IDENTITY OF ROMA WOMEN AND THEIR EXCLUSION IN PROCESSES OF INTERNATIONAL AND TRANSITIONAL JUSTICE

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Abstract: Among the women involved in international legal environments, there are women who are administrators of justice, and women who remain as recipients, consumers or petitioners of justice. The question of identity, be it national, cultural, ethnic, religious or otherwise may become crucial when positioning human beings in one side of justice or another. This article seeks to analyse the formation of identities and the characteristics of Roma women's identity and specifically their roles in international justice together with some actual European political stances towards the Roma peoples. Part of the study will take into account the sequence of processes that take place from the appointment of international judges to the resolutions of the United Nations Security Council, and that lead to the granting of a certain place for women in the transitional/international justice scene. Nevertheless, there are also groups of women who hardly participate in the international legal scene and, although their role has historically been, and still is, reduced to being victims, their possibilities of action in the field justice are extraordinarily limited. This is the case of Roma women in Europe.

Keywords: Roma Women; Ethnic Identity; Transitional Justice; International Tribunals; European Union

Summary: 1. Introduction. 2. Transitional Justice and International Courts. 2.1. An approach to transitional justice. 2.2. Crimes against women. 2.3. Women involved in the provision of international justice. 3. Politics of identity. 3.1. Roma Women's Identity. 4. Political stances towards Roma in Europe. 5. Final remarks.

1. Introduction

Among the women involved in international legal environments, there are women who are administrators of justice, and women who remain, exclusively, as recipients, consumers or petitioners of justice. It is useful to analyse the characteristics of this distribution of roles and to carry out an analysis that takes into account the role of identity in the processes that take place from the appointment of international judges to the resolutions of the United Nations Security Council, and that lead to the granting of a certain place for women in the international justice scene. The relevance of this analysis lies in a qualitative matter: whether the quality of justice for women increases when women become administrators of justice. And also in a quantitative one: is providing justice exclusively about being a judge or is it also about making the law and/or participating in

the relevant procedures that make up the State or the legal system? We must leave these questions for future works and focus in the role of Roma women in transnational and international justice settings, where women are in general underrepresented.

Today, the Roma population constitutes the largest ethnic minority in the European Union (EU), being estimated between ten and twelve million citizens by the European Union Agency for Fundamental Rights –FRA- (2012). But the term *Roma* comprises in one identity many heterogeneous (and also connected) social communities (Bunescu, 2014). The overarching term Roma is used to refer to the distinct Roma groups and subgroups living in Europe (Roma, Romanichels, Boyash, Ashkali, Egyptians, Yenish, Travellers, Gypsies, Dom, Lom, etc.)[2], giving a false image of a single identity, a single culture and, therefore, same values for all these communities. The concept of ethnicity is knotted intimately to the idea of value – who we believe ourselves to be and how we choose to relate to others are issues that are shaped through the prisms of *ethnicised* cultures (Bhattacharyya, 1988).

Romanies first arrived in Europe at the end of the thirteenth century, from India (Hancock, 2002). Their ethnicity, as identity, was to be fashioned and reshaped by a multitude of influences, internal and external. They would assimilate numerous elements which have nothing to do with India, and they would eventually cease to be, in any meaningful way, Indians; their identity and their culture would, however, remain sharply distinct from that of the *gadje*[3] (Fraser, 1995).

Yet there is one essential element that all Roma communities have had in common, with both time-based and geographical continuity: they have experienced, and still do, widespread poverty, exclusion, discrimination and, occasionally, violence across the European continent (Hancock 1987, 2002 and 2010; Liégeois, 2007; Ringold, Orenstein & Wilkens, 2005). In general, it can be observed that it is often difficult to differentiate specific cultural aspects from other features more related to the socio-economic situation in which many Roma families find themselves. In other words, there is no appreciation of the distinction between Roma culture and *marginalization culture* (Fakali, 2013). Yet these attitudes and practices that reproduce the *pariah* status of the Roma, the systematic abuse of their rights, their history of widespread persecution and racial discrimination and the growing European anti-Gypsism, are precisely the ones contributing to the survival of the Roma as an ethnic, cultural and social identity (Petrova, 2003).

The *gadje* European public opinion generally perceives the coexistence with the Roma people as a problem derived from the presence of an un-adapted or ethnically unequal population within the general social mainstream identity, that is to say, not as a problem resulting from the presence of a social stratum extremely affected by poverty within the general social trend. It could be said that, apparently, the more intensely the

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[2] Groups externally identified as Gypsies that don't necesarily consider themselves Roma actually include the above listed Ashkali and Egyptians from Kosovo and North Macedonia; the Travelers in the United Kingdom and Ireland; Sinti and Kale in other European countries, etc. (Petrova, 2003).

[3] Rafael Buhigas (2018) explains the appropriateness and suitability of this term to designate the non-Roma person or collective.

existence of a Roma community with urgent social needs is perceived, the more coexistence will be thought in terms of ethnic or racial differences, underpinning the construction of inequality through the construction of an exclusive identity. Petrova states that Roma continue to be seen "as parasitic elements, alien to the principle of productivity and its underlying values" (Petrova, 2003, p. 130).

