



**ESCAPING A COMMON PAST**

**WHY THE CZECH AND SLOVAK REPUBLIC FAIL TO PROTECT**

**VULNERABLE ROMA GROUPS**

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## ABSTRACT

In 1978, the authors of the Charter 77 document *On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic* were able to identify two significant cases of violence perpetrated by state power in communist Czechoslovakia on the most vulnerable members of the Roma minority. The forced sterilizations of Romani women and the segregation of Romani children are examples of the human rights failure of the two successor independent democracies, Czech Republic and Slovak Republic, long after the 1989 Velvet Revolution and the division of the Czech and Slovak Federative Republic in 1992. In the coming decades, both young democracies would lose the case brought against them under the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) rather arbitrarily and inconsistently takes into account the essential historical context of the continuity of legal and policy repression against the Roma. The thesis raises a question as to the difference between a *repeating pattern* and an *isolated excess* when the history of the Roma is in fact a history of discrimination.

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## Introduction

In 1993, the Czech and Slovak Republics became independent; after seventy-four years, Czechoslovakia had dissolved. Following the 1989 Velvet Revolution and forty years of totalitarianism, both countries wanted to demonstrate their separation from the communist past. Therefore, in the 1990s, they tried to play the role of an active normative actor in the field of human rights.<sup>1</sup> After independence, they accepted the previous human rights obligations of Czechoslovakia and continuously ratified a number of human rights conventions.<sup>2</sup> The myth of Czechoslovak dissent became a discursive and value framework in which the Czech and Slovak human rights policies of the 1990s were formed. The Czech Republic, through the pre-eminent figure of dissident—the last Czechoslovak and the first Czech president Václav Havel—even played, for some time, the role of a kind of human rights model among the former socialist countries.<sup>3</sup>

However, despite the declared emphasis on human rights, long after the revolution, both countries faced complaints concerning human rights violations against the Roma minority and, moreover, against the most vulnerable groups: Roma women and children. The case of *D.H. and Others v the Czech Republic*<sup>4</sup> (2007) concerning the segregation of Romani children in the Czech Republic, a series of cases of Romani women who were forcibly sterilized in Slovakia and, above all, the fact that both countries have so far failed to implement the judgments satisfactorily, raise a number of questions about the nature of the historical legacy of discrimination. How is it possible that the two democratic countries, members of the European Union, thirty-one years after the fall of communism, are still unable to meet their human rights obligations and protect the most vulnerable groups of their ethnic minority?

This work will try to show that the current problems in the Czech and Slovak Republics are largely the legacy of systems which have continuously broken the traditional

<sup>1</sup> Janků L and others, 'Mezinárodní závazky České republiky v oblasti lidských práv' [International Obligations of the Czech Republic in the field of Human Rights][2012] 14(2–3) *Středoevropské politické studie* 195.

<sup>2</sup> Czechoslovakia ratified the UN Convention on the Elimination of All Forms of Racial Discrimination in 1966, in 1975 it ratified the ICCPR and the ICESCR. In 1991 Czechoslovakia ratified the UN Convention on the Rights of the Child, in 1992 it was the first state in Central and Eastern Europe to become a party to the ECHR.

<sup>3</sup> 'Vaclav Havel's human rights legacy an inspiration' (*Amnesty International*, 21 December 2011) <<https://www.amnesty.org/en/latest/news/2011/12/vaclav-havel-s-human-rights-legacy-inspiration/>>

<sup>4</sup> *DH and Others v the Czech Republic* App no 57325/00 (ECtHR, 13 November 2007).

culture of Roma communities, its cultural codes and its values.<sup>5</sup> Whether it was communist Czechoslovakia, Nazi repression during World War II, the interwar First Czechoslovak Republic or the Austro-Hungarian monarchy, what unites all these state entities is that in them ‘the Roma could not become an active and equal subject of development’.<sup>6</sup> This line of reasoning was followed by the Grand Chamber of the European Court of Human Rights when, in the judgment of *D.H. and Others v the Czech Republic*, it stated that it was the centuries long rejection, persecution and perpetual uprooting which made the Roma a ‘disadvantaged and vulnerable minority’.<sup>7</sup> However, this position sparked a legal debate. According to dissenting Judge Borrego Borrego, this is incompatible with the mission of any court. The concept of the applicants as members of a community exposed to the harmful effects of discriminatory legislation enabled the Court to refrain from dealing with the applicants’ individual complaints, thus ceasing to in fact be the Court. Instead, it became the second European Commission against Racism and Intolerance.<sup>8</sup>

In the case of *V.C. v Slovakia*<sup>9</sup> (2011), which concerns the forced sterilization of a Romani woman, the Court ruled as if in agreement with Judge Borrego Borrego. It avoided the historical approach, disregarded the context of decades of discrimination against the Roma and ruled the case an isolated excess in the context of the individual level of Article 3 and Article 8 of the Convention. However, this decision did not go unanswered either:

Judge Mijovic emphasized in her dissenting opinion that by omitting the discriminatory aspect and Article 14 of the Convention and ignoring the context of the general state sterilization policy of socialist Czechoslovakia as well as the widespread racism in contemporary Slovak society, the Court loses the ability to properly assess the substance of the case, which is ethnic discrimination. These two completely different dissenting opinions illustrate the complexity of the problem and outline the basic question of this paper—the extent to which the historical context should be taken into account when assessing human rights violations. Is it possible to interrupt structural racism once and for all by drawing the border between the two newly created states, ratifying international covenants and hiding the young democracy and its historical burden under the umbrella of international human rights?

<sup>5</sup> Pavelčíková N, *Romové v českých zemích v letech 1945-1989* [Roma in the Czech Lands in 1945-1989] (1st edn, Úřad dokumentace a vyšetřování zločinů komunismu PČR 2004) 13.

<sup>6</sup> Jurová A, 'Rómska menšina na Slovensku v dokumentoch (1945 –1975)', [Roma Minority in Slovakia in Documents 1945-1975] *Záverečná správa z grantovej úlohy Rómska menšina na Slovensku v dokumentoch /1945-1975/, č.2/6194/27* (Spoločenskovedný ústav SAV Košice 2008) 37.

<sup>7</sup> *DH and Others v the Czech Republic* App no 57325/00 (ECtHR, 13 November 2007) [182].

<sup>8</sup> *Ibid.* (Borrego Borrego, dissenting opinion) [7].

<sup>9</sup> *VC v Slovakia* App no 18968/07 (ECtHR, 8 November 2011).

## Chapter 1 - Continuity of repressive measures against Roma

The history of the Roma in the territory of contemporary Czech Republic and Slovak Republic is in fact the history of Roma discrimination. Already during the Austro-Hungarian monarchy, nomadic Roma were subject to a series of anti-Roma governmental regulations against 'job-loathing individuals',<sup>10</sup> idle people and vagrants. Stigmatization and repression of the Roma continued in the Czechoslovak First Republic, which was established in 1918 after the collapse of the Austro-Hungarian monarchy. Although the new state of Czechs and Slovaks was defined as 'cultured, peace-loving, democratic and progressive'<sup>11</sup>, nomadic Roma were considered backward and primitive and were, for some time, persecuted according to still valid regulations from the time of the monarchy.<sup>12</sup> Labour camps for Roma adults and re-education institutions for children and young people were even considered by prominent politicians.<sup>13</sup> Pursuant to Act No. 117/1927 Coll. on Wandering Gypsies,<sup>14</sup> the authorities carried out inventories of nomadic Roma, kept their dactyloscopic records, and forbade them to move or enter certain places without permission. They could also take their children away.

After the establishment of the Protectorate of Bohemia and Moravia and the independent pro-Nazi Slovak State, these First Republic records on the Roma served the Nazi administration during World War II, as did the concept of the Roma as an 'hereditary criminal and anti-social element'.<sup>15</sup> Czech Roma were de facto exterminated by the Nazis; only 583 people survived the forced concentration camps.<sup>16</sup> Within the Slovak State, local Roma were protected from systematic genocide on the scale of that in the Protectorate. However, because some Slovak Roma actively helped in the anti-Nazi resistance, in the final phase of the war,

<sup>10</sup> Janák J, 'Rakouský protitulácký zákon z roku 1873 jako pokus o řešení společenských důsledků průmyslové revoluce' [The Austrian Vagrancy Act as an Attempt to Address the Social Consequences of the Industrial Revolution][1969] 18(16) *Sborník prací Filozofické fakulty brněnské univerzity: řada historická* 86.

<sup>11</sup> The Constitution of the Czechoslovak Republic 1920. Available at <http://ftp.aspi.cz/opispdf/1920/026-1920.pdf>.

<sup>12</sup> Nečas C, *Romové v České republice včera a dnes* [Roma in the Czech Republic Yesterday and Today] (5th edn, Univerzita Palackého 2002) 55.

<sup>13</sup> Ibid.

