

# Human Rights, State Sovereignty and Medical Ethics

Examining Struggles Around Coercive  
Sterilisation of Romani Women

Claude Cahn

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Sterilisation of Romani Women*

*By*

Claude Cahn



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LEIDEN | BOSTON

Library of Congress Cataloging-in-Publication Data

Cahn, Claude, author.

Human rights, state sovereignty, and medical ethics : examining struggles around coercive sterilisation of Romani women / by Claude Cahn.

pages cm. -- (Immigration and asylum law and policy in Europe, ISSN 1568-2749 ; v. 35)

Includes bibliographical references and index.

ISBN 978-90-04-28033-5 (hardback : alk. paper) 1. Race discrimination--Law and legislation--Europe, Eastern. 2. Minorities--Legal status, laws, etc.--Europe, Eastern. 3. Women, Romani--Civil rights--Europe, Eastern. 4. Involuntary sterilisation--Law and legislation--Czech Republic. 5. Involuntary sterilisation--Law and legislation--Slovakia. 6. Sterilisation of women--Law and legislation--Czech Republic. 7. Sterilisation of women--Law and legislation--Slovakia. 8. Sovereignty. 9. Medical ethics. I. Title.

KJC5144.M56C34 2015

341.4'858--dc23

2014032785

This publication has been typeset in the multilingual "Brill" typeface. With over 5,100 characters covering Latin, IPA, Greek, and Cyrillic, this typeface is especially suitable for use in the humanities. For more information, please see [www.brill.com/brill-typeface](http://www.brill.com/brill-typeface).

ISSN 1568-2749

ISBN 978-90-04-28033-5 (hardback)

ISBN 978-90-04-28034-2 (e-book)

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# Immigration and Asylum Law and Policy in Europe

*Edited by*

Jan Niessen  
Elspeth Guild

VOLUME 35

The titles published in this series are listed at *brill.com/ialp*

## Acknowledgements

This book originated as my doctoral dissertation in Law at the Radboud University of Nijmegen, the Netherlands. The title of the dissertation, as presented, was “Sovereignty, Autonomy and Right: Human Rights Law and the International Effort to Seek Justice for Romani Women Coercively Sterilised in the Czech and Slovak Republics”. It was successfully defended on 14 January 2014. Its completion would not have happened without the support and encouragement of my family, above all my wife Cosmina Novacovici. The five years of holidays and Sundays spent staring into a computer will not be returned. My gratitude for her determination that I see this finished is immense. I will similarly not be able to repay the love and support of my father Walter Cahn, my mother Annabelle Simon Cahn, and daughters Sarah Kali and Johannah Shai.

One could not want for more constructive, cheerful, patient, engaged and supportive advisers than Kees Groenedijk and Elspeth Guild. *E pluribus unum*.

Gwendolyn Albert, Stephen Humphreys, Laurence Lwoff and Erika Schlager read one or more chapters of the draft document and provided helpful guidance and thoughts. Janneke Gerards, Rick Lawson and Olivier de Schutter acted as the Reading Committee for the dissertation, and in that capacity read an advanced draft of the dissertation and provided comments on it.

As will be evident, this book would be inconceivable without the opportunity provided by my eleven years of work at the European Roma Rights Centre. I also owe immense debts of gratitude for the many remarkable personalities, fellow-travellers on this particular road, above all Gwendolyn Albert, Elena Gorolová, Erika Schlager and Sri Kumar Vishwanathan. This work would of course also have been impossible without the remarkable Group of Women Harmed by Coercive Sterilisation and the team at Vzájemné Soužití, including in particular, in addition to Elena and Kumar, Vlasta Holubová, Nataša Botošová and the late Helena Balogová, among many, as well as Jozef Cina and the late Ana Čiňová. I am also grateful for over ten years of thoughts and comments on these issues by Jan Jařab and Anna Šabatová, as well as those of Jiří Kopal and the late Otakar Motejl.