The history of the Roma in Europe is that of slavery, criminalization, persecution and forced assimilation (Curran, 2016; Ivanov, Collins, Grosu, Kling, Milcher, O'Higgins, Slay and Zhelyazkova, 2006; Janević, Sripad, Bradley and Dimitrievska, 2011; Petrova, 2003; Weiss-Wendt, 2015). It is, however, not possible to fully explain the European majority stereotypes and the political decisions about the Roma on the basis of history alone. Certain features of the Roma social identity may better explain the behavior of other social identities towards Roma population. For Petrova "the single most important concept that helps explain anti-Gypsy prejudice is *weakness*. To put it simply, Roma would not have been ignored, resented, insulted, humiliated, and repressed if they had *power*" (2003, p. 128). This certainly does not mean that that *weakness* is an inherent characteristic of Roma community members in general. As Jenkins (1997) explains, we must distinguish between two processes of ascription: group identification, which occurs inside the ethnic boundary, and social categorization, which occurs outside and across the ethnic boundary. Thus, *weakness* is not the cause, but one of the consequences of the social stigmatisation imposed by the dominant societies, and aimed, in many different ways, to construct and share negative representations of Roma capable of weakening and disarming the categorised in their capacity for identity reaction, response and resistance (Vallés, 2019).

A *weak* group, in terms of vulnerability, conforming a *strong* identity, in terms of "otherness", can play a very useful political role in certain societies; it can play the *risk* role. Risks are not like calamities, afflictions, sufferings or torments that stand between people and their chances of having a good life. Hunger, disease, unemployment, are not risks, they are real pains, material experiences. Risks are immaterial and invisible, we need to be told they exist for us to fear them, and their causes are almost never transparent. As stated by Beck, "(f)or risks, interpretative diversions of stirred-up insecurities and fears are more easily possible than for hunger and poverty. What is happening here need not be overcome here, but can be deflected in one direction or another and can seek and find symbolic places, persons, and objects for overcoming its fear. In risk consciousness then, *displaced* thought and action, or *displaced* social conflicts are especially possible and in demand" (1992, p. 77). Zygmunt Bauman concludes that governments may decide to hide or deny "security risks" and at the same time they can make them up. The reasons to be afraid or fear for safety can be put aside or kept secret, and also they can be imaginary or exaggerated (Bauman, 2004). Fear may, through the creation of exclusionary identities, become a political value.

In this article we intend to address 1) some aspects of conflicts and transitional/international justice that particularly affect women, who mobilize and challenge, in these areas, the traditional gender roles in the legal professions and 2) some aspects of the European social reality that particularly affect the Roma community, understanding that the combination of both analyses can illustrate, albeit in a generic way, the situation of European Roma women in the general map of international justice.

2. Transitional Justice and International Courts

2.1 An approach to transitional justice

The United Nations (2010, pp. 1-2) states that "transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" involving judicial and non-judicial mechanisms, separated or combined (i.e. prosecution initiatives and trials, truth and reconciliation commissions, amnesties, reparations, institutional reforms). Whatever combination is selected must be in compliance with international legal standards and obligations. Transitional justice should seek to take account of the root causes of conflicts and the connected violations of all rights, including civil, political, economic, social and cultural rights.

There are five common components of transitional justice processes (United Nations, 2010). (a) The first one is based on investigation and prosecution; those who are responsible for the commission of crimes, especially serious violations of human rights or international humanitarian law, are tried and eventually sentenced in accordance with international standards of due process. Thus, transitional justice programs should develop or reinforce the investigative capacities of the bodies designated for this purpose, promote the independence of the judiciary, guarantee the legal defense of the parties, and strengthen protection and support mechanisms for witnesses and victims. Within this component is the delicate issue of amnesties, offering a set of possible results in the face of an eventual balancing of the duty to investigate and sentence the criminals, and on the other hand, peace and reconciliation; (b) The second is related to the right to truth; in this context, truth has been understood in three different dimensions: the factual truth, the personal truth and the social truth. The factual truth refers, for example, to the location of mortal remains or the clarification of the events that occurred during the conflict. The personal truth allows the expression of that truth and the unburdening of the person through that manifestation. The social needs to be adopted through dialogue and debate (García Sayán & Giraldo Muñoz, 2016); (c) Reparations are the element of transitional justice seeking to redress violations of human rights by delivering to victims material and/or symbolic benefits; (d) The fourth element is possibly the most ambitious one, for it might virtually mean the construction of a new state apparatus. The component involves institutional reforms whereby those institutions that extended the armed conflict should be transformed into others aimed at sustaining peace and the rule of law. The transformation includes positive training and capacity-building measures for officials in the post-conflict era, and the investigation and removal from office of those who actively participated in the perpetration of serious human rights violations, who allowed them to occur or who denied their investigation; (e) The last element refers to national consultation processes, aimed at designing transition measures suited to the specific context in which they are to be implemented.

