspective. The legal framework should recognize this issue and should serve to protect the rights and dignity of Romani women. The United Nations acknowledged that forced sterilization presented a violation of human rights and medical ethics.<sup>60</sup> This practice can be described as ‘a brutal, inhuman act of torture’.<sup>61</sup>

Legal aspects of forced sterilization will be explored on three levels: national, regional (European) and international level. Violation of several human rights is found on each level, namely: the violation of rights to health, right to privacy, right to family, patient rights, right to information, and the like. It will be described in more detail below.

Former Czechoslovakia had a decline in the birth rates in the ‘60s.<sup>62</sup> Based on that, in ‘66, the State created measures that promote birth rate: ‘prolonger maternity leave, financial incentives, encouraged early retirement for mothers, and others.’<sup>63</sup> Despite these discourse of motherhood, in 1972 health ministers of Czechoslovakia issued a sterilization law: Decree on Sterilization.<sup>64</sup> The sterilization law increased the power of public authorities to ‘control and shape population’; also it promoted sterilization of Romani women and women with disabilities.<sup>65</sup> According to that, ‘gypsy origin’ was an indicator for sterilization: a Czechoslovakian gynaecologist published a paper about sterilization of Romani women for ‘socio-economic reasons.’<sup>66</sup> Romani women were considered as abnormal and the state decided to ‘control their procreation’.<sup>67</sup> That legal provision led to the systematic sterilization

---

<sup>60</sup> UN Human Rights Council (n 3).

<sup>61</sup> *ibid.*

<sup>62</sup> Vera Sokolova, *Cultural Politics of Ethnicity: Discourses on Roma in Communist Czechoslovakia* (2008).

<sup>63</sup> *ibid.*

<sup>64</sup> The European Roma Rights Centre, ‘Coercive and Cruel: Sterilisation and Its Consequences for Romani Women in the Czech Republic (1966-2016)’ (2016) <[http://www.errc.org/uploads/upload\\_en/file/coercive-and-cruel-28-november-2016.pdf](http://www.errc.org/uploads/upload_en/file/coercive-and-cruel-28-november-2016.pdf)>.

<sup>65</sup> European Roma Rights Centre, ‘Parallel Report by European Roma Rights Centre Concerning the Czech Republic’ (2015) <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CZE/INT\\_CEDAW\\_NGO\\_CZE\\_20847\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CZE/INT_CEDAW_NGO_CZE_20847_E.pdf)>.

<sup>66</sup> Gvendolyn Albert and Marek Szilvasi (n 10).

<sup>67</sup> Gvendolyn Albert and Marek Szilvasi (n 2)6.

of Romani women without their full consent.<sup>68</sup> Thus, both post-modern theories, which are applied to the case study, expounded and explained the roots of this position. Later on, in 1979, the state introduced the program that provided financial incentives for Romani women to undergo sterilization and it represented state policy.<sup>69</sup> Statistics shows that from 1972-1990: 36.6 % of all female sterilization was performed on Roma, although they presented 2% of the population.<sup>70</sup> During that period, more than 300 Romani women complained to authorities that they were sterilized without consent, and the State did not recognize their harm.<sup>71</sup> In other words, the State violated their right for effective remedy.

Furthermore, Czechoslovakia was one of the former states in the United Nations (UN), from 1945, so the state should complied with the international instruments addressed to combatting racism and protecting human rights, which stipulates the UN Charter.<sup>72</sup> Even though Czechoslovakia was one of the founders of the UN, the country had a discriminatory, racist law which justified brutal crimes. Racist public and legal discourse in Czechoslovakia formed silent genocide by using sterilization as a weapon.

The decree on Sterilization was abolished in 1993 with the dissolution of Czechoslovakia on two countries.<sup>73</sup> The highest legal acts of these two countries, The Constitution of the Czech Republic<sup>74</sup> and Constitution of the Slovak Republic<sup>75</sup>, are based on the rule of law, on the respect for the rights and freedoms of citizens. According to both Constitutions, they guarantee protection of minority and women rights, protection of family rights and protection of right to health. The Slovakian Constitution specifically stipulates in the Article 17 that ‘a person may be committed to or held in a medical institution without his or her consent only in cases stipulated by law.’<sup>76</sup> Moreover, it stipulates in the Article 38, that ‘Women, minors, and disabled persons shall enjoy more extensive health protection’.<sup>77</sup> However, the reality of Romani women remained the same, although countries abolished the decree of sterilization and prescribed full protection of rights. Countries did not comply with their own norms and

<sup>68</sup> The European Roma Rights Centre (n 64).

