

# Intersectional Discrimination of Romani Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic

GWENDOLYN ALBERT AND MAREK SZILVASI

## Abstract

This paper reviews domestic and international activism seeking justice for Romani and other women harmed by coercive, forced, and involuntary sterilization in the former Czechoslovakia and Czech Republic. Framed by Michel Foucault's theory of biopower, it summarizes the history of these abuses and describes human rights campaigns involving domestic and international litigation, advocacy, and grassroots activism, as well as the responses of the Czech governments. The paper describes how legal and policy work during the past decade has led to recognition of coercive, forced, and involuntary sterilization as a present-day human rights issue worldwide, to the adoption of new guidelines on female sterilization, and to a joint statement on the issue by seven UN agencies. Relying on academic literature, reports by domestic and international human rights groups, state investigations, judgments from Czech courts and the European Court of Human Rights (ECHR), media reports, and the experience of the authors, who have been allies of the Romani women harmed in the Czech Republic since 2005 and 2012, respectively, the paper describes the current state of play with respect to achieving redress for them, including current conceptual, legal, political, and social obstacles and their antecedents in 20th century notions of population control.

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## Introduction

Surgical sterilization is one of the most effective contraceptives, an elective procedure of no therapeutic value.<sup>1</sup> The medical consensus is that female contraceptive sterilization should be considered permanent.<sup>2</sup> Its elective, permanent nature means the decision to undergo it should be made voluntarily, based on an informed choice, and without coercion.<sup>3</sup> An informed choice means the woman understands the benefits and risks of sterilization and other contraceptives, freely decides which method suits her, and is free to change methods. A permanent procedure precludes being able to change methods, and therefore an adequate period between a medical consultation about sterilization and a definite request for such a procedure should apply to eliminate potential short-term bias in making this decision. According to leading ethicists in the reproductive health care field, health care providers' ethical obligations include respecting women's autonomy, doing no harm, and providing services equitably.<sup>4</sup>

These ethical obligations and their legal corollaries have been violated by cases of unethical sterilizations performed on women worldwide.<sup>5</sup> One set of cases of coerced, forced and involuntary sterilizations was initiated by communist Czechoslovakia in the early 1970s and perpetuated by its democratic successor states in the 1990s.<sup>6</sup> (Coerced sterilization involves the intention of a third party to induce consent to sterilization, either through a benefit or threat. Involuntary (non-consensual) sterilization is a procedure that happens against the will of or without the knowledge of the affected person. Forced sterilization involves sterilization without seeking consent.) This state-sponsored, systemic sterilization policy exemplifies how the eugenic discourse of invasive state interventions into family life, health and privacy persists to the present day and how the state, as embodied by health care and social care providers, continues to wield immense power over individuals' reproductive strategies.

As human rights have been infringed upon in the name of public health, human rights advocacy to combat such infringement has proliferated. One

result of that advocacy is the global expansion and strengthening of informed consent policy. The principle of informed consent in medicine was introduced by the 1947 Nuremberg Code and has been refined ever since, including by the 2005 UNESCO Universal Declaration on Bioethics and Human Rights and the 2011 International Federation of Gynaecology and Obstetrics (FIGO) Guidelines.<sup>7</sup> Informed choice and consent are supposed to have become crucial, irreplaceable components of contraceptive sterilization by now.<sup>8</sup>

## Origin and context of sterilization policies: Population control and eugenics

Czechoslovak (and later, Czech and Slovak) state policies targeting women for forced sterilization should not be deemed exceptional in the context of modern European states. As Michel Foucault has theorized, modern European states and invasive population control policies have been strongly mutually intertwined.<sup>9</sup>

Foucault sees the powers of the emerging modern state target the human body as early as the 18th century, cultivating and disciplining human reproduction.<sup>10</sup> With the emergence of the modern state, the human body is turned into an object of "disciplinary power," which focuses on controlling and curtailing its (re-)productive possibilities.<sup>11</sup> For Foucault, the human body is a heterogeneous multiplicity, an unorganized reservoir of bodily affects, mechanical energy and psychological processes, and what he termed "disciplinary power" is the technique of organizing these human multiplicities in a productive manner that fits the state's objectives.<sup>12</sup> Modern rulers assume the power to "make" people live or "let" them die according to the utility the individual can provide the state: "a new right which does not erase the old right [the right to kill] but which does penetrate it, permeate it. This is the right, or rather precisely the opposite right. It is the power to 'make' live and 'let' die."<sup>13</sup> The objective is to maximize individual human potential in terms of individual economic effectiveness and minimize human potential in terms of individual political resistance.<sup>14</sup> Human bodies therefore increase in

value to the state only so long as they are deemed both individually docile and useful.