One of the central goals of post-conflict accountability processes is to face and deal with abuses and atrocities that occur in the context of armed conflicts or non democratic regimes. Transitional justice, without delving into the various types of transitions that exist, helps remove perpetrators from political influence and provide recognition to victims and may lead to fewer grievances in the future. The ability to succeed in these goals, however,

does depend on a number of elements which may influence the implementation process and the role that reconciliation plays for the establishment of sustaining peace and/or democracy. Transitional justice is generally viewed as having a restitution function yet relevant feminist literature describes how it operates "to facilitate the workings of the political sphere by absolving the need for absolute accountability" (Aolain & Turner, 2007, p. 231). When we look at transitional justice we are often unable find a statutory procedure provided and, consequently, it becomes easier to reconcile its foundation with non-legal conceptions of authority and informal or merely political processes and mechanisms.

The multiple distinct experiences of transitional justice use a diverse range of institutional *strategies* to come to terms with the past, prosecute the criminals, and give dignity to victims. It is often defended that not all those who participated in the armed conflict can -or should- be subject to the same transitional justice measures, nor are all victims achieving the same type of reparations. A balance between both aspects is claimed as necessary to achieve the transition and to prevent the creation or resurgence of the conditions that led to the previous situation (García-Sayán y Giraldo Muñoz, 2016). It makes sense also to defend, in conexion with the *disparities* of transitional justice, whether it might be better explained and understood if it is not assumed to be *a kind of justice*.

Without resolving this debate here, it is worth mentioning

that peace agreements and processes and political transitions are deeply gendered (see Bell & O'Rourke, 2010; Bell, 2015; O'Reilly, Ó Súilleabháin & Paffenholz, 2015). As Aolain & Turner explain,

> (E)ssentializing women's experiences of conflict and political repression, in combination with women's exclusion from peace processes, has a compound effect on our understanding of conflict (including its potential resolution) and on what happens or ought to happen in the transitional phase. In this context, it is persistently unacknowledged that women play a series of complex and potentially paradoxical roles in a conflicted society. These can include a combatant role or a supportive role in the perpetration of violence, as well as the more traditional and highly visible roles of victim and peace maker in informal community and family settings. If these multiple capacities were imaginatively harnessed, women could arguably make significant contributions (2007, p. 243).

As will be outlined below, the masculinity of transitional justice, and of international law in general, has shown itself vehemently and unabashedly, making feminists ask whether women were as human as men (Mackinnon, 1994; Franke, 2006; Peach, 2001).

2.2.   Crimes against women

As mentioned above, a number of current debates around transitional justice recognize the importance of paying attention to gender issues during armed conflict and in post-war periods. This progressive recognition of the relevance of sexual affiliation

when examining the events and consequences of conflict on individuals has been enhanced by the development of international legal norms concerning sexual violence during warfare.

Although not a closed list, the fact that rape and sexual violence were not plainly listed as violations of the laws and customs of war, and did not appear on the list of crimes against humanity, ensured that these violations did not define the Nuremberg Trials (Nuremberg International Military Tribunal) and received more than limited attention in Tokyo (International Military Tribunal for the Far East). The Tokyo indictment included allegations of gender-related crimes, described the rape of civilian women and health personnel as inhumane treatment and disrespect for family honor and rights, and prosecuted these crimes under the umbrella of conventional war crimes. The failure to include gendered persecution alongside political, racial and religious persecution reflects the invisibility of women and gendered experiences not only in war and post-conflict justice processes, but in society.

The Statutes of the Nuremberg and Tokyo Tribunals created the jurisdiction to prosecute crimes considered serious by the allied forces and which did not previously exist in international law: war crimes and crimes against humanity. But despite the historical developments, nowhere in the Statute of the Nuremberg Tribunal could the crime of rape or any other crime of a sexual nature be found, although there was sufficient documentary evidence about the mass rapes, forced sterilizations and abortions, sexual mutilation and sadistic sexual assaults that took place throughout World War II. Sexual atrocities were not charged, nor were the criminals punished. This was an era of silence, prosecutors protected themselves from the issue as if it were simply in extremely bad taste (Hagay-Frey, 2009, pp. 62 ff; Chinkin, 2001; Argibay, 2003; Skjelsbæk, 2001).

It is not hard to conclude that the vulnerability of some women, and the visibility of that condition, "are determined by their position within the societies in which they are abused, as well as their position in the discourses that give meaning to the abuses" (Žarkov, 2007, p. 181). Rape was used by the Serbs in Croatia, Bosnia and Herzegovina and Kosovo over the last decade of the 20th century to contaminate the blood of other ethnic groups, including the Roma, Ashkali and Egyptian communities. The Serbian forces that committed mass rapes were aware of the significance and consequences that their sexual crimes would have on other cultures. Rape is a particularly effective weapon to dominate, humiliate, and completely subjugate women, their families, and their ethnic communities (Olujić, 1998). In Balkan communities, if a woman has sex outside of marriage, she will lose her honor and dishonor her family as well. The conditions under which it is lost are relevant only to the woman, the loss of honour is no less real because it is the result of rape, and the consequences for the woman in the family or in the community are the same. In the Balkans, where a man's honor depends on a woman's chastity, a husband who believes that his wife has had sex with another man, forced or not, must reject her to save his pride as a man. She can tell what happened to nobody. If she was *lucky* enough not to get pregnant, she will most likely hide the story to save the family and herself from dishonor. If she is forced to go public, it will mean for her no more than further tragedy (Ray, 1997).