<sup>69</sup> *ibid.*

<sup>70</sup> Gvendolyn Albert and Marek Szilvasi (n 2)5.

<sup>71</sup> Public Defender of Rights (n 11).

<sup>72</sup> ‘The Czech Republic in the UN’

<[https://www.mzv.cz/mission.vienna/en/organisations\\_covered\\_by\\_the\\_permanent/united\\_nations/czech\\_republic\\_in\\_the\\_un/index.html](https://www.mzv.cz/mission.vienna/en/organisations_covered_by_the_permanent/united_nations/czech_republic_in_the_un/index.html)>.

<sup>73</sup> New World Encyclopedia, ‘Dissolution of Czechoslovakia’

<[https://www.newworldencyclopedia.org/entry/Dissolution\\_of\\_Czechoslovakia](https://www.newworldencyclopedia.org/entry/Dissolution_of_Czechoslovakia)>.

<sup>74</sup> The Czech National Council, ‘The Constitution of the Czech Republic’

<<https://public.psp.cz/en/docs/laws/constitution.html>>.

<sup>75</sup> The Government of the Slovak Republic, ‘The Constitution of the Slovak Republic’

<[https://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/slovakia/slovak-e.htm](https://www.concourt.am/armenian/legal_resources/world_constitutions/constit/slovakia/slovak-e.htm)>.

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

standards. Hence, reality of Romani women did not change with new, democratic values. They faced brutality and injustices, and state authorities continued these inhuman practices and degrading treatment toward Romani women. In the same manner, both countries stipulate that the state shall respect its obligations from the International law.

In the regional legal discourse, the Czech Republic and Slovakia became member states in the Council of Europe in 1993.<sup>78</sup> According to that, they ratified the European Convention for Human Rights and Fundamental Freedoms (ECHR)<sup>79</sup>, which represents regional legal aspect. ECHR<sup>80</sup> guarantees: the right to life, the ban of torture and related forms of degrading treatment and the right to private and family life. As well as that, it prescribes the right to effective remedy and advocates non-discrimination and equality in the exercise of rights. Moreover, the right to respect private and family life is stipulated by Article 8.2 in ECHR. Thus, various articles which are guaranteed by this convention were violated by both States. In the same manner, both States did not comply with regional legal instruments and norms. Regional legal discourse did not protect Romani women from the harm and brutality. Reported cases of forced sterilization were not recognized by domestic courts and institutions in these countries, and they ended up in front of ECtHR.<sup>81</sup> ECtHR recognized harm and injustice suffered by Romani women and non-compliance with adopted norms, which is clarified in the case study.

Similarly, both countries became part of the United Nation in 1993.<sup>82</sup> The founding document of the UN is United Nation Charter from 1945.<sup>83</sup> Members of the UN are obligated by it. The mission and principles of the UN are constructed on it. The Czech Republic and Slovakia ratified numerous documents which are critical for protection human and minority rights in 1993<sup>84</sup>:

- The United Nation Declaration of Human Rights (UDHR) from 1948;
- The International Covenant on Civil and Political Rights (ICCPR) from 1966;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) from 1966;

<sup>78</sup> Council of Europe, 'Our Member States' <<https://www.coe.int/en/web/about-us/our-member-states?desktop=true>>.

<sup>79</sup> Council of Europe, 'European Convention of Human Rights and Fundamental Freedoms'.

<sup>80</sup> *ibid.*

<sup>81</sup> Gvendolyn Albert and Marek Szilvasi (n 10).

<sup>82</sup> United Nations, 'Member States on the Record' <<https://www.un.org/en/library/unms>>.

<sup>83</sup> United Nations, 'United Nations Charter' <<https://www.un.org/en/about-us/un-charter/full-text>>.

<sup>84</sup> United Nations, 'UN Treaty Body Database' <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en)>.

- The International Convention on the Elimination of All Forms of Racial Discrimination from (ICERD) 1969;
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) from 1979;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1987 (CAT).