This discourse has prevailed not only in health care, but in the realm of privacy and sexual life, transforming sexuality and reproduction into yet another means of production to serve the state. People were mainly supposed to have sex to procreate, to produce new human resources for the state, and all other aspects of sexuality were deemed “unproductive” and were therefore to be eliminated and suppressed.<sup>15</sup>

Apart from the modern state’s focus on organizing individual human bodies to maximize their utility, Foucault analyzed the state as organizing and regulating the collective biological life of society—the population—beginning in the second half of the 18th century.<sup>16</sup> His concept of biopolitics (biopower) notoriously coined a discourse that discusses human societies as if they were easily comprehended, organized units.<sup>17</sup> When biopower is wielded, it does not approach people in society as individual human bodies or units of production, but as a collective biological body, as the aggregate population. Through biopower, the state assumed it would execute full control over the biological aspect of society by regulating population.<sup>18</sup> In this framework, states that fail to exercise their biopower to regulate sexual and reproductive behavior risk slipping into the biological phase of “degeneration.”

According to Foucault, when state power invests itself into disciplining individual human bodies in order to regularize the population out of fear of degeneration, then racism emerges as a state doctrine in order to separate putatively biologically “degenerate” groups (which are politically identified) from the rest of society in order to control or eliminate them.<sup>19</sup> Racism introduces a war-like relationship within society that has its own perverted logic, as follows: The more such “degenerate” groups are eliminated, the better the “non-degenerate” (normal) group can live. Racism is, in Foucault’s view, a method of organizing societal hierarchies according to the threat of “degeneration” that this or might group putatively poses to the population. The modern state assumes a responsibility to identify and control “degenerate” groups and thus

assure the population will regenerate correctly.<sup>20</sup>

Forced sterilizations are a striking example of an intervention by the modern state to control populations and to limit the reproductive strategies of any group ideologically deemed to pose a “degenerative” threat to society as a whole. Forced sterilization policies introduced in the first half of the 20th century were based on the effort to eliminate the reproduction of disability or the reproduction of ethnic groups and also targeted the poor, the unmarried, and women seeking abortion. Forced sterilization policies in Europe were implemented in Sweden, Norway, Austria, Denmark, Finland, France, Germany, and Switzerland. By engaging in the forced sterilization of Romani women since the 1970s, Czechoslovakia (and the Czech and Slovak states later on) did not do anything exceptional; rather, they joined the ranks of modern states that have executed and still are executing biopower policies upon groups ideologically deemed “degenerate,” be they the chronically ill, people living with disabilities, ethnic minorities, the politically unreliable, or the poor.

### Sterilizations in former Czechoslovakia and successor states

During communism, social workers offered women financial inducements to undergo sterilization. Some women chose to be sterilized of their own free will, while others were coerced or misled into doing so. Health care providers also forcibly sterilized Romani women during other ob/gyn services or surgeries without seeking their consent. Hundreds of women have been illegally sterilized without their informed choice or consent, and nobody has ever been held responsible.<sup>21</sup>

Financial inducements for sterilization formally ended in 1991 after the 1989 transition to democracy. Social workers have reportedly coerced Romani women into sterilization through threats after 1991, and health care providers have continued to sterilize women without consent during other surgeries into the 21st century. Public discussion of these abuses has revealed intersectional persistence of ableist, antigypsyist, eugenic and racist motiva-

tions in Czechoslovak and then, respectively, Czech and Slovak society.<sup>22</sup>

### Legal framework of biopower

In 1972, the health ministries of the federal republics of Czechoslovakia jointly issued a sterilization law; the guidelines issued then by the Czech Socialist Republic applied there until a new law took effect in the Czech Republic in 2011.<sup>23</sup> “Directive No. 01/1972 of Ministry of Health and Social Affairs of the Czech Socialist Republic” passed on 17 December 1971 and took effect on 1 January 1972. The Decree expanded the provisions of the Law on Public Health from 1966. Its guidelines described the various indicators under which sterilizations could lawfully be performed.