In the case of Roma women,

(A) victim of rape may be considered as a criminal, or as someone who has cooperated in the crime (…) a woman who is raped is seen as a *polluted* woman and as such has to be rejected by the family and the community. A woman who is not married will have to keep it a secret otherwise her chances of getting married will be extremely slim. If a married woman is raped and the husband finds out, he will almost certainly leave his wife. Even in this case, he will always be remembered as the man whose wife had been raped. The same stigma applies to the children and the grandchildren. Yet without the support of a husband and/or her community, a Romani woman is condemned to die (Ceneda, 2002, p. 51).

Crimes of sexual violence are explicitly prohibited by humanitarian law. But sexual violence, including rape, was not defined until the International Tribunals for the crimes committed during the conflicts in Rwanda and Yugoslavia, respectively, issued rulings on the matter (Campbell, 2007). The significance of rape and the terror it instilled was of such magnitude that the strategy succeeded in consolidating the territorial gains of the Serbian soldiers. Moreover, because rape was approved and sometimes ordered by the higher ranking military, the soldiers had constant sexual access to women and girls, maintaining the rise in their feelings of superiority and domination. This access was ensured by the establishment of rape camps. It is not known how many women were interned in these camps and repeatedly raped by large groups of soldiers and paramilitaries (Women in the Law, 1994).

There are no official figures on the number of women raped during the wars in the former Yugoslavia. It is estimated that between 30,000 and 50,000 women were raped in Bosnia and Herzegovina and between 10,000 and 40,000 in Kosovo. The number of women raped in Croatia, where the government has not made an estimate, has to be added to these approximations (Amnesty International, 2012).

2.3 Women involved in the provision of international justice

Since women make up approximately half of the world's population, they are significantly under-represented in the international bodies responsible for implementing, monitoring and developing international law (Grossman, 2012). As of June 2021, there are seven women among the eighteen members of the United Nations Human Rights Committee, five among the members of the Committee on Economic, Social and Cultural Rights and three among the ten members of the Committee against Torture, which means that in the most relevant global mechanisms for the protection of human rights the quota of women does not exceed 30%.

By mid-2021, there are three women judges in the International Court of Justice (out of fifteen members) and the International Tribunal for the Law of the Sea has only five women (out of twenty-one members). Since its establishment, only 3.7% of the judges of the International Court of Justice, 10.4% of the judges of the European Court of

Justice and 2.5% of the judges of the International Tribunal for the Law of the Sea have been women (Borda, 2016). In total, only 18% of the members of the international courts are women. We may tentatively point out three reasons for this under-representation: the very international courts that silence and approve of discriminatory composition; the governments that propose candidates for these positions; the civil society that fails to take care of these appointments (GQual, 2015).

During the creation of the International Criminal Tribunal for the former Yugoslavia, a number of non-governmental organizations lobbied to include women judges, among other initiatives to ensure that perpetrators and instigators of sexual violence were punished. Women's caucuses and groups feared that the massive sexual assault of tens of thousands of women, mostly Bosnian Muslims, would be ignored. Women's groups thought that the presence of women judges could make a difference in the prosecution of international crimes against women. For these reasons, women's lobbies pushed hard for Gabrielle Kirk McDonald and Elizabeth Odio Benito to be elected to the International Criminal Tribunal for the Former Yugoslavia –ICTY- (Grossman, 2012).

The National Alliance of Women's Organizations, a British advocacy group concerned with women's human rights and the promotion of equality, viewed the establishment of the ICTY as an opportunity, not only to secure full justice for the women of the former Yugoslavia who have been and continue to be mistreated in gender-specific ways, but also to correct the historical trivialization of abuses against women during war. Among their proposals to achieve these goals was that at least 50% of the staff involved at all levels and in all areas of the Tribunal's functions should be women. The Organisation of the Islamic Conference's proposal on the composition of the Tribunal also called for judges to represent, on an equitable geographical basis, the principal legal systems of the world, with a special presence of Muslim countries and with due regard to gender representation. Similarly, the Lawyers Committee for Human Rights proposed that the criteria for the selection of judges be designed to ensure diversity in terms of geographical origin, gender and religion. The United Nations Secretary-General's report on the establishment of a Yugoslav tribunal encouraged the recruitment of female staff, and the United States representative to the Security Council stressed the importance of women jurists and prosecutors at the ICTY (Grossman, 2012).

It is in the creation of the International Criminal Tribunal for the former Yugoslavia that feminist activism and women's groups have been most present, and even so, during its 20 years of work, it tried only one case involving the rape of a Roma woman, Haradinaj et. al, which ended in an acquittal[4].

Therefore, however tentatively, it can be affirmed that the thousands of Roma women who were raped in the Balkans do not appear in the historical records as justice providers, claimants for justice, nor even as victims in a position to demand this justice. The Romani women survivors have been rendered invisible in transitional and international justice

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[4] Case IT-04-84-I, *Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj,* 29 November 2012.

processes as much as in the communities where breaking the silence signifies isolation. In the field of transitional justice, feminist activism has made great progress (Mertus, 2008; Halley, 2009; Aolain, 1997) and nevertheless, these have been limited to being a vehicle for the demands of Western feminism, with objectives that underpin the liberal legal model, denying the social and legal plurality of the world. Feminist approaches "began with a foundational engagement with the boundaries and biases in international law rather than a focus on specific arenas of rights and protections applied to women" (Heathcote, 2012, p. 6).