All Declarations and Conventions above, advocate full protection of human rights and fundamental freedoms, and States shall respect human rights and comply with them. For instance, the United Nation Charter<sup>85</sup>, as well as the other documents, stipulate that ‘all human beings are born free and equal in dignity and rights; there should not be any discrimination due to race, religion, sex, national or social origin’. Moreover, it advocates that ‘everyone has the right to a standard of living adequate for health and wellbeing, including medical care and necessary social services’<sup>86</sup>. Also, the right to information, the right to liberty and security of every person, the right to be free from cruel, inhuman, and degrading treatment is prescribed by the ICCPR, as well as by others ratified conventions. Thus, these norms are closely related with the case study and the protection of the rights of Romani women. Prescribed rights are overlapping with each other, and States should comply with them. In the cases of forced sterilization, States did not comply with the international legal discourse and the standard of rights.

As well as that, CEDAW<sup>87</sup> prescribes in several articles ‘equal access to health services and freedom of discrimination’. Also, it prescribes ‘the right to be free from cruel, inhuman, and degrading treatment.’<sup>88</sup> Moreover, it has an explicit link between coercion and ‘non – consensual sterilization’ in its General Recommendation No. 24: ‘Forced sterilization and forced abortion, present violation of women’s sexual and reproductive health and rights; they have amounted of torture, inhuman and degrading treatment.’<sup>89</sup> Thus, in the legal framework this issue became recognized, although violation of it is found even after legal recognition.

---

<sup>85</sup> United Nations, ‘United Nations Charter’ (n 83).

<sup>86</sup> *ibid.*

<sup>87</sup> United Nations, ‘Convention on the Elimination of All Form of Discrimination against Women (CEDAW)’ <<https://www.un.org/womenwatch/daw/cedaw/>>.

<sup>88</sup> *ibid.*

<sup>89</sup> *ibid.*

Additionally, the framework of patient human rights presents a certain area of vulnerability and marginalization.<sup>90</sup> World Health Organization (WHO) entitled ‘Principles of the Rights in Patients in Europe’ in 1994<sup>91</sup>: it stipulates that ‘the informed consent of the patient is a prerequisite for any medical intervention.’<sup>92</sup> That also brought new layer of the protection of patient rights. Hence, the international law recognized the need for protection of patient rights, but it did not change the reality of Romani women: in many cases the sterilization of Romani women without their consent was still present. Therefore, the States violated the patient rights of Romani women.

Consequently, the international law requires that ‘all victims of conceive sterilization have an effective remedy, including recognition of harm, therapeutic measures for medical and psychological consequences of those practices, effective punishment of these perpetrators, and others.’<sup>93</sup> It is stipulated in several international documents: ICCPR, ICESCR, ICERD, CAT and CEDAW. The right of effective remedy present a problematic aspect of this issue, because the harm of a lot of women stayed unrecognized.<sup>94</sup>

To point out, the states violated the right on each level and the laws on three levels did not protect Romani women from abuses. Although the international discourse gradually recognized the need for higher protection of women and minority rights, the international law did not protect Romani women and their dignity and rights. Namely, the legal framework is insufficient for the full protection of the human and minority rights; particularly it is insufficient for the protection of Romani women of forced sterilization. Legal recognitions of the harms are not enough for eradication of injustices, brutality and oppression suffered by Roma people. Silent genocide cannot be justified in the name of majority.

There is an evident connection with CRT, which critiques legal discourse and postulates that legal recognition of historical oppression and brutality is insufficient. As CRT outlines, the social construction of minority leads to racial injustice. After legal recognition, changing the stereotypes of Roma in the public discourse is necessary for racial justice and respect for human rights and dignity.

<sup>90</sup> Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide* (2011).

<sup>91</sup> World Health Organization, ‘A Declaration on the Promotion of Patients’ Rights in Europe’ <[https://www.who.int/genomics/public/eu\\_declaration1994.pdf](https://www.who.int/genomics/public/eu_declaration1994.pdf)>.

<sup>92</sup> *ibid.*

<sup>93</sup> Claude Cahn, ‘Justice Delayed: The Right to Effective Remedy for Victims of Coercive Sterilization in the Czech Republic’ [2017] Harvard School of Public Health: Health and Human Rights.14.

<sup>94</sup> Journeyman Pictures (n 22).