In 1988, a new decree amended the Social Security Act in the Czech Socialist Republic and stipulated compensation schemes for sterilization until such schemes were abolished in 1991.<sup>24</sup> Statistics from some Czechoslovak regions show that from 1972 until the 1990s, Romani women constituted a disproportionately large group among those sterilized—up to 36.6 % of all female sterilizations in those years were performed on Roma (who are estimated to have constituted less than 2% of the population).<sup>25</sup> Since 1989, at least 300 Romani women have complained to various authorities, including the courts, that doctors have sterilized them without consent.<sup>26</sup> At least two cases are now pending against the Czech Republic with international courts and committees alleging forced sterilization.<sup>27</sup>

Věra Sokolová discusses how Czechoslovak discourse about the “gypsy question” played on societal anxieties about “degeneracy” (in the Foucaultian sense), casting Roma as deviant, as not Czechoslovaks, and as people without an ethnic or national identity.<sup>28</sup> In this discourse, the term “gypsy” embodied social deviance, not ethnic identity. Sokolova notes that

*the ethnic target of the sterilization policy was never fully enunciated from above nor fully institutionalized, but was rather always implicitly understood to refer to Romani women by local*

*practitioners who inhabited a dual world between “official” discourse and unofficial racial bias; the documentary record and recollections of those involved reveal that “much of the initiative to urge or even pursue Romani women to undergo sterilization came from [...] local offices.”<sup>29</sup>*

Such local initiative was part of the larger project to enforce what Sokolová calls “the mechanisms of social control that enabled the discrimination of Czechoslovak Roma to flourish under the guise of social welfare.”<sup>30</sup> Those drafting law and policy did so such that any discriminatory intent would not be apparent from the letter of the law. In a context of apparently falling fertility rates among non-Roma and apparently rising fertility rates among Roma, the “normalizing” action to take was obvious. Active targeting of Romani women was an element of population policy, driven by the state’s eugenic concern over public health. Because the list of medical indications for sterilization included a “social” indicator, medical records sometimes even listed “gypsy origin” as the indication for sterilization.<sup>31</sup>

### Czechoslovak population policy

The 1960 Czechoslovak Civil Code defined motherhood as an obligation.<sup>32</sup> Although state population policies from the 1950s onwards were dominated by pro-natal measures, not all children were considered to benefit “the nation.” Pro-natal measures were focused exclusively on families whose offspring the state anticipated would be healthy and whose development would not be endangered by material deprivation.<sup>33</sup>

Communist elites had begun to undertake various disciplinary measures with respect to the Roma as a population in the 1950s. Czechoslovak state media alleged a Roma population “explosion,” using rhetoric that was being deployed elsewhere in the Global North about its own minorities and populations of the Global South.<sup>34</sup> In this rhetoric, social ills were allegedly the genetically inevitable outcomes of “uncontrolled” minority procreation. The Commission of the Government of the Czech Socialist Republic for Gypsy Population Issues therefore recommended that Romani women spe-

cifically be given contraception free of charge, but many had no access to a range of contraceptive methods or information about them on which to base an informed choice.<sup>35</sup>

In 1969 the Czech and Slovak Socialist Republics became legislatively independent of each other.<sup>36</sup> By 1970, during “normalization,” public health officials in the Czech Socialist Republic interpreted the reportedly slow uptake of contraception by Roma as meaning Roma were incapable of gauging how many children they could “properly” care for.<sup>37</sup> In 1972, the Czechoslovak Federal Ministry of Labor and Social Affairs issued a publication for social workers entitled “Care for Socially Unadjusted Citizens,” which asserted that “material inequalities” had been eliminated by socialism, that the Czechoslovak population was “homogeneous,” and that “social pathology” was a “residue” of the capitalist regime that was still being transmitted intergenerationally by the “culturally substandard” (the “degenerate,” in Foucaultian terms).<sup>38</sup> What was never made explicit, because it was implicitly understood, was that this analysis pathologized Roma. Czechoslovak demographers even described the reported sex ratio among Roma as “unnatural” (more males), as opposed to the “natural,” “Czechoslovak” ratio of more females. “Gypsies” were characterized as “ignorant” about reproduction in contrast to “civilized” “Czechoslovak” reproduction.<sup>39</sup>