In many countries where systematic violations of women's reproductive rights have been committed in the past, and where forced and coercive sterilization has been applied on a massive scale to Roma women as a state policy "the political authorities have failed even to apologise or to assume responsibility. Where this has taken place, there has been no legal or financial redress" (European Economic and Social Committee, 2018, parr. 431).

Nonetheless, in two cases, decided in 2011 and 2012, the European Court of Human Rights found the coerced sterilization of Roma Women is in violation of the prohibition of inhuman or degrading treatment and the right to respect for private and family life of the European Convention on Human Rights (V.C. v Slovakia and N.B. v Slovakia[5]).

3.   POLITICS OF IDENTITY

Why would some political parties or governments use *otherness* and ethnicity to make populations scared? Is it just a way to make majority populations distracted from real threats or problems? Why would risks be invented or, in other words, what do invented risks actually achieve? We would like to analyse whether the absence of Roma women in international and transnational justice scenarios is one of the consequences of the politics of identity.

Some authors argue that *ethnicity* is primarily a result of humans' efforts to reduce the uncertainty that they face in the world, while *ethnic politics* is mostly about particular interests. The most fundamental human interest, they argue, is the maximization of life chances, translated into wealth, real security, and power as well as desires for status and self-esteem. Therefore, explanations of ethnic politics must separate ethnicity from the realm of motives (desires, preferences, values) at the same time that they introduce it into the realm of strategy (Hale, 2008). It seems common all throughout Europe that –initially- not very relevant politicians and political parties, which have no recognizable electorate or program, resort to the ethnic or the nationalist discourse to get a place under the spotlight that may lead to power. As a strategy we may understand the dynamics of political bias or racism towards the Roma community, but still, it is a strategy that would never have potential to show results if citizens were not already prepared to accept the exclusionary discourses and/ or adhere to them.

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[5] ECHR Case *V.C. v Slovakia*, 8 November 2011 and ECHR Case *N.B. v Slovakia*, 12 June 2012.

David Mayall explains that the processes of categorization, labelling and representation are at the heart of majority-minority relations, shaping and being shaped by popular responses and state attitudes and/or policies. Mayall stresses the importance of contemplating these processes in a two way, mutually reinforcing relationship with responses: "An image of a group can lead to a particular response, just as a particular response can lead to the creation and legitimization of an image" (Mayall, 2004, p. 18).

Only minimum, arbitrary category information is needed to create a sense of in-group and out-group. The positive notion of a group relies on favourable comparisons to other groups. To enhance their self-esteem people will try to enhance the salience and value of their group or try to switch the group. Groups which are highly valued will restrict social mobility to retain meaningful distinctions between themselves and the out-groups; losses are accepted in order to retain inter- group differences (Tajfel and Turner 1979).

Initially, it may seem obvious that social categories, their membership rules, content, and estimation are the products of human actions and discourses; the result is the constant change to which they are exposed over time. With the term *identities* translated as *social categories,* this seems a quite reasonable claim. As Fearon and Laitin locate it, "it even verges on tautology. How could social categories be something other than socially constructed?" (Fearon and Laitin, 2000, 848).

Identity, according to this sociological conception, bridges the gap between the *inside* and the *outside*, between the personal and the public world. The fact that we project *ourselves* into these cultural identities, while internalizing their senses and values and making them *part of us*, helps us to align our subjective feelings with the objective places we occupy within the social and cultural world. Identity, then, bonds the subject and the structure. It stabilizes both the subjects and the cultural worlds that they inhabit, making them more united and predictable to each other (Hall, 2010).

Values and practices that foster hatred emerge in response of the above-mentioned *risk politics* and perceived menaces, narrated or built for the public with considerable success, denying the very potentiality of pluralism and cultural heterogeneity. Political and social implications of the construction of exclusionary identities today may very probably shape the new contours of violence to be witnessed in the next decades (Jara Gómez, 2019). Roe explains that when politicized, social exclusionary identities will blame the social *other* for past crimes and tragedies, and very probably the excluded groups may be suspected to harbour hostile purposes. This is used to support the claim that minorities living inside national boundaries should be denied equal rights. These minorities will appear to pose a menace if they are left unsuppressed; moreover, their suppression will be seen as morally justified due to their *misbehavior*, be it past or planned. "In this way, certain existing rights will be revoked or demands for new rights will be denied – rights deemed vital for the reproduction of societal identity. National movements that are rights-suppressing are generally seen as 'ethnic nationalist'" (Roe, 2005, 63).

Zvetan Todorov describes ethnocentrism as the most common *universalistic* choice of values. Universalism. It consists of unduly elevating the values of the society

to which one belongs to the category of universal. When he aspires to the universal, the ethnocentrist starts from something particular, which he immediately tries to generalize; being something particular, it must necessarily be familiar to him, that is, it must be found in his culture. For Todorov, the only thing that differentiates a universalist from an ethnocentric is that he attends to the law of the least effort and proceeds in a non-critical manner: the ethnocentrist believes that his values are the values, and this is enough for him; he never really tries to prove it. The non-ethnocentric universalist would try to base on reason the preference he feels for certain values to the detriment of others and be willing to abandon what is familiar to him and adopt a solution observed in an external culture, or one found as a result of deduction. Ethnocentrism thus has two facets: on the one hand, the universal claim, and on the other, the particular content (Todorov, 1991).