<sup>14</sup> Act No. 117/1927 Coll. on Wandering Gypsies and People avoiding Employment. Available at <http://ftp.aspi.cz/opispdf/1927/052-1927.pdf>.

<sup>15</sup> Lhotka P, 'Himmlerův výnos o deportaci Romů do Osvětimi [Himmler's Decree on the Deportation of Roma to Auschwitz] (1942)' (*Holocaust.cz*, 2005) <https://www.holocaust.cz/dejiny/pronasledovani-a-genocida-romu/pronasledovani-a-genocida-romu-v-ceskych-zemich/himmleruv-vynos-o-deportaci-romu-do-osvetimi-1942/>.

<sup>16</sup> Nečas C, *Romové v České republice včera a dnes* [Roma in the Czech Republic Yesterday and Today] (5th edn, Univerzita Palackého 2002) 83.

many of them became victims of retaliatory terror, including the burning of Roma settlements, murders and massacres.<sup>17</sup>

After the Second World War, Czechoslovakia was restored. More than 2.2 million Germans were expelled from the country and their property confiscated. The previously German border area had become depopulated, and the government felt the need to revive it economically, which it wanted to achieve through an artificial resettlement plan. Between 1945 and 1947, 15 to 20 thousand Slovak Roma came to the Czech lands from Slovakia. For them, migration was a solution to the critical economic situation. The majority population responded to their arrival with strong xenophobia and the drafting of protest petitions. The incoming Roma were referred to in the press as ‘bedbugs, migratory birds and hordes’.<sup>18</sup> At the same time, those Roma who stayed in the Slovak part of Czechoslovakia still paradoxically faced the continuity of discriminatory provisions which endured from the Nazi Slovak State.

As of 1945, there was a duty to work in Czechoslovakia. Roma who did not have a permanent job because they were economically in the grey zone—they traditionally performed crafts, such as basketry, repairs, music or horse trading—and often changed their place of residence found themselves outlawed.<sup>19</sup> The Roma first came to Bohemia spontaneously and later as part of state-organized movements, heading mainly to industrial cities. As historian Anna Jurová states, the authorities had the goal of ‘moving and manipulating the Roma as a reserve to cover the quotas for organized recruitment’.<sup>20</sup> The combination of xenophobia, mutual misunderstanding, Roma cultural differences and government social engineering created the ground for segregation and discrimination for many decades to come. In addition, the Roma faced the disruption of traditional ties and social and cultural uprooting. The government responded to the complicated situation by building on the continuity of pre-war and wartime repressive public surveillance policies. Through Decree No. 756 from 1947, the Ministry of the Interior announced another list of ‘wandering gypsies’ directly following the discriminatory 1927 act of the First Republic.

<sup>17</sup> Nečas C, 'Slovenští Romové v letech 1939-1945' [Slovak Roma in 1939-1945] [2004] 53 *Sborník prací Filozofické fakulty brněnské univerzity: řada historická*, Masarykova univerzita 175.

<sup>18</sup> Spurný M, 'Pokus o převýchovu: Romové v objetí stalinské péče o člověka v 50. letech' [A Re-education Attempt. Roma in Embrace of Stalin's Human Care in the 1950s.] [2017] 11(3) *Paměť a dějiny: revue pro studium totalitních režimů* 3.

<sup>19</sup> Ibid.

<sup>20</sup> Jurová A, 'Rómska menšina na Slovensku v dokumentoch (1945–1975)', [Roma Minority in Slovakia in Documents 1945-1975] *Závěrečná správa z grantovej úlohy Rómska menšina na Slovensku v dokumentoch /1945-1975/, č.2/6194/27* (Spoločenskovedný ústav SAV Košice 2008) 8.

In 1948, the communist coup took place, which, in addition to four decades of lacking freedoms, also brought a new approach to ethnic minorities. Because the repressive power focused more on the social classes than on specific ethnic groups,<sup>21</sup> a significantly new ideological framing of the so-called Roma question appeared. The Roma began to be seen in government documents as victims of exploitation and years of capitalist order, a culturally backward group, which the socialist regime set itself the goal of educating and re-educating.

The expectation that the Roma would naturally, socially and culturally equal themselves with socialist societies, adopt its values and merge with the majority was not fulfilled. Their school attendance did not improve. They often did not have permanent jobs and found themselves outside the health care system. In addition, work and family fluctuations between the Slovak and Czech parts of Czechoslovakia continued, which irritated the majority society.

In 1958, therefore, Act No. 74/1958 on the Permanent Settlement of Nomadic Persons<sup>22</sup> was approved, which was inspired by a 1956 decree from the USSR on the prohibition of vagrancy. Although the law did not specifically mention the Roma ethnic group and did not prohibit nomadism, in the context of Czechoslovakia in the late 1950s, it was clear to whom this discriminatory practice was aimed. Its purpose was to restrict the movement of Roma and their permanent settlement, something that all regimes and systems in the region had been striving to do for decades. Here again, we can see a clear continuity with previous legislation, which had always faced the problem of unconstitutionality by introducing repressive and racist measures against the Roma, resulting in legislative hypocrisy. The socialist state, through the constitution, ensured not only equality but also freedom of movement for the citizens. Act No. 74/1958 violated both.

The act was followed by the implementation of the nomadic Roma census in 1959. The course of the census in the Czech lands and in Slovakia differed. While the Roma in Slovakia arrived at the office on a certain day and had themselves counted, night raids took place in the Czech lands; the nomads' horses were taken away, and cars and caravans were liquidated.<sup>23</sup> The Roma were not allowed to leave their place of permanent residence. During

<sup>21</sup> Spurný M, 'Pokus o převýchovu: Romové v objetí stalinské péče o člověka v 50. letech' [A Re-education Attempt. Roma in Embrace of Stalin's Human Care in the 1950s.] [2017] 11(3) Paměť a dějiny: revue pro studium totalitních režimů 4.

<sup>22</sup> Act No. 74/1958 Call. on Permanent Settlement of Nomadic Persons. Available at <https://www.zakonyprolidi.cz/cs/1958-74>.

<sup>23</sup> Jurová A, 'Rómska menšina na Slovensku v dokumentoch (1945–1975)', [Roma Minority in Slovakia in Documents 1945-1975] *Závěrečná správa z grantovej úlohy Rómska menšina na Slovensku v dokumentoch /1945-1975/, č.2/6194/27* (Spoločenskovedný ústav SAV Košice 2008) 25.

the census, there was a high error rate, and thousands of people who did not belong there appeared on the lists.<sup>24</sup>

The ban on nomadism and the disruption of the traditional family and social ties of the Roma were perceived as a basic precondition for the merging of the Roma with the majority and overcoming the Roma backwardness. Historian Matěj Spurný points out that the majority population reacted very positively to the restrictions against the Roma, thus building support and legitimacy for the socialist oppression: 'The legitimacy of the bearer of the revolution was replaced by the legitimacy of the guardian of the people and order.'<sup>25</sup> On the other hand, the authorities were aware of the discriminatory nature of the measures and feared negative reactions abroad.<sup>26</sup>

The law was repealed after the revolution in the 1990s.<sup>27</sup> However, the Roma in the Czech Republic and Slovakia have never returned to nomadic life.

<sup>24</sup> Jurová A, 'Rómska menšina na Slovensku v dokumentoch (1945 –1975)', [Roma Minority in Slovakia in Documents 1945-1975] *Záverečná správa z grantovej úlohy Rómska menšina na Slovensku v dokumentoch /1945-1975/, č.2/6194/27* (Spoločenskovedný ústav SAV Košice 2008) 69.

<sup>25</sup> Spurný M, 'Pokus o převýchovu: Romové v objetí stalinské péče o člověka v 50. letech' [A Re-education Attempt. Roma in Embrace of Stalin's Human Care in the 1950s.] [2017] 11(3) *Paměť a dějiny: revue pro studium totalitních režimů* 14.

<sup>26</sup> Jurová A, 25.

<sup>27</sup> Act No. 74/1958 Coll. on Permanent Settlement of Nomadic Persons. Available at <https://www.zakonyprolidi.cz/cs/1958-74/zneni-19900701>.

## Chapter 2 – Czechoslovak Roma and the dissident movement

As mentioned in the introduction, the myth legend of Czechoslovak dissent became a discursive and value framework in which to form Czech and Slovak human rights policy in the 1990s. To understand the continuity of discrimination against the Roma in the Czech Republic and Slovakia, it is therefore essential to know how the dissident movement approached the problem before 1989. Many former dissidents got into politics in the 1990s and had the opportunity to influence the situation of the Roma themselves and contribute to its improvement. And they often tried to do so.