A Czechoslovak gynecologist who was the head of his hospital department published a paper in 1975 about sterilizing Romani women for “socio-economic reasons,” calculating that the amount the state paid women as a sterilization incentive was far less than the “cost” of “genetically damaged” children.<sup>40</sup> Disability among Roma was assumed to result from alleged inbreeding, and another 1975 study described the population “explosion” of “Gypsies” as resulting in the “decreasing quality of the Gypsy population itself.”<sup>41</sup> Roma were “abnormal,” their apparently higher fertility viewed as a symptom of allegedly “bad” parenting.<sup>42</sup> Roma parents were caricatured as not disciplining their children, not loving their children, promoting substance abuse to them, and sexually abusing them.<sup>43</sup> Since Roma families allegedly endangered

the social order, the state decided to control their procreation.

Who was being sterilized in Czechoslovakia (and why) did not go unnoticed by those who had eyes to see and ears to hear. The International Covenant on Civil and Political Rights had been ratified by Czechoslovakia in 1975 and was seized upon by the dissident movement as a tool to monitor adherence to human rights. The Charter 77 organization was created and in 1978 published “Document 23” on the situation of “Gypsies,” reporting that Romani women’s consent to sterilization was being obtained by “suspicious” means and that social workers’ performances were being judged according to how many Romani women they coerced into undergoing sterilization. Document 23 warned that “Czechoslovak institutions will soon have to answer charges that they are committing genocide.”<sup>44</sup>

While the rights of persons seeking sterilization were prescribed and explicit consent was required in writing, social workers coerced signatures through incentives or threats (reportedly as recently as 2007). Sometimes consent was never sought and sterilization was done during other surgery, or sought under circumstances that rendered the signature invalid as an expression of intent. Women were asked to sign when they were in labor, or were asked to “consent” to sterilization after the fact.<sup>45</sup>

### Activism, advocacy, and litigation

Researchers Andrš and Pellar interviewed Romani women throughout Czechoslovakia in an effort to map sterilization in the Roma community between 1967 and 1989.<sup>46</sup> Doctors discussed Roma reproduction with these male researchers in dehumanizing terms and freely admitted to automatically sterilizing Romani women during Caesarean section deliveries, justifying this as necessitated by the “inferior quality” of Romani children and the alleged cost to society of caring for them.<sup>47</sup>

In 1990, the Czechoslovak government’s human rights committee asked the Czech and Slovak general prosecutor to investigate allegations of the coercive sterilization of Romani women.<sup>48</sup> The investigation was concluded in 1991 by recommending

legislative changes and asking district prosecutors to advise all local medical authorities where sterilizations had been performed unlawfully that this was the case (a request that was apparently ignored or had no effect if undertaken).<sup>49</sup> Helsinki Human Rights Watch also reported on the issue.<sup>50</sup>

The Czech and Slovak Federative Republic ratified the European Convention for the Protection of Fundamental Rights and Human Freedoms in 1992. That made it possible for victims to complain to the European Court of Human Rights (ECtHR).

### Seeking justice in the Czech Republic 1993–present

Sokolova reports that from 1995 on, the issue of the forced sterilization of Romani women was increasingly discussed by civil society.<sup>51</sup> The first lawsuits over forced sterilizations were filed at this time, with varying success.

In 2003, the European Roma Rights Centre (ERRC), an international human rights organization, approached the Czech government's human rights commissioner regarding forced sterilization of Roma in the Czech Republic. He recommended the issue be raised with the Czech public defender of rights (the ombudsman).<sup>52</sup> In 2004, the ERRC presented some allegations of coerced or forced sterilization to the ombudsman and other allegations to the United Nations Committee against Torture.<sup>53</sup>

The ombudsman asked the Czech health ministry to review the medical records of 50 (out of 87) women who sent complaints to the ombudsman.<sup>54</sup> The ministry responded by setting up a panel including other cabinet representatives and a Council of Europe legal expert. The ombudsman forwarded the cases to the Czech prosecutor-general; all were dismissed for procedural reasons or because the statute of limitations meant victims could only claim compensation within three years of suffering the harm. The ombudsman published a final statement on his investigation in 2005, contrasting the ministry's findings with his own and declaring the vast majority of cases to have been illegal.<sup>55</sup> He also concluded that state policy and practice, up to 1991, had been motivated by eugenics.<sup>56</sup>