3.1   Roma Women's Identity

In an analysis that connects some of the classic theories of justice with the identity of Roma women, Pérez de la Fuente (2008, p. 145) concludes that Roma women have to struggle for the inclusion of their equal dignity, for the redistribution of resources and access to rights in the face of inequality and for the recognition of their identity in the face of assimilation into the majority, without this implying a reinforcement of traditional hierarchies. Roma women, he adds, ought to be agents for the transformation of their environment in the most equitable sense of gender justice.

The processes of marginalization of Roma women take place along the intersection where social, gender and age inequalities within their own communities and the ethnic, social, gender and age inequalities that exist in relation to the majority society in question intersect. It should be highlighted that "(t)he single focus on women's or gender-based discrimination (…) could lead to blindness concerning the issues confronted by women who are simultaneously vulnerable to other power vectors, such as race/ethnicity, class, or disability" (Kóczé, 2009, p. 17).

Angéla Kóczé further explains that Romani women activists have to face two central dilemmas when looking at the intersection of sexism and racism. The first one is *intra-differentiation*, which translates into addressing the specific gender problems of Roma women through dividing them into separated specific groups with specific difficulties. The second dilemma is the risk of *exposing intra-group hierarchies* through discussing issues (i.e., early marriages) that might stigmatize the group or strengthen majority biased representations of Roma culture as repressive and backward, thus making gender claims a way to be disloyal to the larger Roma community (Kóczé, 2009, pp. 19-21).

It is up to women, as the main educators, to pass on the values to the next generations, assuming that the survival of the features that are considered to make up the Romipen or Roma cultural identity depends on them and such role is justified on the basis of gender differences. Women, as in other ethnic groups, have a greater responsibility to show the representative and differentiating symbols of their culture, especially the most visible habits or the elements that characterise their clothing and image (Peña García, 2020).The debate on whether their role as women and child bearers within their community should be changed is

very much intertwined with the matter of the Roma identity in general. Any effort to modify such role might be understood as "*giving away* the Romani identity, especially in a historical context where Roma have suffered at best prejudice and at worst extermination" (Ceneda, 2002, p. 31). Unfortunately, the alternative to modifying the role is far from rosy. There are many inequalities between Roma men and women. Economic and social constraints show the low status of Roma women not just in society but inside their own families. As we will describe further below, this is added to the lack of formal employment, reduced access to property, limited education, and dependency on the family and/or partner.

Dependency is used here as a *cultural* concept, as Roma women are gradually becoming main income providers in some Eastern European communities, yet in many cases "it is still the men who have control over the economic resources. (…) (B)y placing the burden of economic provision on women without giving up control of the resulting resources, men are trying to maintain their power; in this light it appears that the status of women has decreased in Roma society, rather than increased" (Jones, 1998, p. 59).

The initiative called "The Decade of Roma Inclusion (2005–2015), was initiated by UNDP, the World Bank and the Open Society Institute and identified four key areas where gender inequalities were more manifest, namely education, employment, health and housing (Cukrowska & Kóczé, 2013). Without exploring into each of them in detail, and bearing in mind they are often connected, we want to highlight that the gender gap in the overall years of education is higher among Roma, 17% in favor of Roma males and just 3% in favor of non-Roma. Non-Roma women employ in education almost twice as many years as Roma women (10.7 and 5.66 years respectively). Likewise, Roma men use in education 61% of the time the non-Roma men do (the share for Romani women is 53%). The data demonstrates that Roma men suffer ethnic gap while Roma women suffer both ethnic as well as gender gaps when it comes to the time spent in an educational system (Cukrowska & Kóczé, 2013, p. 14)

The situation in East Europe is is exemplified in the following terms:

Romani women are the most vulnerable ones, and hardly anyone cares about our protection and education. In Yugoslavia, patriarchy has built up a hierarchy of power, based on age and gender, in which Romani women and girls have very little control, if any, over their sexual or married life, the number of children they have and the time between births. The consequences are short lives and a vulnerable physical and mental state (Ilić, 2000, s/p)

It would seem defendable, as Merhaut advices, to critically scrutinize inferior position of a woman in the Roma community regarding gender roles and power mechanisms. "Related ethnographic descriptions can be used to understand better how the Roma community works, but they must not be uncritically embedded in the summary of the culture that is needed in the name of Romani pride and the suppression of ethnocentrism" (Merhaut, 2019, p. 32).

Roma women's movements frame their plans of action by identifying injustices that Roma women experience and by offering explanations on the causes behind and

solutions to those wrongs and discriminations. Various injustices and discriminations that Roma women endure are also shared by non-Roma women and Roma men. Feminists explore that patriarchy is a common experience of many or all women in variable degrees in all cultures (Kóczé et. al., 2018). This may open the door to important associations, as Corradi explains, "(t)he in-progress alliances between Gypsy women, feminists, and LGBT-Queer activists happen in such a way that these become transformative opportunities for all social actors involved. Through common political praxes—sit-ins, demonstrations, squats, publications—the act of working together impacts GRT communities, the migrants' milieu, and parts of the Gadje world" (Corradi, 2021, p. 159).