From its beginnings in 1977, the Charter 77 dissident movement sought to convince the Czechoslovak government to fulfil its international obligations resulting from the ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) in 1975. Dissidents informally grouped around the non-hierarchical Charter 77 movement later significantly contributed to the overthrow of the communist regime and actively participated in the 1989 Velvet Revolution. They had access to information about human rights violations in Czechoslovakia, a direct connection to the political dissident community and contacts to foreign human rights defenders and organizations. Due to their activities, the dissidents were repeatedly prosecuted, imprisoned and bullied by the authorities. After the establishment of the independent Czech and Slovak republics in 1993, they actively participated in politics. A large portion of the Charter 77 documents was written by the future Czech president Václav Havel.

The little-known document no. 23, *On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic*<sup>28</sup> is the only text of its kind written by the Charter 77 movement dedicated exclusively to the Roma minority. For the first time, discrimination against the Roma in Czechoslovakia as a human rights problem was comprehensively addressed. The text was issued on 13 December 1978, officially addressed to the Czechoslovak government and secretly sent abroad to people in exile and to foreign broadcasting stations.<sup>29</sup>

The document stated that around 300,000 Roma were living in Czechoslovakia at the time, the public was indifferent to their discrimination, and most people did not know or were

<sup>28</sup> 'O postavení Cikánů-Romů v Československu', [On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic] Charta 77 (Document 23, 13 December 1978). Available at <http://www.romea.cz/cz/zpravy/historicke-okenko-dokument-charty-77-o-postaveni-cikanu-romu-v-ceskoslovensku-z-prosince-1978>.

<sup>29</sup> Donert C, *The rights of the Roma: The Struggle for Citizenship in Postwar Czechoslovakia* (1st edn, OUP 2017) 225.

not interested in the Roma's problems. 'Public attitudes fluctuate between indifference and racism',<sup>30</sup> the authors wrote. There was no Roma or official state institution in Czechoslovakia to defend their rights and interests. The only platform where Roma as a minority could engage publicly was the Gypsy-Roma Union (Svaz Cikánů-Romů). However, in 1973, it was forced by the socialist government to terminate activity. Thus, despite the fact that the Roma did not legally exist as a group, the state power still supervised them, registered them and classified them into various categories on the basis of their degree of adaptability.

The authors mentioned significant legislative milestones which contributed to the difficult situation of the Roma. They called Act 74/1958 on the Permanent Settlement of Nomadic Persons unconstitutional and drew attention to the schizophrenia of state power: The state was unable to provide decent housing for the Roma in their settlements in Slovakia, and the families lived in completely unsatisfactory, unhealthy conditions. They were very often unemployed thus forced to migrate, and although this migration was not always related to the traditional way of life of some Roma, which is nomadism, the restrictions affected all Roma without difference. Many Roma, who, for example, were only travelling around Czechoslovakia by train on the day of the census, were also added to the lists of nomadic people.<sup>31</sup> Charter 77 drew attention to the absurd situations which arose during the implementation of Law 74/1958: In accordance, with the act the Roma were offered an apartment and a job on the spot by the authorities. If they rejected this, because, for example, they already lived or worked somewhere, they were found guilty of 'concealing nomadism'.<sup>32</sup>

The document also critically evaluated the plans for the liquidation of eastern Slovakian Roma settlements and the subsequent controlled dispersion of the Roma population into state-designated regions without the possibility to freely choose a place of residence and employment. On the one hand, dispersion was to be mandatory, but, at the same time, it had to be 'voluntary', which the Chartists referred to as typical 'legal alibism'.<sup>33</sup> Such hypocrisy appears in most government regulations of that time affecting the Roma minority. Although the government resolution on relocation of the Roma population was repealed, the unplanned and spontaneous migration of Roma continued to be considered undesirable. Roma again found

<sup>30</sup> 'O postavení Cikánů-Romů v Československu', [On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic] Charta 77 (Document 23, 13 December 1978). Available at <http://www.romea.cz/cz/zpravy/historicke-okenko-dokument-charty-77-o-postaveni-cikanu-romu-v-ceskoslovensku-z-prosince-1978>.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

themselves in the paradoxical position of double victims of controlled transfers and the simultaneous punishment of their movement between the Czech lands and Slovakia. The authorities refused to change their permanent residence and the Roma found themselves in a legal vacuum, outside the health or education systems and the system of locally relevant social support.<sup>34</sup> Charter 77 called for the recognition of minority rights for the Roma and a solution to their critical situation because the problem of the Roma minority had already become an urgent ‘question of the conscience for the whole society’.<sup>35</sup>

The dissidents, marginalized and persecuted by the regime, had an extraordinary empathy for the injustice perpetrated on ‘the most vulnerable group in the population’,<sup>36</sup> the Roma people. This may be why they were also able to identify with sharp providence two concrete violations of human rights of especially vulnerable groups, which remain extraordinary relevant today: (1) the segregation of Roma children in education and (2) the forced sterilizations of Roma women. Both are exemplary of the historical burden of a common past and shared repression that the Czech and Slovak Republics would continue to bear long after 1989. Due to these problems, both countries would face allegations at the European Court of Human Rights. If we are interested in where the roots of these problems lie and why they cannot be solved easily, the Charter 77 document largely answers these questions as a testimony of the time.

<sup>34</sup> ‘O postavení Cikánů-Romů v Československu’, [On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic] Charta 77 (Document 23, 13 December 1978). Available at <http://www.romea.cz/cz/zpravy/historicke-okenko-dokument-charty-77-o-postaveni-cikanu-romu-v-ceskoslovensku-z-prosince-1978>.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

## Chapter 3 - Segregation in education

### 3.1. Roots of school segregation in Czechoslovakia

Although the communist regime externally declared as its success the elimination of illiteracy and the elevation of the educational level among the Roma population, in reality, no comprehensive concept for the education of Roma youth was created in Czechoslovakia which had the ambition of exceeding the level of special or primary school.<sup>37</sup> As the historian Nina Pavelčíková indicates, during the years of totalitarianism, the importance of education had been devalued in Czechoslovakia.<sup>38</sup> The main pillar of the communist system was the working class. For discriminated Roma, who developed their pragmatic survival strategy within communist totalitarianism, formal education was useless because they could not use it.<sup>39</sup> In a system that preferred manual work and used the Roma as cheap labour, the Roma usually worked as helpers in construction, agriculture and services. Romani families did not feel motivated to direct children towards education because they did not believe in success within the majority population given the racial prejudices. At the same time, they perceived the education system itself as incomprehensible and hostile because it removed children from the environment of the traditional Roma community, which had its own specific customs, values and cultural codes.

In the 1950s, the prevailing view was that efforts to re-educate adult Roma—victims of decades of capitalist exploitation—were hopeless but that Roma children were educable provided the harmful impact of a backward family background on them was minimized.<sup>40</sup> At that time, a series of experiments with the education of Roma children took place in Czechoslovakia, the most famous of which was the controversial project of the School of Peace in Květušín, South Bohemia during the years 1950–54.<sup>41</sup> A teacher Miroslav Dědič accepted an offer to teach children from Roma families who worked on a state military farm in an isolated area of the military zone. By introducing a system of motivations and rewards (for example, through regular free meals; clean, warm boarding school accommodation; leisure

<sup>37</sup> Pavelčíková N, *Romové v českých zemích v letech 1945-1989* [Roma in the Czech Lands in 1945-1989] (1st edn, Úřad dokumentace a vyšetřování zločinů komunismu PČR 2004) 103.

<sup>38</sup> Ibid. 102.

<sup>39</sup> Nečas C, *Romové v České republice včera a dnes* [Roma in the Czech Republic Yesterday and Today] (5th edn, Univerzita Palackého 2002) 43.

<sup>40</sup> Pavelčíková N, 48.

<sup>41</sup> Similar experiments took place in Soběsuky near Žatec, in Melč near Opava, Karlov Village in the Křivoklát region, Teplice, Hradec Králové and Pardubice.

activities and games) he managed to put together a class of extremely poor and often malnourished Roma children from the surrounding area, which he gradually isolated from their parents. According to Dědič's method, the children should live within the school community and, ideally, completely stop contact with the family. The prize for the progress the children made at school was the severance of family ties. The parents did not see their children for many months; Dědič did not allow them to visit the children, confiscated the students' correspondence, and censored letters. He also resorted to violence several times when parents wanted to take the children home from the Květušín school.<sup>42</sup>

Significantly, no one asked the Roma for their opinion on this experiment, which had all features of social engineering. It was automatically assumed that the Roma were at a lower level of development, and re-education, the purpose of which they did not understand, should therefore be imposed on them by force.<sup>43</sup> Despite the mentioned controversies and obvious human rights violations, the school had excellent results. The children developed, and some continued their education and graduated from university. The Květušín school was used as an example of the education of conscious socialist citizens; the pupils even went on trips to eastern Slovakian settlements to motivate the local Roma towards education. However, the experiment was terminated because the Romani school ceased to conform to the ever-changing state principles of assimilation.<sup>44</sup>

From the 1960s, compulsory school attendance of Roma children in Czechoslovakia began to improve and the illiteracy of Roma was gradually reduced.<sup>45</sup> However, most Roma pupils did not complete all primary school grades.<sup>46</sup> The main reason was frequent absence from school caused by the large amount of Roma families who travelled around Czechoslovakia for work. The number of Roma children in special care schools, children's homes and detention facilities in the 1960s was still 40% of the population of Roma children.<sup>47</sup> The Charter 77 document states that at the end of the 1970s, 30% of Czechoslovak Roma were illiterate, only less than 0.5% had a completed secondary education, and there were only fifty Roma with a university degree in Czechoslovakia, a country of 15 million inhabitants.<sup>48</sup> Most

<sup>42</sup> Šebová B, *Škola míru v Květušíně 1950 – 1954 a její pokračování na Dobré Vodě u Prachatic – kritická reflexe v historickém kontextu 50.let* [The School of Peace in Květušín](Diplomová práce, FF UK Praha 2009) 92.