A number of staff and fellow students at the Radboud University of Nijmegen assisted my efforts to complete this work in various ways. Many thanks therefore to Petra Bouman, Carolus Grütters, Paul Minderhoud, Hannie van de Put and Karin Zwaan, as well as to Camille Defourny. The author is further grateful to the Dutch journalists Paul Öfner and Bert de Rooij for their support and continuing efforts to keep this issue on the agenda, close to twenty-five years since they first assisted Czechslovak dissidents Ruben Pellar

and Zbyněk Andrš in making public their 1989 findings about coercive sterilisation in Czechoslovakia. Similar gratitude is also owed the Czech Helsinki Committee for the continuing efforts of that organisation to elaborate a remedy mechanism for victims of these practices in the Czech Republic, as well as for involving the author in those discussions.

Thanks are also gratefully extended to my supervisors at the United Nations – Nicola Harrington-Buhay, Kaarina Immonen, Gianni Magazzeni and Hulan Tsedev. At crucial moments, they supported my efforts to complete this work.

This book endeavors to be current to the date 31 March 2014. The materials presented here do not necessarily reflect the views of the United Nations or any of its entities. The author stands by all mistakes in this document. They are, resolutely, his own.

# Abbreviations

CAT	United Nations Committee Against Torture
CDBI	Council of Europe Committee of Ministers Steering Committee on Bioethics
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW	United Nations Committee on the Elimination of Discrimination Against Women
CERD	United Nations Committee on the Elimination of Racial Discrimination
CJEU	Court of Justice of the European Union
CSCE	United States Commission on Security and Cooperation in Europe
DH-BIO	Council of Europe Committee on Bioethics
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	Council of Europe European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EHRC	Council of Europe Human Rights Commissioner
EIDHR	European Union European Instrument for Democracy and Human Rights
EP	European Parliament
ERRC	European Roma Rights Centre
EU	European Union
FCNM	Council of Europe Advisory Committee to the Framework Convention for the Protection of National Minorities
FIGO	International Federation of Gynecology and Obstetrics
HRC	United Nations Human Rights Committee
ICC	International Criminal Court
Rome Statute	Rome Statute of the International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICTR	International Criminal Tribunal for Rwanda
IMF	International Monetary Fund
NGO	Non-Governmental Organisation
OHCHR	United Nations Office of the High Commissioner For Human Rights
OSCE	Organization for Security and Co-operation in Europe

OSI	Open Society Institute
Oviedo	Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (Oviedo Convention)
PACE	Parliamentary Assembly of the Council of Europe
QUANGO	Quasi Non-Governmental Organisation
ROI	Romani Civic Initiative
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review of the UN Human Rights Council
VONS	Committee for the Defense of the Unjustly Prosecuted
WHO	World Health Organization



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# Introduction

In early February 1999 – February 8 to be precise – I spent a remarkable afternoon in Brno, Czech Republic, listening to the claims of a woman I will call here ‘Monika’, a 35-year-old Romani woman, raised in an institution, and living with her German Shepherd in a Spartan first-floor one-room apartment in the Bratislavská area of the city, a heavily Romani urban slum. Monika claimed that she had gone some years previously for a ‘woman’s operation’ related to pain she had been suffering. When she emerged from anaesthesia the doctor had told her, ‘I’m sorry, we couldn’t put you back together again’, from which she understood that she would no longer be able to have children.

At the time, I was in Brno as part of research efforts into the segregation of Romani children in education in the Czech Republic, research which ultimately became the basis for the European Court of Human Rights judgment in *D.H. and Others v. Czech Republic*.<sup>1</sup>

The Romani and related ethnic groups are a diverse set of peoples and communities living in Europe, the Americas and parts of Africa, related to similar groups in the Middle East and Central Asia, called ‘Lom’ and ‘Dom’. Roma are believed descended from groups of people who left India approximately 1000 years ago and arrived in Europe in successive waves beginning in or around the 14th century. A lack of written community records makes Romani history an extremely difficult field, intensely reliant among other things on sources such as the historical imprint left on the various Romani dialects.<sup>2</sup> The history of Roma in Europe is not a happy one. Soon after their arrival in Europe Roma were excluded in Western Europe, and periodically subjected to raw persecution.<sup>3</sup> In the Ottoman Empire, Roma occupied a low status, even when members of the privileged Muslim community.<sup>4</sup> Roma were enslaved in the Romanian principalities.<sup>5</sup> From the beginning of the modern state, significant efforts were periodically undertaken – with mixed success – to assimilate

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1 *D.H. and Others v. Czech Republic* (Application no. 57325/00), judgment (Grand Chamber) of 13 November 2007.