4.   POLITICAL STANCES TOWARDS ROMA IN EUROPE

Julie Mertus, when analysing the Balkan wars, clarifies that the politics that take root in antagonistic truths must necessarily be propelled by a culture of victimization and a history of real and imagined domination of one group over another, by the underlying long-term political and social oppression of a disadvantaged ethnic group and by structural poverty, by the manipulation of misunderstandings by the media, and by the absence of civil and political institutions that allow for the orderly expression of political pluralism, respect, tolerance and consequently the divergence of opinions (Mertus, 1999). This very clear description of extreme "otherness" politics may come in handy to understand some of the political positions that the European States have taken towards the ethnic Roma population.

Since 2005-2006, and very intensely since 2008, extremist parties and politicians have sharpened anti-Roma rhetoric, creating a climate in which rights violations are more likely to go unpunished. In Hungary, a paramilitary organization with an openly racist agenda, the *Magyar Garda*, continues to operate despite being banned by the Supreme Court and the anti-Roma *Jobbik* party won four seats in the European Parliament in 2009. In Italy, the government has used anti-Roma rhetoric to harden public opinion towards the Roma and fuel a state of emergency aimed exclusively at expelling Roma from their homes and cramming them into controlled camps (Glenny, 2012). But the Roma question is not Hungarian only, it is even far from being limited to Eastern Europe.

During the summer of 2010, in an unpredictable series of events, the legal position of the Roma population was put at the top of the security policy agenda by the French government. The right-wing party led by Nicolas Sarkozy took a tough stance towards what he called "the Roma illegal immigrants", who had been accused of being a community of criminals occupying camps illegally (About, 2012).

In a television advertisement for the June 2009 elections for the European Parliament, the Czech National Party showed a video with a drawing of a white sheep kicking a black sheep off the Czech flag. After this first image –which had already been used by a Swiss party before- it could be read "(t)he final solution to the gypsy question proposed by the National Party is a blueprint for all European States" followed by a picture of two men with few teeth clutching an axe and the text "stop black racism". The advertisement then shows the text "National Party against integration of inadaptables" (Albert, 2012, p. 139).

All these examples help illustrate Julie Mertus' words quoted above. Without wishing to draw overly dramatic conclusions regarding the actual European political situation, and in view of the succession of supremacist outbursts, which are so numerous that we cannot expound them exhaustively, it could be said that continental constitutional democracy may be requiring certain steps in order to survive in satisfactory conditions. Rather than a new ideology, neo-nationalism is a social phenomenon in the European Union, involving new forms of community making along national or regional lines, established on a reformulation of the expressions for identifications against the background of uncertainties caused by globalization (Picker, 2012)

The image of the Roma as a people with far away origins, who can be deprived of their very citizenship and considered not European has not changed much in the past centuries. They are said to possess an alien culture, live in great poverty or squander money irresponsibly, have no scruples, be extremely emotional, have many children, be uneducated and unable to hold a job, suggesting that feature is an ethnic characteristic of the Roma. This is why often the Roma are presented as an unemployed and severely backward group of the population which relies on social benefits, forgetting to speak about the social stratification of this group or the strategies they have developed to survive the situation of unemployment (Wizner, 2002).

The EU Framework for National Roma Inclusion Strategies identifies as an objective within the Europe 2020 inclusion process to ensure that all Roma children complete at least primary school. On average, 97.5% of children complete primary education across the EU, which serves as a benchmark. EU Agency for Fundamental Rights (FRA) data on Roma education (in Spain, Portugal, France, Bulgaria, Czech Republic, Greece, Italy, Hungary, Slovakia, Poland, Romania) show that in these countries between 20 and 40% of Roma aged 16-24 have not completed primary education. Education has an impact on future life opportunities. Not only is it crucial for finding stable and well-paid employment, but it also has an intrinsic value. It is therefore of concern that girls have been shown to be particularly vulnerable to exclusion from education. The results show that Roma women still lag behind men in all the educational parameters observed: self-perceived literacy, school attendance rate and highest level of education achieved. However, the gap narrows when looking at the younger age groups, indicating that there have been improvements over time, especially in some EU Member States (European Union Agency for Fundamental Rights, 2014). FRA figures show that 80% of Roma respondents aged 16 and over report being able to read and write. This already indicates an important ethnic difference: the proportion of gadje people who identify themselves as literate is 99 %. The gender gap is also pronounced. In general, Roma women report lower levels of literacy (77 %) than Roma men (85 %) (European Union Agency for Fundamental Rights, 2014).