### Coercive sterilization in the Czech Republic at the European Court of Human Rights

In 2005, a Czech court ruled that Helena *Ferenčíková*, a Roma plaintiff, had been sterilized in 2001 without her informed consent, ordering the hospital to apologize in writing but not awarding damages. Both sides appealed, the verdict was upheld, and the hospital apologized in 2007. *Ferenčíková* appealed for compensation and the ECtHR declared her case admissible in 2010. She settled in 2011; the Czech government informed the ECtHR it would pay her EUR10,000 to cover court costs and damages.<sup>57</sup>

Civil and criminal verdicts in other cases began to emerge. In 2007, police investigated two complaints forwarded from the ombudsman's office and found that while crimes had happened, they could not be prosecuted because of the statute of limitations.<sup>58</sup> In 2007, a Czech court awarded EUR18,200 in damages to Roma plaintiff Iveta Červeňáková, who was forcibly sterilized but not informed of that fact at the time; she did not come to understand the kind of procedure that had been performed on her and its implications for her reproductive future until seven years after the operation. That ruling was overturned; she was told the statute of limitations applied from the time she had been sterilized, not the time she had become aware of her sterilization, and that she had sued too late. The hospital was instructed to apologize. In 2011, the Supreme Court upheld the original ruling and returned the case to the High Court. It was declared admissible before the ECtHR in 2012 but was not pursued; she settled with the hospital for EUR20,340 in damages and EUR2,457 for court costs.

The case of *R.K. v. the Czech Republic* also ended with a friendly settlement in November 2012 after four years pending before the ECtHR. First and second-instance rulings had established the rights violation and ordered financial compensation.<sup>59</sup> The parties agreed to a financial award of EUR10,000. The government admitted the case had been an "exceptional" failure by the state, but denied any systemic practice.

In 2010, Czech courts awarded damages

in two other such cases; media reporting on the awards did not mention the dates or locations of the sterilizations or the ethnicity of the plaintiffs.<sup>60</sup> In December 2015, the ERRC and the League of Human Rights, an NGO, submitted a third-party intervention to another such case against the Czech Republic before the ECtHR.<sup>61</sup>

While the ECtHR has been open to ruling on cases of coercive or forced sterilization of Romani women in the Czech Republic and Slovakia as gross human rights violations,<sup>62</sup> In Slovakia, the *Body and Soul* report produced by the Center for Civil and Human Rights Poradna and the Center for Reproductive Rights (CRR) about the involuntary sterilization of Romani women was published in 2003, followed by several cases submitted to the domestic courts which eventually made their way to Strasbourg. Despite three ECtHR cases having since decided against Slovakia (*V.C. v Slovakia* (2011), *N.B. v Slovakia* (2012), and *I.G. and others v. Slovakia* (2012)), and despite a recent case confirming compensation for involuntary sterilization by a Slovak District Court (2017), the Slovak government's response has only acknowledged "individual failures" and has refused to introduce any direct compensation measures. The ECtHR judgments have so far not found ethnic discrimination or intersectional injustice against these women.<sup>63</sup>

### Advocacy beyond the courts

In 2006, Romani women who had been forcibly sterilized began their activism. The spokesperson for the informal Group of Women Harmed by Forced Sterilization, Elena Gorolová, spoke to the UN Committee on the Elimination of Discrimination against Women (CEDAW) while her fellow survivors simultaneously demonstrated in Ostrava, receiving national media attention. CEDAW noted the final statement from the ombudsman's office and recommended the state take "urgent action" to compensate the victims.<sup>64</sup> Ever since, survivors unable to sue have worked domestically and internationally to seek redress from the government.

Other international human rights bodies

followed suit. In 2007, the UN Committee on the Elimination of Racial Discrimination (CERD) echoed CEDAW's findings.<sup>65</sup> In 2008, the UN Human Rights Council's Universal Periodic Review (UPR) called on the Czech government to provide reparations.<sup>66</sup> Those calls have been reiterated by progressively more countries involved in the UPR processes of 2012 and 2017.<sup>67</sup>

In 2009, the Czech government's Human Rights Council recommended that the government introduce compensation. In July 2009, the government rejected that motion, but in November 2009 it adopted a resolution expressing regret "over the instances of errors found to have occurred in the performance of sterilizations." The Human Rights Council reiterated its compensation recommendation in 2012.<sup>68</sup>