2 See especially Matras, Yaron, *Romani: A Linguistic Introduction*, Cambridge: Cambridge University Press, 2002.

3 See Fraser, Sir Angus, *The Gypsies*, Oxford: Blackwell, 1992.

4 See Marushiakova, Elena & Popov, Vesselin, *The Gypsies in the Ottoman Empire*, Hatfield: University of Hertfordshire Press, 2001.

5 See Viorel, Achim, *The Roma in Romanian History*, Central European University Press, 2004, pp. 27–132.

Roma forcibly.<sup>6</sup> Roma were targeted for genocide during World War II.<sup>7</sup> The period since 1989 has seen a renewal of active anti-Romani antipathy throughout the continent. Tens of thousands of Roma were ethnically cleansed from Kosovo in the period 1999-present.<sup>8</sup> Outbreaks of anti-Romani racism have plagued every European society without exception.

I was not in Brno to look into human rights abuses in the health field. I had wound up listening to Monika's story because she was persistent in making me understand that she had something important to say. At the time I lacked both the skills and the knowledge – subsequently provided in large part by Ina Zoon and Barbora Bukovská in their groundbreaking work documenting the forced and coercive sterilisation of Romani women in Slovakia<sup>9</sup> – that coercive sterilisation practices of Romani women were proceeding (in Slovakia at least), frequently in the context of second caesarean section births. I literally did not know what to make of the information that Monika was evidently trying to impart to me.

I did not, however, disregard the discussion. Romani women were sterilised without consent under Communism by policy in Czechoslovakia until the policies were revoked in 1990, a practice which aroused widespread international concern and was the subject of action by the dissident group Charter 77, detailed *samizdat* research by Ruben Pellar and Zbyněk Andrš, and documentation by *Human Rights Watch*.<sup>10</sup> According to what was known in 1999, the last documented case of coercive sterilisation of Romani women in Czechoslovakia took place in Poprad, central Slovakia, in 1990.

In addition, the sterilisation of Romani women had literally been among the first things to greet me upon my first arrival in Czechoslovakia in September 1991. I had come to Czechoslovakia first, on a program which

6 See Crowe, David & Kolsti (eds), *The Gypsies of Eastern Europe*, Arnok, N.Y.: M.E. Sharp Inc., 1991.

7 See inter alia Zimmermann, Michael, *Verfolgt, Vertrieben, Vernichtet: Die Nationalsozialistische Vernichtungspolitik gegen Sinti und Roma*, Essen: Klartext, 1989; Kenrick, Donald & Grattan, Puxon, *Gypsies under the Swastika*, Hertfordshire: University of Hertfordshire Press, 1995.

8 See Cahn, Claude, 'Birth of a Nation: Kosovo and the Persecution of Pariah Minorities', *German Law Journal*, Vol. 8, No. 1, pp. 81–94.

9 Ultimately published as Center for Reproductive Rights & Poradňa pre občianske a ľudské práva, in consultation with Ina Zoon, *Body and Soul: Forced Sterilisation and Other Assaults on Roma Reproductive Freedom in Slovakia*, Center for Reproductive Rights and Poradňa pre občianske a ľudské práva, 2003.

10 Tritt, Rachel, *Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies* (Helsinki Watch Report), New York: Human Rights Watch, 1992.

placed American recent college graduates in Czech schools to teach English. I spent September 3 – my first working day and third day in the country – at the Omská school in Prague 10, located at Cuban Square (until recently ‘Square of the Cuban Revolution’) with a woman I will call Mrs Pigeon, my host teacher, throwing out posters of Ché Guevara and Fidel Castro. The school had been a school for elites, training in Spanish, with a special relationship with Cuba. Mrs Pigeon had in fact been in Havana on a school trip during the dramatic events of November 1989. The school was replacing Spanish with English, more useful for the new order: out with the old, in with the new.