<sup>43</sup> Ibid. 39.

<sup>44</sup> Pavelčíková N, *Romové v českých zemích v letech 1945-1989* [Roma in the Czech Lands in 1945-1989] (1st edn, Úřad dokumentace a vyšetřování zločinů komunismu PČR 2004) 103.

<sup>45</sup> Ibid. 51.

<sup>46</sup> Ibid. 103.

<sup>47</sup> Ibid. 82.

<sup>48</sup> J Paxton, *The Statesman's Year-Book 1979-80* (116th, Palgrave Macmillan UK, 1979), 382.

Czechoslovak Roma spoke Romani dialects at home—the East Slovak or Vlax Roma (Lovari) dialects—and their knowledge of standard Czech and Slovak was limited. As the Charter 77 document indicates:

‘Romani children are forced to attend Czech and Slovak schools whose language of instruction they do not understand and where everything from the picture in spelling books to the curriculum is constantly forcing them to imagine that they are a foreign, inferior race without a language, without a past and without a face.’<sup>49</sup>

### **3.2. *D.H. and Others v the Czech Republic***

According to Charter 77, by 1970–71, the proportion of Roma children in special schools for pupils with below-average intelligence (*zvláštní školy*) on the Czech territory<sup>50</sup> was 20 per cent, compared to only 3 per cent of the majority children.<sup>51</sup> Once Roma children were placed in a special school, the path to further education was closed to them, and, like their parents, they were condemned to unskilled work. Charter 77 thus identified a fundamental problem at the end of the 1970s, which the Czech and Slovak Republics would face for many decades after the fall of the communist regime and which has not been resolved to date: the statistically disproportionate placement of Roma children in special schools, which contributes to a vicious circle of segregation, social exclusion and the replication of poverty in future generations.

A major milestone in the legal struggle against the segregation of Roma children in the post-revolutionary period, not only for the Czech Republic but for the entire region, was the 2007 judgment of the Grand Chamber of the European Court of Human Rights (ECtHR) in *D.H. and Others v the Czech Republic*<sup>52</sup>. The application was filed by eighteen Roma from the

<sup>49</sup> ‘O postavení Cikánů-Romů v Československu’, [On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic] Charta 77 (Document 23, 13 December 1978). Available at <http://www.romea.cz/cz/zpravy/historicke-okenko-dokument-charty-77-o-postaveni-cikanu-romu-v-ceskoslovensku-z-prosince-1978>.

<sup>50</sup> Charter 77 document does not mention any data from Slovak part of Czechoslovakia.

<sup>51</sup> ‘O postavení Cikánů-Romů v Československu’, [On the Situation of Gypsies-Roma in the Czechoslovak Socialist Republic] Charta 77 (Document 23, 13 December 1978). Available at <http://www.romea.cz/cz/zpravy/historicke-okenko-dokument-charty-77-o-postaveni-cikanu-romu-v-ceskoslovensku-z-prosince-1978>.

<sup>52</sup> *DH and Others v the Czech Republic* App no 57325/00 (ECtHR, 13 November 2007).

Ostrava region, who, in 1996–99, were enrolled in special schools<sup>53</sup> with modified educational programmes for children with mild mental disabilities. Therefore, they could not attend normal school, which significantly affected their further professional life. The complainants relied on research by various NGOs to show that, due to racial prejudice, Roma children were placed in special schools many times more often than children from the majority population. Third parties stated that the decision to place Roma children in special schools is, in most cases, not justified by a real mental disability but by linguistic and cultural differences, which are not taken into account in the assessment.<sup>54</sup>

Although accurate statistics on the ethnicity of children were not available at the time, the Court observed from the data available that the number of children in special schools was disproportionately high. According to the Court, the striking difference in the treatment of Roma children in comparison with children from the majority population was not objectively and reasonably justified.<sup>55</sup> The Grand Chamber, in agreement with the bodies of the Council of Europe, stated that the psychological tests were designed for the majority society and did not take into account the cultural specifics of the Roma population.<sup>56</sup> The legislation of the Czech Republic therefore had a disproportionately negative impact on the Roma community in the given period, which suffered from indirect discrimination. There was thus a violation of Article 14 of the European Convention on Human Rights (ECHR; prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (the right to education).

From the point of view of systemic violations of human rights as a historically conditioned phenomenon, the passage in which the Court defined the Roma as a disadvantaged and vulnerable minority which requires special protection is essential. ‘The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority.’<sup>57</sup> Judge Borrego Borrego responded to this in his dissenting opinion with a question, which is entirely relevant legally and which reveals why the international human rights system may not always guarantee a solution to the historical burden of deep-rooted racism: ‘Is it the Court’s role to be doing this?’<sup>58</sup>

<sup>53</sup> Following the Education Act of 2004, special schools (*zvláštní školy*) were renamed practical schools (*školy praktické*).

<sup>54</sup> *DH and Others v the Czech Republic* App no 57325/00 (ECtHR, 13 November 2007) [167].

<sup>55</sup> *Ibid.* [196].

<sup>56</sup> *Ibid.* [201].

<sup>57</sup> *Ibid.* [182].

<sup>58</sup> *Ibid.* (Borrego Borrego, dissenting opinion) [5].

### 3.3. Implementation of the D.H. judgment in the Czech Republic

As the Czech state has not yet systematically addressed this serious structural problem, the response to the judgment has been rather embarrassing, confused and inconsistent. In 2009, the government prepared a draft of the National Action Plan for Inclusive Education, which aimed to ‘act preventively against the social exclusion of individuals and entire social groups’.<sup>59</sup> The document states that, due to the insufficient level of systemic support for schools, a disproportionately significant proportion of pupils with social disadvantages—sociocultural and socioeconomic status or ethnicity—are educated in a school system for pupils with mild mental disability.<sup>60</sup> The Czech cabinet found the original draft insufficient. In 2011, fifty expert advisers resigned from the Ministry of Education’s working group on education reforms in protest of the state’s inability to deal effectively with the situation. They no longer wanted to participate in ‘legitimizing the government’s inadequate actions’.<sup>61</sup>

In June 2012, the National Action Plan for Inclusive Education was replaced by a new modified plan for ‘equal opportunity’ measures aimed exclusively at correcting the mistakes, which the Czech Republic had failed to do in Strasbourg (i.e. requiring compliance with the ECHR and the Convention on the Rights of the Child). The plan required changes in the method of diagnosing pupils and the introduction of monitoring the number of Roma pupils in schools.<sup>62</sup> In 2012, the ombudsperson, Pavel Varvařovský, published the first national data on the ethnic composition of pupils in former special schools. The research showed that 32% of children in practical primary schools are Roma.<sup>63</sup> The Czech School Inspectorate continued to collect data on the ethnic composition of pupils. In 2013, new tests for the assessment of mild mental disabilities were introduced in order to eliminate their discriminatory approach.

In 2014, as the situation had yet to improve significantly, the European Commission initiated an infringement procedure against the Czech Republic for persistent discrimination

<sup>59</sup> Draft of the 'National Action Plan for Inclusive Education' (Ministry of Education, Youth and Sports 2009) Available at [http://www.vzdelavani2020.cz/images\\_obsah/dokumenty/knihovna-koncepci/napiv/napiv.pdf](http://www.vzdelavani2020.cz/images_obsah/dokumenty/knihovna-koncepci/napiv/napiv.pdf).

<sup>60</sup> Ibid. 1.

<sup>61</sup> 'Rok 2011 v České republice z pohledu Amnesty International: bohatý na události, chudý na výsledky' [2011 in the Czech Republic: Rich in Events, Poor in Results]([www.amnesty.cz](http://www.amnesty.cz) 2012) <<https://www.amnesty.cz/news/576/rok-2011-v-ceske-republice-z-pohledu-amnesty-international-bohaty-na-udalosti-chudy-na-vysledky?d=2017-12>>.