In 2013, the Czech Helsinki Committee, an NGO, drafted an *ex gratia* compensation bill.<sup>69</sup> Their draft was submitted to the Czech human rights minister, whose team drafted its own version of such a bill and submitted it to the government in February 2015. The government rejected it in September 2015 without explanation.<sup>70</sup>

In 2016, the human rights commissioner of the Council of Europe raised the Czech government's rejection of the compensation bill with the prime minister and received a response, which the commissioner then released.<sup>71</sup> The prime minister maintains that the state has never supported systemic sterilization among Roma women and recommends that all previously harmed women sue.<sup>72</sup> He states the belief that victims have always had the option of suing health care facilities and says the government decided not to establish a compensation mechanism because allegedly "the assessment of individual cases from distant past [sic] would be difficult and questionable also due to the possible failure to retain medical documentation or other evidence." Finally, he claims court fees can be waived, legal representation can be provided at the state's expense, and NGOs might bear the financial burden of representing plaintiffs (a remarkable assertion for a government to make), finally alleging that the state is on the brink of providing a free legal aid system that will address all

potential obstacles.

This approach means local facilities would be the entities to sue and begs the question of whom to sue should the facilities no longer exist. The claim that “legal representation can be appointed at the state’s expense” is belied by the current bill on free legal aid being discussed by the Czech legislature, which proposes no such thing.<sup>73</sup>

The ERRC and League of Human Rights also submitted a joint individual complaint on behalf of six affected Roma women to CEDAW in February 2016.<sup>74</sup> All of those cases are statute-barred under Czech law.

Given that litigation has proven less than satisfactory when it comes to the scale of the numbers of victims requiring restitution, avenues beyond the courts have been approached for advocacy.

### International responses to advocacy beyond the courts

The International Federation of Gynecology and Obstetrics (FIGO) is the only global organization representing national ob/gyn societies.<sup>75</sup> It has been refining its ethical guidance about contraceptive sterilization since 2003, when it adopted its “Resolution on Professional and Ethical Responsibilities Concerning Sexual and Reproductive Rights” urging professionals to protect women’s rights in practice.<sup>76</sup> In 2004, FIGO published a code of ethics on sexual and reproductive rights that urges the profession to support decision-making that is “free from bias or coercion.”<sup>77</sup>

In 2009, the Council of Europe and the Open Society Foundation’s Women’s Program supported a panel at FIGO’s triennial congress with lectures about coerced, forced, or involuntary sterilization in Europe, India, and North and South America. This was followed by communication between activists and the FIGO Ethics Committee on refining FIGO’s guidelines for female contraceptive sterilization, which were reissued in 2011 and mention the forced sterilization of Romani women and women living with disabilities.<sup>78</sup>

Open Society Foundations also launched the Campaign to End Torture in Health Care in 2010,

including forced sterilization as an issue.<sup>79</sup> The 2012 FIGO congress featured a panel to discuss the new ethics guidelines. As a result, in part, of the campaign and many other advocates, the UN Special Rapporteur on torture published a 2013 report recognizing that treatment amounting to torture occurs in health care settings, including forced sterilization.<sup>80</sup>

Seven UN agencies—the Office of the High Commissioner for Human Rights, UNAIDS, the UNDP, UNICEF, the UN Population Fund, UN Women, and WHO—issued a 2014 joint statement on eliminating coercive, forced, and otherwise involuntary sterilization.<sup>81</sup> The recommendations were reviewed in 2015 by another FIGO panel. By including this content on the scientific program of its triennial congresses, FIGO has provided advocates the ability to reach health practitioners more directly than through the protracted tactic of litigation and to enlist them as allies.