## V. Conclusion

My thesis investigated cases of forced Sterilization in Czechoslovakia and its successor countries. I aimed to prove how sterilization was used as an instrument and weapon of bio-power for eradication of Roma people. Also, how Romani women were object for these brutal and inhumane practices because of their biological predisposition. I examined human rights abuses on the three levels: situation level - case study, theoretical level - roots of those practices, and legal level - practical level which should protect and guarantee rights.

In the first part, through a case study I explained what forced sterilization is. In the same manner, I explained what the focal points were for these practices in Europe. Thus, Romani women presented the target group for these inhuman practices. They were not represented 'suitable subject for reproduction', because Roma were considered as a 'degenerative, dangerous and poor nation.' Also, I described the historical subordination of Romani women, racist laws and how public discourse put them in an inferior position.

In the second part, through the lens of two post-modern theories, I explained the reality and the roots of these abuses. The first theory which I applied is the Critical Race Theory. Two tenets of CRT are applicable on the case study: social constructionism and material determinism. They showed how the social construct of race had an impact on the reality of Romani women, on the violation of their rights, as well as their marginalized and poor position. The second theory that is applied is Foucault's theory of 'bio-power', which explained how States used power to control and shape population and individual's bodies of people in the light of nationalism. Thus, they control the biological aspect of the individuals, and Romani women presented an example of intervention by modern states.

In the last part, I presented the legal aspect of abuses suffered by Romani women. Gradually, I investigated these abuses on three different legal levels: national, regional and international. This part presented violation of: the rights to health, the right to privacy, right to family, patient rights, right to information, principle of equality and non-discrimination. It showed violation of various legal documents on each layer. Also, it presented how the legal discourse and policies were changing gradually from the sterilization law to the legal recognition of forced sterilization. As well as that, this part showed that even after legal recognition of these issues, the reality of Romani women remained the same.

To conclude, my thesis shows various aspects of this issue. It describes historical oppression of Roma in legal and social discourse, as well as racial laws and practices. With the lens of two post-modern theories, it explains roots and racial motives behind these practices. Also, how State authorities used the power against the bodies and rights of Romani women. Furthermore, it shows changes in legal discourse and their inefficacy in the reality. This thesis shows that violation of human rights does not expired just by laws and legal recognition. Social construct of Roma people is deeply embedded in society. Changes on every level of society are necessary for the solution of these historical injustices and oppression. Due to all facts, discourse of Roma must be changed. They are not subject to oppression and control; they are an equal, valuable part of society.

## Bibliography

- Claude Cahn, 'Justice Delayed: The Right to Effective Remedy for Victims of Coercive Sterilization in the Czech Republic' [2017] Harvard School of Public Health: Health and Human Rights
- Council of Europe, 'European Convention of Human Rights and Fundamental Freedoms'
- ———, 'Our Member States' <<https://www.coe.int/en/web/about-us/our-member-states?desktop=true>>
- European Roma Rights Centre, 'Parallel Report by European Roma Rights Centre Concerning the Czech Republic' (2015)  
<[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CZE/INT\\_CEDAW\\_NGO\\_CZE\\_20847\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CZE/INT_CEDAW_NGO_CZE_20847_E.pdf)>
- Foucault, *Society Must Be Defined: Lectures at the College de France 1975-1976* (New York: Picador 2003)
- Gwendolyn Albert and Marek Szilvasi, 'Intersectional Discrimination of Romani Women in the Former Czechoslovakia Republic' [2017] Health and Human Rights Journal
- International Justice Resource Center, 'Forced Sterilization as a Human Rights Violation' <<https://ijrcenter.org/forced-sterilization/#:~:text=Forced%20sterilization%20is%20the%20involuntary,vioence%2C%20discrimination%2C%20and%20torture.>>>
- Journeyman Pictures, *Forced Sterilisation of Romany Women in Slovakia* (2003)  
<[https://www.youtube.com/watch?v=IxCS\\_QOtKRc](https://www.youtube.com/watch?v=IxCS_QOtKRc)>
- Katia Gene, 'The Question of Biopower: Foucault and Agamben' [2006] Rethinking Marxism 43
- Mari J. Matsuda and others, *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (1993)
- Mark Bell, *Racism and Equality in European Union* (Oxford University Press 2008)
- Mathias Moschel, *Racial Stereotypes and Human Rights* (Intersentia 2016)
- Maurizio Lazzarato, 'From Biopower to Biopolitic' [2002] Pli: The Warwick Journal of Philosophy 13.8
- New World Encyclopaedia, 'Dissolution of Czechoslovakia'  
<[https://www.newworldencyclopedia.org/entry/Dissolution\\_of\\_Czechoslovakia](https://www.newworldencyclopedia.org/entry/Dissolution_of_Czechoslovakia)>