<sup>62</sup> M Šojdrová and others, *Rovný přístup ke vzdělávání v České republice: situace a doporučení* [Equal Access to Education in the Czech Republic] (1st, Česká školní inspekce, Praha 2014) 11.

<sup>63</sup> 'Výzkum veřejného ochránce práv k otázce etnického složení žáků bývalých zvláštních škol' [Ombudsperson’s Research on the Ethnic Composition of Former Special Schools Pupils] (Veřejný ochránce práv 2012). Available at [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Vyzkum\\_skoly-zprava.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf).

against Roma pupils.<sup>64</sup> Two years later, a new education law came into force, which stipulates that pupils with special educational needs should be provided with support in mainstream schools and that they may benefit from a teaching assistant and from the adjustment of the organization, assessment, content and methods of education.<sup>65</sup> Despite guaranteed support measures, in 2017, the ombudsperson, Anna Šabatová, stated in the annual *Report on Protection against Discrimination* that segregation, ‘one of the most dangerous forms of discrimination undermining the democratic structure of society’, persists.<sup>66</sup>

### **3.4. Measures against segregation in Slovakia**

In 2011, 34% of Roma children in Slovakia attended schools with a predominant Roma student body.<sup>67</sup> Two years later, the Slovak ombudsperson indicated that Roma children comprise more than 88% of first-year pupils in special primary schools and special classes for children with mild mental disabilities, mapped in research carried out by the ombudsperson’s office.<sup>68</sup> In 2016, 62% of Roma children in Slovakia visited schools where all or the majority of their classmates were also Roma. In the Czech Republic, it was 30% of Roma children.<sup>69</sup> However, in comparison with the Czech Republic, it is difficult to determine the exact extent of the problem in Slovakia because the Slovak government does not collect national data on ethnicity in education and the data from surveys in the sample of selected schools are always only approximate.

<sup>64</sup> 'EU action against Czech Republic for discrimination in schools is a victory for rights, justice, and Roma' (www.amnesty.org 2014) < <https://www.amnesty.org/en/latest/news/2014/09/eu-action-against-czech-republic-discrimination-schools-victory-rights-justice-and-roma/>>.

<sup>65</sup> Act No. 561/2004 Coll. Education Law. Available at [https://www.msmt.cz/uploads/skolsky\\_zakon.pdf](https://www.msmt.cz/uploads/skolsky_zakon.pdf).

<sup>66</sup> 'Výroční zpráva o ochraně před diskriminací 2017' [Annual Report on Protection against Discrimination 2017] (Veřejný ochránce práv 2018). Available at [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyrocni\\_zpravy/Vyrocni\\_zprava\\_o\\_ochrane\\_pred\\_diskriminaci\\_2017.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocni_zpravy/Vyrocni_zprava_o_ochrane_pred_diskriminaci_2017.pdf).

<sup>67</sup> C Brüggemann, *Roma Education in Comparative Perspective* (United Nations Development Programme 2012) 64.

<sup>68</sup> 'Správa verejnej ochrankyne práv o uplatňovaní práva na vzdelanie detí/žiakov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami' [Report of the Public Defender of Rights on the Right to Education of Roma Children with Special Educational Needs](Kancelária verejného ochrancu práv, 2013) 19. Available at <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf>.

<sup>69</sup> C Brüggemann, *Roma Education in Comparative Perspective* (United Nations Development Programme 2012) 27.

In 2015, the European Commission launched an infringement procedure against Slovakia for violation of the Race Equality Directive.<sup>70</sup> The procedure is based on the same reasoning as its 2014 counterpart against the Czech Republic: discrimination against Roma children who come from a socially disadvantaged environment and their unjustified placement in special schools on the basis of incorrectly diagnosed mild mental disabilities. In response, Slovakia adopted an amendment to the Education Act.<sup>71</sup> The act states that children whose special educational needs derive solely from their development in a socially disadvantaged environment should be enrolled in class ‘together with other children or pupils’.<sup>72</sup> Specialized classes may be established for pupils who are unlikely to successfully complete the curriculum of the year in question. Pupils may be placed in these classes with the informed consent of their legal guardian for a maximum of one year.

Slovakia does not yet have any ruling on discrimination against Roma children from the ECtHR, which is due to the length of the proceedings and the fact that in Slovakia the problem began to be resolved through the courts a little later than in the Czech Republic. In 2012, however, the District Court in Prešov issued a groundbreaking judgment on the segregation of Roma children in Slovakia. The court ruled that a primary school with a kindergarten in Šarišské Michal’any had violated the principle of equal treatment by placing Roma children in separate classes and committed illegal discrimination on the grounds of ethnicity. Although the school argued that segregation made it possible to develop an individual approach to Romani pupils and was of a compensatory nature, the court ordered the school to rectify the illegal situation and to place Roma children in classes with other non-Roma children.<sup>73</sup>

<sup>70</sup> 'Slovakia is the second member state to be subject of an infringement procedure for breach of EU anti-discrimination law' (*Amnesty International*, 29 April 2015) <<https://www.amnesty.org/en/documents/eur72/1777/2015/en/>>.

<sup>71</sup> Act No. 245/2008 Coll. Education Law, amended 30.7. 2015.

<sup>72</sup> *Ibid.* 107 [3].

<sup>73</sup> 'Okresný súd Prešov, Rozsudok' [Ruling of the District Court in Prešov] No. 8110216181 (5 December 2011). Available at [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/aktuality/prvostupnovy\\_rozsudek\\_OS\\_Presov.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/aktuality/prvostupnovy_rozsudek_OS_Presov.pdf).

### 3.5. Character of segregation in Slovakia and the Czech Republic

In Slovakia, many Roma children live in extreme poverty in social excluded localities, often in settlements and sometimes without basic civil amenities. This is an unfortunate burden of historical continuity since Roma in this region have always been extremely poor, especially in the settlements of eastern Slovakia. If local Roma visit mixed schools, situated usually closer to the city centre, they might face logistical difficulties which significantly contribute to the segregation. Roma families cannot afford to pay for public transport, there are no free school buses, often even no infrastructure connecting social excluded localities and schools, such as proper sidewalks. The Slovak authorities are not willing to solve this problem to support inclusion; instead they build so-called container schools, rather temporary objects, in order to bring the education closer to Roma children.<sup>74</sup>

Research *A Lesson in Discrimination* on segregation conducted by Amnesty International in Slovak schools in 2017<sup>75</sup> reveals a significant unwillingness of responsible stakeholders, governmental institutions, schools, ministries and the school inspectorate to coordinate steps: the Ministry of Education of the Slovak Republic considers segregation to be a result of the ‘white flight’<sup>76</sup> of non-Roma children, who are taken by their parents from mixed schools to avoid contact with Roma. In this way, the official government body in fact relinquishes responsibility for the ongoing situation through the excuse of entrenched racism in Slovak society. At the time of the research, the ministry had not planned any practical measures to prevent the ‘white flight’.<sup>77</sup> Slovak teachers were often explicitly racist during the interviews; several Slovak school directors refused to speak with the researchers or ignored requests for an interview.

Compared to Slovakia, the segregation in the Czech Republic is less obvious and more hidden. While conducting similar research<sup>78</sup> on segregation in selected Czech schools, researchers did not have problems speaking with directors and teachers. The respondents were not explicitly racist. However, almost all Roma children who have had experience with Czech mixed schools said they had repeatedly faced bullying and disrespect. Sometimes they were bullied by classmates and teachers ignored it, sometimes discriminatory behaviour was

<sup>74</sup> *A Lesson in Discrimination: Segregation of Romani Children in Primary Education in Slovakia*, Amnesty International (AI Ltd. London 2017) 17.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid. 8.

<sup>77</sup> Ibid. 50.

<sup>78</sup> *Must Try Harder: Ethnic Discrimination of Romani Children in Czech Schools*, Amnesty International (AI Ltd. London 2015).

committed by the teachers themselves. Therefore, Roma parents already expect racism and often place children into the special schools to protect them from the majority.

The fact that even four decades after the creation of the Charter 77 document there is a lack of political will to support the feeling of belonging and identity among Roma children is evidenced by the fact that twenty-three of the 24 schools in the Czech Republic where Amnesty International conducted research do not teach anything about Romani history or culture.<sup>79</sup> Textbooks for primary schools do not contain any information about the Roma, except for one stereotypical paragraph in a textbook on civics for practical primary schools: ‘[Roma] came from India hundreds of years ago when they started their journey around the world. With horses harnessed to carriages, they moved from one place to another, and, because they differed from the Europeans by the colour of their skin and their lifestyle, they were viewed with distrust and hostility.’<sup>80</sup> In 2018, the Romani language was taught in seven schools in Slovakia<sup>81</sup> and in two secondary schools and one primary school in the Czech Republic.<sup>82</sup> In Slovakia, an experimental verification of the effectiveness of the Romani language and literature curriculum and Romani realities at primary and secondary schools took place in 2003–2010.<sup>83</sup> In the Czech Republic, Roma realities were taught at two secondary schools for an hour per week in 2018.<sup>84</sup>

According to a survey conducted by the Public Opinion Center in April 2020, 70% of Czechs surveyed on a scale from very sympathetic to very unsympathetic said they are very unsympathetic towards the Roma.<sup>85</sup> 80% of respondents to a survey of attitudes towards the Roma conducted by the Slovak Academy of Sciences in June 2019 agreed with the negative

<sup>79</sup> *Must Try Harder: Ethnic Discrimination of Romani Children in Czech Schools*, Amnesty International (AI Ltd. London 2015) 49.