The following UN and Council of Europe bodies have sent the Czech government recommendations of urgent action to investigate the extent of involuntary sterilizations and establish a compensation mechanism for the victims:

- CEDAW in 2006, 2010, and 2016;
- CERD in 2007 and 2011;
- the UN Human Rights Committee in 2007 and 2013;
- the UN Human Rights Council under the Universal Periodic Review in 2008, 2012 and 2017;
- the European Commission against Racism and Intolerance (ECRI) in 2009;
- the Commissioner for Human Rights of the Council of Europe in 2010;
- the UN Committee against Torture (CAT) in 2012;
- the UN Committee on the Rights of Persons with Disabilities (CRPD) in 2015;<sup>82</sup>
- Navanethem Pillay, UN High Commissioner for Human Rights (2008 to 2014);
- Gianni Magazzeni, Office of the High Commis-

sioner for Human Rights' Chief of the Americas, Europe and Central Asia Branch, Field Operations and Technical Cooperation Division;

- Nils Muižnieks, Council of Europe Commissioner for Human Rights;
- Mirjam Karoly, Senior Adviser on Roma and Sinti Issues at the Office for Democratic Institutions and Human Rights, Organization for Security and Cooperation in Europe (OSCE/ODIHR); and
- Soraya Post, Member of European Parliament.<sup>83</sup>

Forced sterilization in the 20th and 21st centuries has been prompted by fears of perpetuating the reproduction of people living with disabilities or people of stigmatized ethnicities, and has also targeted the poor, the unmarried, and women seeking abortion. Forced sterilization policies in Europe have been implemented in Austria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Norway, Slovakia, Sweden, and Switzerland. Of those countries, Austria, Germany, Sweden, Norway, and Switzerland have assumed responsibility for those policies and enacted special remedies for victims, as have the American states of North Carolina and Virginia, with legislation planned for introduction in California. This progress is due to domestic and international advocacy that has created a platform for self-advocating women harmed by sterilization and civil society to join forces and pressure states.<sup>84</sup>

## Conclusion

The dehumanizing cases of coerced, forced, and involuntary sterilizations from the former Czechoslovakia and its successor states are by no means singular or unique events. State sterilization policy targeting Romani women is one of the starkest manifestations of Foucault's theory of biopower. Introduced as an approach to curtail and control the size of the Roma population, which allegedly threatened to overtake the "majority" as defined in ethno-nationalist terms, and even more importantly, an approach to allegedly protect the Czechoslovak

population against slipping collectively into alleged biological degeneration if the Roma were left to reproduce freely, these policies represent a case of modern (state) racism, defined by Foucault as biological warfare within a modern society. What makes Foucault's theory of biopower a particularly fitting explanatory framework for analyzing coercive sterilization policies is that those policies were the outcomes of the then-mainstream quasi-biological science of social engineering that spoke the language of "population control" unabashedly.

Throughout the 20th century, beginning in Sweden, many European states adopted coercive sterilization policies aimed at their minority groups which allegedly posed threats of biological degeneration and social disorder to the population, and Roma were the group constantly targeted. Czechoslovakia was among one of the last states to introduce these policies during its normalization era, but the ensuing years of systematic coercive sterilization and the persistence of this practice post-1989 represent one of the most drastic examples of biopower put into practice.

Human rights activism has managed to secure recognition of these violations internationally, including by the gynecological profession itself. The recalcitrance of the Czech authorities to take action to redress the individuals harmed indicates that, despite democratic governance, EU membership, and ratification of various human rights instruments, the Czech state is still insensitive to the fact that legal protection remains inaccessible to members of vulnerable groups, including victims of human rights abuse.

In November 2009, Czech Prime Minister Fischer expressed regret but did not acknowledge the state-supported, systematic nature of the practices he otherwise condemned.<sup>85</sup> That official action and the work of the Public Defender of Rights were responses to the efforts of civil society, especially self-advocating Romani women who decided to become activists committed to breaking the silence over these intimate atrocities. In September 2015, however, the Czech government added insult to injury by rejecting the compensation bill without public explanation.

Four self-advocating Romani women have since created a social theater performance, together with their allies, about their circumstances.<sup>86</sup> This was an exercise in raising awareness and a form of therapy for them to cope with their trauma. They and their civil society supporters, domestic and international, continue to fight for them to be compensated and for states to proactively ensure that no other women will ever endure such abuse at the hands of medical professionals or state authorities again.