The situation of the Roma in South-Eastern European countries has been documented in some detail by Ivanov et. al. (2006), connecting the data we have seen with the disadvantage of Roma in the labour market. There are usually two explanations for this disadvantage: (a) the lower level of education observable among Roma, which, since employment opportunities and wages increase with educational attainment, imply a restriction of the employment opportunities available to Roma; and (b) the discrimination

faced by Roma in the labour market, where employers are less willing to employ them and pay them lower wages compared to gadje with similar qualifications. In an attempt to identify the relative impact of these two explanations, it can be concluded that both have some validity, but that, in fact, the lower returns to education -that is, the lower benefits received by the more educated Roma in terms of greater chances of finding a job and higher wages- that result from discrimination explain to some extent the lower level of motivation and participation in education of this ethnic group (O'Higgins, 2010).

Although, as mentioned previously, there have been significant improvements in educational attainment, these have not translated into improvements in employment or access to the labour market. The type and quality of employment in Roma communities is very different from that offered to the majority of the population. Analysis shows that Roma employment rates are clearly lower when the Community lives in segregated areas and that most employed people remain below the risk of poverty line, indicating that jobs are often irregular and poorly paid. Roma women often face multiple obstacles to employment: traditional gender roles, low skills and vocational training and few options for childcare, except within the home. Living in segregated areas and facing discrimination makes access to the labour market even more difficult. As a result, the employment situation of Roma women differs from country to country. In the former socialist societies, there is a long tradition, which continues today, of women and men sharing equally in labour participation (European Union Agency for Fundamental Rights, 2014).

The Roma community is one of the most affected by the processes of globalization and, in the post-socialist economies of Eastern Europe, the economic restructuring and industrial decomposition that resulted from integration into a global economy meant a massive loss of employment opportunities for Roma men and women. The expansion of the institutional framework in the post-socialist regimes created jobs primarily for those who had gained access to higher levels of education (Asztalos Morell, 2016). In this way, the levels of income from economic activity, which in the countries of the East are among the lowest in the European Union, will be even lower for Roma. Roma women will be excluded from certain professions and jobs, and additionally they will have restricted access to an undetermined number of health measures and care compared to Romany men and non-Romany women. When they are victims of gender-based violence or sexual violence, Romany women will also have difficulties in accessing protection and institutional and police support (Janević, Sripad, Bradley and Dimitrievska, 2011).

The reluctance to report a crime to the police, as explained by the Agency for Fundamental Rights in its hate crime reports, means that such crimes will not be investigated nor prosecuted, reinforcing the sense of impunity of the perpetrators, while victims do not benefit from the legal protection and psychosocial support to which they are entitled under the EU Victims' Rights Directive. While some victims of hate incidents may find other ways of coping, such as assistance from family and friends, people who might have chosen to seek legal redress if they had access to information about their rights and support mechanisms are unable to do so if they do not report such crimes. The unwillingness of victims to report crimes to the police and criminal justice institutions is nothing less than a measure of their institutional effectiveness (European Union Agency for Fundamental Rights, 2019).

The rights of minorities and non-discrimination of women are currently at the centre of many contemporary human rights debates. There is an extensive political and even legislative development of numerous international standards coming from the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and the European Union, aimed at nothing less than a better and broader inclusion of minorities and greater equality for women in all aspects of life. The Roma is considered the most marginalized and discriminated minority in the social, economic and also legal sphere. As a result of this situation there seems to be a reactive response of struggle and demand for the recognition and guarantee of the rights of the Roma worldwide, which extends to many institutional and civil society levels. But as far as the doctrine of gender equality applied to the Roma collective is concerned, there is little progress and even less commitment. Wherever programs and actions are implemented that seek recognition of the rights of the Roma minority, the rights of Roma women receive more limited attention. Roma women accurately represent the multiple discrimination suffered by many minority women: discrimination because they are women, because they are Roma and, very often, because they are poor. Moreover, Romani women not only face discrimination by the social majorities but also experience, as explained above, internal, gender-based discrimination in their own communities (Ravnbøl, 2010).

5.   Final remarks

It can be concluded that, although the Roma are marginalized actors in different armed conflicts, they are certainly not peripheral victims of these conflicts. However, as wars are not fought in their name or for their benefit, and the armed conflicts in the Balkans are a paradigmatic recent example, in most cases they are not recognized as victims. In the case of women, silence, forced by the stigma of sexual violence, means absolute absence from the international legal scene. The fact that they are not recognized as victims and that attacks against the Roma population are justified as collateral damage perpetuates not only their marginalized position, but also the anti-Gypsyism of peacetime social structures.

Roma women represent a complex issue in the social and legal world; they are a disadvantaged group within a minority group. It is important to analyse how Roma women enter into contemporary approaches to minority rights and gender equality, or how they fail to be present in such approaches. The responsibility can be placed, at least in part, on the international community, states with significant Roma minorities, the global Roma movement and the feminist movement for not specifically addressing the problems of Roma women. This multi-actor critique raises questions as to whether the traditional separation in the international human rights field between gender and minority issues has in practice become a gap capable of causing the isolation of such relevant groups as women belonging to certain minorities from the application of human rights and transitional justice. On this basis, it can be argued that women belonging to ethnic or national minority groups, and particularly Roma women, face a double disadvantage, not only in social life, but also in the realm of international law and policy.

Therefore, and using similar words to those expressed by the European Commission (2012), a better integration of Romani women is a moral and economic requirement that must also require a change in the mentalities of both the majority collectives and the

members of the Roma communities. We would add, perhaps also a change in the approach of feminism in general.

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