<sup>80</sup> Ibid.

<sup>81</sup> 'Na Slovensku sa vyučuje rómsky jazyk na siedmich školách' [In Slovakia, the Romani Language is Taught in Seven Schools] (teraz.sk 2018) < <https://www.teraz.sk/slovensko/msvvas-na-slovensku-sa-vyucuje-romsky-ja/318620-clanok.html> >.

<sup>82</sup> 'Zpráva o stavu romské menšiny' [Report on the Situation of Roma Minority] (Úřad vlády ČR, Sekce pro lidská práva 2018). Available at <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/dokumenty/Zprava-o-stavu-romske-mensiny.pdf> 47.

<sup>83</sup> In 2001, Slovakia ratified the European Charter for Regional or Minority Languages also for the Romani language.

<sup>84</sup> 'Zpráva o stavu romské menšiny' [Report on the Situation of Roma Minority] (Úřad vlády ČR, Sekce pro lidská práva 2018). Available at <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/dokumenty/Zprava-o-stavu-romske-mensiny.pdf> 47.

<sup>85</sup> 'Vztah české veřejnosti k národnostním skupinám žijícím v ČR – březen 2020' [The Relationship of the Czech Public to Ethnic Groups Living in the Czech Republic] (Centrum pro výzkum veřejného mínění 2020) < <https://cvvm.soc.cas.cz/cz/tiskove-zpravy/ostatni/vztahy-a-zivotni-postoje/5203-vztah-ceske-verejnosti-k-narodnostnim-skupinam-zijicim-v-cr-brezen-2020>>.

stereotypes about the Roma.<sup>86</sup> However, the racial prejudice in both societies do not relieve any of the states of responsibility. The ‘respect, protect, and fulfill’ framework imposes an obligation on states to protect citizen’s rights against the acts of individuals. Roma children must be protected against segregation even though non-Roma parents try to bypass the antidiscrimination provisions by ‘white flight’ and teachers are racist. Here we can see the limits of alibism, which both states do not want to cross. If the authorities really wanted to solve the problem and not just proffer formal solutions, they would have to directly address the deep problem of racism in society.

<sup>86</sup> 'Negatívne postoje voči Rómom súvisia s nepriateľským politickým diskurzom' [Negative Attitudes Towards the Roma are Linked to Hostile Political Discourse] (Slovenská akadémia vied 2020) <[https://www.sav.sk/index.php?doc=services-news&source\\_no=20&news\\_no=8688](https://www.sav.sk/index.php?doc=services-news&source_no=20&news_no=8688)>.

## Chapter 4 - Forced sterilizations

### 4.1. Historical continuity of sterilizations

Forced sterilizations of Roma women had already occurred within the territory of today's Czech Republic and Slovakia during the Nazi occupation, and they continued again starting in 1960s post-war Czechoslovakia with the aim of controlling and ideally reducing the Roma population. In 1972, a directive from the Ministry of Health on sterilization<sup>87</sup> came into force in Czechoslovakia which de facto legalized this eugenic practice. Although the directive itself was racially neutral in its wording, the number of sterilized Roma women soon significantly exceeded the number of sterilized non-Roma women.

In the Charter 77 document, the authors critically reflect that Roma women were motivated to sterilization in the form of a financial reward, and officials were instructed to persuade as many Romani women as possible to undergo sterilization.<sup>88</sup> The authors of the document see this as an effort by the state to prevent a minority ethnic group from having children, which, according to their legal analysis, establishes allegations that genocide took place on the part of the Czechoslovak authorities: § 259 of the Criminal Code (the Genocide Act) provides that

‘(1) whoever intends to destroy, in whole or in part, a national, ethnic, racial or religious group [...] and (b) takes measures to prevent the birth of children in such a group [...] shall be punished by imprisonment for 12–15 years or the death penalty.’<sup>89</sup>

The sterilization of Romani women became a taboo in Czechoslovakia which was not talked about. However, neither the Czech Republic nor Slovakia were able to deal with this rooted practice satisfactorily; forced sterilizations continued long after the dissolution of Czechoslovakia, until 2007, when the last known case occurred in the Czech Republic.<sup>90</sup>

<sup>87</sup> Directive on Sterilisation 1972. Available at <https://www.epravo.cz/vyhledavani-asp?Id=32073&Section=1&IdPara=1&ParaC=2>.

<sup>88</sup> Since 1988, Roma women received a one-off financial contribution corresponding to the annual income for performing sterilization. Financial contributions ceased to be paid in 1991.

<sup>89</sup> Act No. 140/1961 Coll., Part II: Special provisions; Chapter X: Crimes Against Humanity, Sect. 259 Genocide. Available at <https://www.zakonyprolidi.cz/cs/1961-140>.

<sup>90</sup> *Coersive and Cruel: Sterilization and its consequences for Romani Women in the Czech Republic 1966 – 2016* (European Roma Rights Center 2016) 7.

## **4.2. Body and Soul: Sterilization as a routine practice**

In 2003, the Center for Reproductive Rights and Counseling Center for Civil and Human Rights published the *Body and Soul* report<sup>91</sup> in which 230 women from forty Roma settlements in eastern Slovakia described the process of sterilization they forcibly suffered and its impact on their private lives. The study served as the evidence base in court cases in which women sought justice and redress and became an important source of information on the subject for the central European region: Slovakia, the Czech Republic and Hungary.

The stories of sterilized women from Slovakia are remarkably similar to those of the Czech Republic.<sup>92</sup> Although caesarean delivery was not always necessary, Roma women in the hospitals of both countries were routinely forced to give birth in this way. According to the Directive on Sterilization, written consent was needed to perform the procedure. Just before giving birth, doctors informed Roma women that they would be at risk in the case of further pregnancy and that they or their child could die during the next birth. They were told they must sign consent to sterilization so as to avoid fatal consequences. The Roma women, who often encountered a language barrier because they spoke a Roma dialect and mastered only the basics of Czech or Slovak, did not understand the exact meaning of the word ‘sterilization’. In addition, their cognitive abilities were limited due to severe pain, they had no opportunity to consult the husband and family on the procedure, and they were not prepared to make such a crucial decision. All respondents consistently recall the pressure and fear when the risk of further birth was explained to them: ‘They told me I should have signed or else I would have died. So, what should I have done?’<sup>93</sup>

## **4.3. Lack of full and informed consent**

The *Body and Soul* report identified three key cases of violations of the reproductive rights of Roma women: (a) forced consent to sterilization, (b) forced sterilization, (c) failure to provide complete and accurate reproductive health information, including denial of access to

<sup>91</sup> *Body and Soul. Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia* (Center for Reproductive Rights and Center for Human and Civil Rights 2003).

<sup>92</sup> In 2016, the report about testimonies of Czech Romani women was published: *Coersive and Cruel: Sterilization and its consequences for Romani Women in the Czech Republic 1966 – 2016* (European Roma Rights Center 2016).

<sup>93</sup> *Body and Soul. Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia* (Center for Reproductive Rights and Center for Human and Civil Rights 2003) 60.

medical records. The report shows that medical staff treated Roma women with a lack of respect, were often openly racist or violent and abused their vulnerability so that sterilization could be carried out quickly and easily along with the caesarean section.<sup>94</sup> Some women were told that sterilization was mandatory after a caesarean section and only temporary. Romani women then waited in vain to become pregnant again.

Forced sterilization also had serious implications for the victims' personal lives. The Roma community places great value on family. Women get married very early and are expected to have many children. They identify themselves strongly with the role of mother, which expresses their value in the community. Having only one or two children is considered a stigma and leads to ostracization. It is also often the reason why a man leaves a woman. Forcibly sterilized women suffer from mental health problems as well as lack of acceptance and misunderstanding from the community and partners who blame them for the sterilization as they do not believe women were forced to do so by institutional coercion, manipulation or concealment of information. Women also suffer from multiple victimization. First, by sterilization alone and the caused trauma, then by non-acceptance of a partner and community, often accompanied with domestic violence.