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28. See note 25, Sokolova, p. 209.
29. See note 25, Sokolova, p. 212.
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32. See note 25, Sokolova, pp. 213-216.
33. M. Kučera, "Padesát let hodnocení populačního vývoje České republiky." [Fifty years of the Czech Republic's population development.], in: *Demografie* 50/4 (2008), pp. 230-239.
34. See C. Haberman, "The Unrealized Horrors of Population Explosion," *The New York Times*, May 31, 2015. Available at <http://www.nytimes.com/2015/06/01/us/the-unrealized-horrors-of-population-explosion.html>; see also M. Connelly, *Fatal Misconception*, (Harvard University Press, 2008).
35. *Komise vlády České socialistické republiky pro otázku cikánského obyvatelstva*, Sokolova, p. 217; see also Stejskalová and Szilvasi (note v), pp. 27-29
36. C. Cahn, *Sovereignty, Autonomy and Rights: Human Rights Law and the International Effort to Seek Justice for Romani Women Coercively Sterilized in the Czech and Slovak Republics*, (Wolf Legal Publishers: 2013), p. 40.
37. See note 29, Sokolova, pp. 220 -221.
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39. *Ibid.* p. 227.
40. *Ibid.* p. 231.
41. *Ibid.* p. 220.
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44. Charter 77, *Situace Cikánů-Romů v Československu (The Situation of Gypsies/Roma in Czechoslovakia)*. See also note 25, Cahn, p. 44 and note 5, Stejskalová and Szilvasi, pp. 29-33.
45. See note 5, Stejskalová and Szilvasi.
46. See note 29, Pellar and Andrš.
47. See note 25, Sokolova, p. 231.
48. See note 25, Cahn, p. 45. See also Public Defender of Rights, note 22.
49. In 2005 the Czech Public Defender of Rights noted that the legislative changes proposed had yet to be enacted.
50. Human Rights Watch, *Struggling for Ethnic Identity. Czechoslovakia's Endangered Gypsies* (Washington: Helsinki Watch, 1992). Available at: <https://www.hrw.org/reports/pdfs/c/czechrep/czech.928/czech928full.pdf>.
51. See also note 25, Sokolova, pp. 211-212.
52. See note 25, ERRC, 2006), pp. 44-49.
53. ERRC, *UN Committee against Torture urges the Czech Republic to Investigate Alleged Coercive Sterilisation of Romani Women*, 29 July 2004, available at: <http://www.errc.org/article/un-committee-against-torture-urges-the-czech-republic-to-investigate-alleged-coercive-sterilisation-of-romani-women/1988>

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54. Because Roma life span is on average 10 years shorter than non-Roma life span in the Czech Republic, we will probably never hear directly from most of the women subjected to this treatment during the 1960s. At least one woman who brought forward a complaint to the Ombudsman has since died.

55. See note 15, Public Defender of Rights.

56. *Ibid.* pp. 68-72.

57. ECtHR, *Ferenčíková v the Czech Republic* (Application no. 21826/10), August 30, 2011. Available at: <http://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Application%20no.%2021826/10%22%2C%22itemid%22:%5B%22001-106270%22%5D%7D>

58. Cahn, pp. 76-77. The cases were from 1993 and 1998.

59. ECtHR, *R.K. v the Czech Republic* (Application no. 7883/08), November 27, 2012. Available at: <http://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Application%20no.%207883/08%22%2C%22itemid%22:%5B%22001-115481%22%5D%7D>

60. Cahn, p. 80.

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62. See: M. Stejskalová, M. Szilvasi (2016), pp. 19-20; Poradna, "The Slovak Court awards compensation to another forcibly sterilized Roma woman," May 26, 2017. Available at: <https://www.poradna-prava.sk/en/news/the-slovak-court-awards-compensation-to-another-forcibly-sterilised-roma-woman/>.

63. J. Geller, "Coercive Sterilisation of Romani Women: inhuman and degrading treatment but not discrimination according to the ECHR", in: *ERRC blog*, 25 November 2011, available at: <http://www.errc.org/blog/coercive-sterilisation-of-romani-women-inhuman-and-degrading-treatment-but-not-discrimination-according-to-the-echr/39>. See also J. Geller, A. Weiss, "Strasbourg delivers a blow to reproductive rights, women rights, and Roma rights in one go", in: *Rightsviews*, 22 March 2016, available at: <http://blogs.cuit.columbia.edu/rightsviews/2016/03/22/strasbourg-delivers-a-blow-to-reproductive-rights-womens-rights-and-roma-rights-in-one-go/>.

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65. UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations, Czech Republic*, April 11, 2007, CERD/C/CZE/CO/7. Available at: <http://www.refworld.org/docid/46484d2d2.html>, para. 14;

66. Cahn, p. 83.

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68. See Szilvasi, 2015, (note 23).

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