- Nicola Wenzel, 'Rethinking Friendly Settlements under the European Convention on Human Rights: Why We Should Design a New Friendly Settlement Procedure for Inter-State Cases' (*Völkerrechtsblog*, 28 April 2021)  
<<https://voelkerrechtsblog.org/rethinking-friendly-settlements-under-the-echr/>>
- Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide* (2011)
- Priti Patel, 'Forced Sterilization of Women as Discrimination' [2017] *Public Health Reviews* <<https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0060-9>>
- Public Defender of Rights, 'Final Statement of Public Defender of Rights in Matter of Sterilizations Performed in Contravention of the Law and Proposed Remedial Measures' (2005)  
<[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CZE/INT\\_CERD\\_NGO\\_CZE\\_70\\_8507\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CZE/INT_CERD_NGO_CZE_70_8507_E.pdf)>
- Radka Dudova, 'Regulation of Abortion as State Socialist Governmentality: The Case of Czechoslovakia' [2012] *Institute of Sociology, Czech Academy of Sciences*
- Richard Delgado and Jean Stefancic, 'Critical Race Theory: An Introduction' (New York University Press 2001)
- ———, 'Critical Race Theory: An Introduction', *Critical Race Theory: An Introduction* (New York University Press 2001)
- Sarah Marks, 'The Romani Minority, Coercive Sterilization, and Languages of Denial in the Czech Lands' [2017] *History Workshop Journal* 128  
<<https://academic.oup.com/hwj/article/doi/10.1093/hwj/dbx033/4084268>>
- The Czech National Council, 'The Constitution of the Czech Republic'  
<<https://public.psp.cz/en/docs/laws/constitution.html>>
- 'The Czech Republic in the UN'  
<[https://www.mzv.cz/mission.vienna/en/organisations\\_covered\\_by\\_the\\_permanent/united\\_nations/czech\\_republic\\_in\\_the\\_un/index.html](https://www.mzv.cz/mission.vienna/en/organisations_covered_by_the_permanent/united_nations/czech_republic_in_the_un/index.html)>
- The European Roma Rights Centre, 'Coercive and Cruel: Sterilisation and Its Consequences for Romani Women in the Czech Republic (1966-2016)' (2016)  
<[http://www.errc.org/uploads/upload\\_en/file/coercive-and-cruel-28-november-2016.pdf](http://www.errc.org/uploads/upload_en/file/coercive-and-cruel-28-november-2016.pdf)>
- The Government of the Slovak Republic, 'The Constitution of the Slovak Republic'  
<[https://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/slovakia/slovak-e.htm](https://www.concourt.am/armenian/legal_resources/world_constitutions/constit/slovakia/slovak-e.htm)>

- The United Nations, ‘Universal Declaration of Human Rights’ <<https://www.un.org/en/universal-declaration-human-rights/>>
- UN Human Rights Council, ‘Violence against Women (Addendum): Policies and Practices That Impact Women’s Reproductive Rights and Contribute To, Cause or Constitute Violence against Women’ (1999) Report of the Special Rapporteur on Violence against Women
- United Nations, ‘United Nations Charter’ <<https://www.un.org/en/about-us/un-charter/full-text>>
- ———, ‘Convention on the Elimination of All Form of Discrimination against Women (CEDAW)’ <<https://www.un.org/womenwatch/daw/cedaw/>>
- ———, ‘Member States on the Record’ <<https://www.un.org/en/library/unms>>
- ———, ‘UN Treaty Body Database’ <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEAW&Lang=en)>
- Vera Sokolova, *Cultural Politics of Ethnicity: Discourses on Roma in Communist Czechoslovakia* (2008)
- Victoria Shmidt, ‘Race Science in Czechoslovakia: Serving Segregation in the Name of the Nation’ [2020] University of Graz, SOEGA/SEEHA Centre of South-eastern European History and Anthropology
- World Health Organization, ‘A Declaration on the Promotion of Patients Rights in Europe’ <[https://www.who.int/genomics/public/eu\\_declaration1994.pdf](https://www.who.int/genomics/public/eu_declaration1994.pdf)>