#### **4.4. Czech and Slovak Republic in the ECtHR**

*K.H. and Others v Slovakia*<sup>95</sup> (2009) is the first in a series of sterilization cases in the ECtHR. Eight Roma women who gave birth by caesarean section were unable to conceive again after the operation. They suspected they had been sterilized and planned to sue the hospital. The hospital, however, did not allow them access to their medical records. Therefore, they had to seek information via court proceeding but failed on the domestic level. The ECtHR ruled this a violation of Article 8 of the Convention because the right to respect for family and private life also included the right to information related to health, and it ordered the Slovak authorities to provide the applicants with the documentation. Furthermore, the Court found a violation of Article 6 §1 of the Convention because Roma women were denied the right to a fair trial by denying essential information which could be used as evidence in court.

While the core of *K.H. and Others v Slovakia* was a dispute over the right to information, the Court, in the case of *V.C. v Slovakia*<sup>96</sup> (2011), ruled for the first time directly

<sup>94</sup> Ibid. 72.

<sup>95</sup> KH and Others v Slovakia App no 32881/04 (ECtHR, 6 November 2009).

<sup>96</sup> VC v Slovakia App no 18968/07 (ECtHR, 8 November 2011).

in the matter of sterilization itself. V.C. was a Roma woman forcibly sterilized in 2000 when medical workers warned her of a threat of death unless she signed consent to sterilization. V.C. is one of the women who has suffered severe ostracization from the community and from psychological problems due to sterilization. In the application, V.C. indicated that the practice of forced sterilization of Roma women has a long history in Czechoslovakia and referred to the investigation documented in the *Body and Soul* report. Based on this historical context, the applicant described sterilization as systemic and discriminatory against Roma women and claimed a violation of Article 14.

The Court ruled that ‘sterilization is not considered a life-saving act’,<sup>97</sup> challenging the official justification used by medical authorities who claimed that sterilization is necessary. The Court also recalled the international documents the European Convention on Human Rights and Biomedicine, the UN Convention on the Elimination of All Forms of Discrimination against Women and the European Commission’s *Anti-Racism and Intolerance* report, which stress the need for full and informed consent, without which the surgery can be performed only if it is inevitable and life-saving. According to the Court, informing about alternative forms of contraception could always prevent the risk of further birth. The Court ruled on the violation of Article 3 of the Convention (inhuman and degrading treatment) and Article 8 of the Convention (the right to private and family life), but it did not confirm the violation of Article 14 of the Convention because it did not prove that the decision was intentionally racially motivated.

In *N.B. v Slovakia*<sup>98</sup> (2012), the applicant was a Romani woman who was subjected to forced sterilization at the age of seventeen. She was forced to sign consent under sedatives without understanding the content. The applicant also claimed Article 14, but the Court, referring to its previous decision, ruling that it was not possible to prove that the doctors had acted in bad faith and that ‘the hospital staff’s conduct was intentionally racially motivated’.<sup>99</sup> Therefore, ‘there is no need to examine separately the complaint under Article 14 of the Convention’.<sup>100</sup> Again, as in the previous case, the Court ruled only on the substantive violation of Article 3 and the violation of Article 8 of the Convention.

In *I.G. and Others v Slovakia*<sup>101</sup> (2013), three Romani women, who were sterilized by caesarean delivery, learned about the real nature of the procedure and its consequences only

<sup>97</sup> VC v Slovakia App no 18968/07 (ECtHR, 8 November 2011) [110].

<sup>98</sup> NB v Slovakia App no 29518/10 (ECtHR, 12 September 2012).

<sup>99</sup> Ibid. [121].

<sup>100</sup> Ibid.

<sup>101</sup> IG and Others v Slovakia App no 15966/04 (ECtHR, 29 April 2013).

after several years delay. Although the two complainants were underage at the time of the surgery, the doctors did not inform their parents to obtain their consent. The Court relied on the two previous judgments and emphasized the lack of informed consent and the fact that the intervention was neither life-saving nor necessary. In this judgment, the ECtHR specified the more systematic responsibility of the state: the Court ruled that the state had not put in place effective legal safeguards to protect the reproductive health of Roma women. The Court upheld the substantive and procedural violation of Article 3 and Article 8. The Court did not confirm a violation of Article 14 and decided not to examine it separately.<sup>102</sup>

In 2012, the ECtHR also dealt with a similar case in *R.K. v the Czech Republic*.<sup>103</sup> R.K. was sterilized without consent in a Czech public hospital and the state did not conduct any effective investigation of her case. The applicant complained under Articles 3, 8 and 13. However, the parties agreed to a friendly settlement.

#### **4.5. Dissenting opinion of Judge Mijovic and criticism of the ECtHR**

In her dissenting opinion in *V.C. v Slovakia*, Judge Mijovic disagreed with the Court's decision not to examine separately the violation of Article 14 (prohibition of discrimination). According to Mijovic, the violation of this article is the very basis of this case. She refers to the case-law of the ECtHR, in particular to the case of *D.H. and Others*,<sup>104</sup> where the Court defined the state's behaviour towards an ethnic group that is segregated and does not have access to the same basic education the majority does as discriminatory. According to Mijovic, it is clear that in Czechoslovakia there was a state policy for the sterilization of Roma women, and this case is not an accidental individual excess but a 'relict of a long-standing attitude towards the Roma minority in Slovakia'.<sup>105</sup> Since, as was confirmed, there was no medical reason to sterilize the applicant, the only reason for sterilization remains her Roma origin. The fact that the ECtHR has never found a violation of Article 14 of the Convention in any of the Slovak cases related to forced sterilizations of Roma women has been criticized by many human rights experts as a failure to discern the intersectional nature of human rights violations.

<sup>102</sup> *IG and Others v Slovakia* App no 15966/04 (ECtHR, 29 April 2013).

<sup>103</sup> *RK v the Czech Republic* App no 7883/08 (ECtHR, 20 November 2012).

<sup>104</sup> *DH and Others v the Czech Republic* App no 57325/00 (ECtHR, 13 November 2007).

<sup>105</sup> *VC v Slovakia* App no 18968/07 (ECtHR, 8 November 2011).

Judit Geller considers the decision of the Court, which in the case of *V.C. v Slovakia* does not regard the forced sterilization of Roma women as ‘sex and ethnic discrimination’,<sup>106</sup> as disillusionment. She criticizes that instead of calling this conduct an example of a wider practice of systematic human rights violations, the Court decided to remain on an individual level; however, this is a clear systematic state policy that mainly affected Roma women. From the same perspective, Naomi Kinsella criticizes the judgment in *I.G. and Others v Slovakia*: Limiting violations to Articles 3 and 8 reduces the case to an individual level, although it is obviously a repeating pattern and not an isolated excess.<sup>107</sup>

Gwendolin Albert and Marek Szilvasi draw attention to the aspect of Foucauldian biopower in connection with the control of the Roma’s reproductive rights by the Czechoslovak and, later, Czech and Slovak authorities: According to them, the Czechoslovak sterilization practice represents a ‘case of modern (state) racism’<sup>108</sup> with guidelines and decrees which regulated the sterilizations’ ‘legal framework of biopower’.<sup>109</sup>

Should the ECtHR take into account the perspective of dissenting Judge Mijovic on racial discrimination and interpret the forced sterilization of Roma women as an example of the continuity of state racism, it would help to define more precisely the problem, which is deeply historically rooted, structural and where the paternalism of doctors and humiliation of marginalized groups (women of an ethnic minority) play a significant role. Only by correctly naming what happened in Czech and Slovak hospitals from the 1960s until 2007 can justice be ensured for victims. As one of the Roma women stated, ‘white women have more rights than Romani women. They would not do this to white women.’<sup>110</sup>

<sup>106</sup> J Geller, 'Coersive Sterilization of Romani Women: Inhuman and Degrading Treatment but no Discrimination according to the ECHR' (*European Roma Rights Center*, 25 November 2011) <<http://www.errc.org/news/coercive-sterilisation-of-romani-women-inhuman-and-degrading-treatment-but-not-discrimination-according-to-the-echr>>.

<sup>107</sup> N Kinsella, 'Forced Sterilisation of Roma Women is Inhuman and Degrading but not Discriminatory' (*Human Rights Law Center*, 13 November 2012) <<https://www.hrlc.org.au/human-rights-case-summaries/forced-sterilisation-of-roma-women-is-inhuman-and-degrading-but-not-discriminatory>>.

<sup>108</sup> G Albert and M Szilvasi, 'Intersectional Discrimination of Romani Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic' [2017] 19(2) *Health and Human Rights* 31.

<sup>109</sup> *Ibid.* 26.

<sup>110</sup> *Body and Soul. Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia* (Center for Reproductive Rights and Center for Human and Civil Rights 2003) 60.