Over the course of the afternoon, Mrs Pigeon recounted the details of life under Communism. Her husband was a doctor, and like many he had been forced to take a job in a marginalized area. They saw each other only on some weekends, when he rode his motorbike home. He was sent to work at a hospital in Most, in the coal-blighted industrial north, home of many catastrophic Gypsies. They were terrible, the Gypsies. They were given housing preferentially under Communism, recounted Mrs Pigeon, while many good Czechs had to wait years after marriage to be allocated a flat. It was part of the integration program of Gypsies to give them good new block housing, highly coveted by educated Czech families. The Gypsies destroyed their good new luxury housing. They burnt the furniture and destroyed the interior and made a huge mess. And they bred like rats. They should all be sterilised.

Roma indeed came to feature prominently in the public discourse of the post-Communist period in Czechoslovakia and, after the dissolution of the state into independent Czech and Slovak Republics on 1 January 1993, in the public discourse of both successor states. Roma were blamed for a perceived breakdown in public order, deemed the origin of all or most crime, and indeed even held responsible by some Czechs for the break-up of the state, after widely broadcast interviews with Slovak Roma supportive of Slovakia’s leading autonomist, Vladimír Mečiar. Long-term anti-Romani resentments which developed under Communism<sup>11</sup> – and which could find no public expression in the totalitarian state – blossomed in the new democracies, together with previously discredited or publicly suppressed ideologies of racial superiority.

Monika therefore had to be taken seriously. Several weeks later, Christina Zampas of the Center for Reproductive Rights crossed my path. She was

11 See Guy, Will, ‘Ways of Looking at Roma: The Case of Czechoslovakia’, in Tong, Diane (ed.), *Gypsies: An Interdisciplinary Reader*, New York and London: Garland Publishing Inc., 1998, pp. 26–44; Ulc, Otto, *Judge in a Communist State: A View from Within*, Akron, OH, USA: Ohio University Press, 1972.

seeking insights into what issues to focus on in the area of reproductive rights in Central and Eastern Europe. We spoke for several hours about Czechoslovakia. So began the chain of events ultimately leading to the *Body and Soul* report,<sup>12</sup> the first comprehensive research documenting post-Communist coercive sterilisation practices of Romani women in Central Europe and, ultimately, the 2009 recognition by then-Czech Ombudsman Motejl that he believed there were as many as 90,000 women coercively sterilised on the territory of the former Czechoslovakia.<sup>13</sup>

This book aims dispassionately to assess the interface between law – in this case international human rights law – and society, in this case two advanced, industrialized European states, the Czech and Slovak Republics. As should be evident from the foregoing, the author is not an archetypal dispassionate scientist, observing the events but detached from them. On the contrary, I have been directly involved in some – although not all – of the factual events described herein, particularly in the case study set out in Chapter 2.

Some might therefore question the competence or appropriateness of my efforts to examine the issues here in a scientific context. Am I not too directly involved in the events to study them dispassionately? I will set out here several reasons why I believe this objection is not sustainable. First of all, and in the most abstract, as is widely known, no act of observation fails to have impact on the observed. In physics, observation can literally cause certain types of particles to alter states. Absolute zero is unattainable as a temperature precisely because of the impact of observation. All observation is ultimately a mode of participation.

Secondly, the strands of inquiry set out below – into individual autonomy, national sovereignty, the role and structure of international law, and the interface between social action and legal change –, as well as the insights derived from these inquiries, have all directly benefited from my direct involvement in the matters in the case study. Far from hindering my ability to derive insights from these events, I believe my direct involvement in these matters has heightened my ability to draw lessons from the events described, in light of the critical and theoretical literature on the several subject matters implicated here. This is a defence of the intellectual as participant in the world, rather than as alienated from it.

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12 Center for Reproductive Rights & Poradňa pre občianske a ľudské práva, in consultation with Ina Zoon, *Body and Soul: Forced Sterilisation and Other Assaults on Roma Reproductive Freedom in Slovakia*, Center for Reproductive Rights and Poradňa pre občianske a ľudské práva, 2003.

13 *Lidové Noviny*, 'Ministr Kocáb: Politování sterilizovaných žen je první fáze', 24 November 2009.