#### 4.6. No compensation for victims

Slovakia and the Czech Republic have been facing criticism from international institutions for many years, not only because the forced sterilization practices still took place in both countries even after the fall of communism, but also because their victims have not received fair compensation. The UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern in 2007 that the Czech Republic had not yet provided compensation to Roma victims.<sup>111</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) also repeatedly called on the Czech Republic to provide compensation in 2006,<sup>112</sup> 2010<sup>113</sup> and 2016.<sup>114</sup> In 2015, the Czech government rejected a draft law which would have provided compensation to victims on the grounds that the state had already apologized to illegally sterilized women in 2009. The government advised the victims to go to court individually. In 2019, a group of deputies prepared a bill on the provision of a lump sum of money to sterilized persons.<sup>115</sup> It is estimated that the compensation, around €11,000 per person, would have covered roughly 400–500 people who underwent sterilization between 1966 and 2012. In the explanatory memorandum, the petitioners argue that the majority of victims can currently not receive monetary compensation because the general limitation period in the Czech Republic is three years.<sup>116</sup> The Steering Committee recommended discussion of the bill in November 2019. At the moment, the bill is before the first reading in the Chamber of Deputies.<sup>117</sup>

<sup>111</sup> UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination*, 62th sess. Supplement No 18 (A/62/18). Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=A%2F62%2F18&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=A%2F62%2F18&Lang=en).

<sup>112</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Czech Republic*, 25 August 2006, CEDAW/C/CZE/CO/3, available at: <https://www.refworld.org/docid/453778480.html>.

<sup>113</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW): *Concluding Observations, Czech Republic, 10 November 2010*, CEDAW/C/CZE/CO/5. Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FCO%2FCZE%2FCO%2F5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FCO%2FCZE%2FCO%2F5&Lang=en).

<sup>114</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW): *Concluding Observations, Czech Republic, 14 March 2016*, CEDAW/C/CZE/CO/6. Available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FCO%2FCZE%2FCO%2F6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FCO%2FCZE%2FCO%2F6&Lang=en).

<sup>115</sup> 'Bill on the Provision of a Lump Sum to Persons Illegally Sterilized' (27 September 2019). Available at <https://apps.odok.cz/veklep-detail?pid=ALBSBGKD74NR>.

<sup>116</sup> *Ibid.*

<sup>117</sup> Legislative process as of 8 June 2020: <https://public.psp.cz/en/sqw/historie.sqw?o=8&t=603>.

Slovakia has been criticized by the UN ICCPR Human Rights Committee for failing to provide effective compensation to victims since 2003.<sup>118</sup> Thirteen years later, in 2016, the Human Rights Committee expressed concern that Slovakia had still not acknowledged its responsibility for these practices and, with the exception of one case, had not provided compensation to victims.<sup>119</sup> It also called on the government to establish an independent body to investigate the extent of the practice. In 2000, 2012 and 2013, The UN Committee on the Elimination of Racial Discrimination (CERD) called on Slovakia to implement the ECtHR judgments, provide full reparations and compensation to victims of sterilization, and organize educational trainings for health care professionals on the issue of informed consent.<sup>120</sup> In 2018, following the example of Austria and Germany, the Slovak ombudsperson Mária Patakyová called for the adoption of special legislation since the current national legal framework does not allow for effective redress.<sup>121</sup> Unlike the Czech government, the Slovak government has never apologized to the victims of forced sterilization practices.

Part of the problem of segregation and forced sterilization are paternalizing authorities: teachers and doctors. The segregation of Romani children as well as the sterilization of Romani women are possible due to the absence of informed consent from those for whom these decisions are being made. Romani children are placed in segregated classes and schools by authorities in education; sterilized Roma women are manipulated and placed under pressure by healthcare authorities. The human rights violations of Romani women and children are also linked to violations of the integrity of the Roma as a group. Romani women and children are not only marginalized individuals, they also symbolically represent the future of the Romani community. If forced sterilization is literal interference with a woman's physical integrity and the prevention of further reproduction, that is, the future of the group, through segregation in education, the state steals the future of the young Roma generation, who have no chance of escaping the circle of poverty. The state thus determines and defines who the Roma should be—an uneducated marginalized group without a future

<sup>118</sup> UN Human Rights Committee (HRC), *Concluding Observations: Slovakia*, 22 August 2003, CCPR/CO/78/SVK, available at: <https://www.refworld.org/docid/3f8d4b652.html>.

<sup>119</sup> UN Human Rights Committee (HRC), *Concluding observations on the fourth report of Slovakia*, 22 November 2016, CCPR/C/SVK/CO/4, available at: <https://www.refworld.org/docid/5975c1954.html>.

<sup>120</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the 9th to the 10th periodic reports of Slovakia, adopted by the Committee at its 82nd session, 11 February-1 March 2013 : Committee on the Elimination of Racial Discrimination*, 17 April 2013, CERD/C/SVK/CO/9-10, available at: <https://www.refworld.org/docid/51ee5fed4.html>.

<sup>121</sup> 'Statement of the Public Defender of Rights on Compensation of Victims of Illegal Sterilization in Slovakia' (The Public Defender of Rights of Slovakia 2018) Available at [https://www.vop.gov.sk/files/Stanovisko\\_%20VOP\\_2018\\_Odskodnenie\\_obeti\\_protipravnej\\_sterilizacie\\_fin.pdf](https://www.vop.gov.sk/files/Stanovisko_%20VOP_2018_Odskodnenie_obeti_protipravnej_sterilizacie_fin.pdf)

## Conclusion

In this paper, continuous comparisons were made along the axis of Czechoslovakia—the common past before 1989—vs developments in the independent Czech and Slovak Republics after 1992 as well as along the axis of both countries' approaches to the Roma after 1992 (Czech Republic vs Slovak Republic). It is clear that in the past, the state entities took the administrative repression and functional forms of oppression of marginalized groups from each other, despite the declarative denial of its predecessors' policies. Regardless of the quality of the democratic constitution of the Czechoslovak First Republic, its anti-nomadic law of 1927 followed the repressive measures of the Habsburg monarchy. For some time after the end of World War II, the authorities in the Slovak part of Czechoslovakia still used the pro-Nazi legislative framework of the Slovak State to repress the Roma. Socialist legislation, despite state power distancing itself from the interwar Czechoslovak First Republic as from the exploitative capitalist system, used the same wording in its law against vagrancy and parasitism. The First Republic did consider labour camps for the Roma. During the Second World War, it was Czech guards who tortured and killed Roma in the Lety u Písku labour camp. The sterilization of Roma women during World War II was followed by sterilization under socialism, legalized by decrees. The practice continued until 2007. The placement of Roma children in special schools, which became an automatic practice under socialism, also continues in its gravity after the change in regime to the two new democratic states. Legal alibis and the legislative hypocrisy identified by Charter 77 can be found in all laws which seek to vigorously solve the Roma question and, at the same time, pretend to be neither discriminatory nor unconstitutional.

All the regimes mentioned in the historical overview, both democratic and totalitarian, framed their demands in schizophrenic extremes: On the one hand, they wanted to ban the nomadic Roma and force them to settle and adapt, but, on the other hand, they pushed them out and drove them away from the majority society at the same time. The authorities fought against spontaneous migration but, ironically, soon began to need the Roma to migrate as a cheap labour force from one corner of Czechoslovakia to another. Regardless of the period under study, the common denominator of the continuity of repression is racism and anti-Gypsyism. The result is the passivity of the Roma, their distrust of the majority and the development of alternative survival strategies in the grey zone and on the social fringe where they have been displaced.

All the mentioned state entities of Czech and Slovak history made an effort to record, categorize, classify and control the Roma because they defied the rationality of modernity, symbolically escaped from its framework and physically escaped from the frameworks of estates and regions. The history of the Roma in Bohemia and Slovakia is a history of gradual disintegration, the breaking of traditional ties and uprooting with the contribution and supervision of a paternalizing state. The Czech Republic and Slovakia must finally admit that they have a different history in common than that which is taught at school, a history that is extremely cruel to minorities. It will mean rewriting the popular national narrative of Czechs and Slovaks as victims (victims of Habsburg domination, Germans, Hungarians, victims of Nazism and Communism) and accepting their responsibility for the injustices that Roma generations in both countries have had to face.

The aim of this work was not to decide the complex legal issue outlined in the dissenting opinions of Justice Mijovic (*V.C. v Slovakia*)<sup>122</sup> and Justice Borrego Borrego (*D. H. and Others v the Czech Republic*)<sup>123</sup>, namely whether the ECtHR should take into account the discriminatory history of the given ethnic group or whether it should assess cases on an individual level. However, the author of this work is more inclined to the dissenting opinion of Justice Mijovic: if regional and international human rights bodies are to watch over human rights, they must seek to understand the reasons for human rights failures. However, the practical solution to the problem will remain with the nation states. In this case, in the Czech Republic and Slovakia and their ability to honestly reflect on those aspects of their own history which they would rather forget.

<sup>122</sup> VC v Slovakia App no 18968/07 (ECtHR, 8 November 2011).

<sup>123</sup> DH and Others v the Czech Republic App no 57325/00 (ECtHR, 13 November 2007).

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