Third, the disciplines and theoretical precepts under examination here are particularly 'above the fray' as concerns the possibility of influence or distortion arising from direct involvement. The law of the European Court of Human Rights, for example, is not an item which will be different depending on whether the analysis is done by a person involved in litigation before the European Court. Similarly, an assessment of whether or not victims have had access to an effective remedy as required under international law – an objectively verifiable fact – will not depend on the non-participation of the observer.

The current document aims to make an original contribution to the study of law and society. It focuses in particular on the ability of the international human rights law framework to contribute to persons from extremely marginalized or pariah situations being able to seize, secure and act upon their own autonomy and dignity. In so doing, it examines the concepts of sovereignty and autonomy in light of the changes brought about by the post-World War II international human rights law system.

The core question addressed in this book is the following: To what extent does the international human rights law order live up to its promise of dignity, where persons live under conditions of extreme stigma and exclusion, in atomized, pariah situations? Do human rights in a supranational legal form actually re-frame human autonomy?

Insofar as these questions are posed in the context of international justice, this book poses questions as to the scope and nature of sovereignty, in particular national sovereignty.

In assessing these questions, two distinct sets of theoretical literature are probed: first, in Chapter 1, concepts of sovereignty and autonomy in light of the changes brought about by the post-World War II international human rights law system are examined. Next, after a recital of fact (Chapter 2) and international law and norms (Chapters 3 and 4) in the case at issue, in Chapter 5, theoretical literature drawn from law and society literature, including the emerging field of the anthropology of human rights, is examined. On the basis of these strands of inquiry, conclusions are drawn. It will be seen that, in answering the given question, the latter literature is crucial, as the answers appear to depend to a great extent on subjective understandings of human empowerment among those affected – the victims themselves.

This book is thus organised as follows: Chapter 1, which follows this introduction, provides a theoretical basis for our inquiry. It focuses in particular on the development of the international human rights law system, and its relationship with national sovereignty and individual autonomy, as set out in the critical literature. Chapter 2 summarizes human rights efforts to challenge coercive sterilisation practices in Czechoslovakia and its



successor states, beginning with the dissident group Charter 77 action in this regard.

Chapters 3 and 4 look at several of the particular international human rights law aspects of the issues in question. Chapter 3 examines the development of the jurisprudence of the European Court of Human Rights in the area of discrimination, noting the dependence of the elaboration of this law on Roma rights and the way in which human rights concerns facing Roma on the one hand, and the European Court's anti-discrimination *acquis* have developed in tandem. Chapter 4 examines other legal bases for challenging the coercive sterilisation of Romani women, including the violence against women *acquis* on the one hand, and the norm of free and informed consent in any health intervention on the other. Here too, the thesis notes the extent to which much of this law is enmeshed. In both areas, as will be seen, jurisprudence has evolved considerably in the past two decades, clarifying the content of the 1950 European Convention on Human Rights, as well as more broadly the international human rights law order established in 1945, and strengthened considerably through the adoption in 1966 and entry into force in 1976 of the two core international human rights treaties.<sup>14</sup>

Chapter 5 examines the social movement aspects of efforts to challenge the coercive sterilisation of Romani women, in light of a growing theoretical literature examining the anthropology of human rights, and endeavouring to model the strategies of human rights change. Chapter 5 also dwells on some of the softer legal aspects of the human rights challenge to coercive sterilisation of Romani women, including the role of UN and Council of Europe human rights review processes, as well as the role of the European Union. The thesis concludes by endeavouring to draw these strands together, in particular in light of the theoretical considerations raised in Chapters 1 and 5.

Given the diverse nature of the chapters comprising the whole of this document, different methodological approaches are taken in the various chapters. Chapter 1 is an academic interrogation of a range of academic and theoretical literature on sovereignty, international law and human autonomy. Chapter 2 endeavours to set out what is known about coercive sterilisation in Czechoslovakia and its successor states, and in particular the ways in which hostility toward Roma gave rise to policies and practices in this area. As will be evident, although there is now no serious denial of these practices or of the role of public policy in giving rise to them and sustaining them, to date credible documentation of the scope and nature of these practices remains

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14 The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.