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Humans Out of Sight:

The Stateless Roma In Europe

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Abstract

While half a million Roma died in the Holocaust, they remain the one people in the European Union whom it is largely acceptable to discriminate. Notwithstanding the European Union notable efforts, they remain at the bottom of the heap denied social and political citizenship while suffering vertical and horizontal discrimination across Europe. The question that arises thus is how to bridge such gap between the laws promoting Roma's right and the Roma's doomed reality? Precisely, what are the forces that can bridge the cracks between legality and reality and why can these forces specifically bridge them? In answering these questions, the paper argues that the European Union as well as civil society enjoys sources of power enough to influence the society of sovereign states and most importantly deliver real citizenship – political and social – to Roma. In developing this line of argument, the paper adopts a twofold approach. With respect to the EU, it demonstrates how the two traditional functions of the EU inflect great influence over states. Finally turning to civil society, it identifies three of its distinct missions that are well known for their success in pressuring states. Taken together, the paper cogitates that enacting the EU functions and the civil society missions has the capacity of bringing freedom and rights closer to the many stateless Roma.

Keywords: Roma, statelessness, minorities' rights, civil society, European Union.

Introduction:

> "To be stripped of citizenship is to be stripped of worldliness; it is like returning to a wilderness as cavemen or savages ...they could live and die without leaving any trace." Hannah Arendt '*The Origins of Totalitarianism*'

Once a stateless herself, Arendt captures the perilous plight of the stateless person who has no legitimate legal or political status. Her eighteen years experience as stateless Jew led her to reflect critically upon both the *rightlessness* condition experienced by stateless persons and the inherent contradiction between human rights and state sovereignty. (Ardent 1958, 294-298) Sadly, the political realities of statelessness experienced by Arendt and millions of other people in the wake of First World War have not disappeared. Despite the development of a vital international legal framework for responding to statelessness as well as the denationalizing of fundamental human rights, to date there are high incidence of statelessness and a continuingly poor treatment of stateless persons. This desolate reality of statelessness reveals the hollowness of international human rights law that is dependent on the nation state for enforcement and implementation.

The Roma are Europe's stateless people, at least eight million of them scattered and mostly reviled throughout Central and Eastern Europe. (Berkeley 2009, 3-4) The paper refers to stateless Roma to describe both *dejure* and *defacto* stateless Roma who suffers from none or inadequate citizenship rights. Citizenship rights are understood in the paper as both the political and social rights and not merely the legal bond to a state. The history of Roma in Europe is a story of relentless statelessness; in fact few groups in European history suffered more from inadequate citizenship rights and protection than the Roma. While half a million Roma died in the Holocaust, they remain the one people in the European Union whom it is largely acceptable to discriminate. Notwithstanding the European Union notable legal steps in protecting stateless Roma and reducing their statelessness, they remain at the "bottom of the heap" (The Economist 2008, 35) suffering vertical and horizontal discrimination in practically every sphere of activity across Europe.

The Roma question has been around for decades; however it gained prominence only after the European Union enlargement. Their statelessness and rightlessness raise important questions to issues of European migration, citizenship and integration. Moreover their situation is a stain on the conscience of European societies as well a strain on the European relations. Vaclav Havel famously stated that the Roma became a "litmus test for civil society" in Europe. (Havel 1993) Consequently the treatment of Roma raises serious concerns regarding protecting ethnic minorities and cultural rights within the growing European Union. Equally important, the presence of large groups of Roma fleeing across European borders could revive tension especially between the weak economies of the Eastern and Central bloc.

While several international and European legal instruments offer means of protecting the Roma who are currently stateless or at risk of becoming stateless, the states persistent failure to ratify and comply with the conventions on statelessness and the deliberate national discrimination against Roma expose major holes in statelessness protection regime. In light of the foregoing, it comes as no great surprise that statelessness did command the attention of legal and academic scholars who provided important recommendations and valuable insights to preventing statelessness and protecting stateless people generally and the Roma specifically (Goldston 2006; Perks and De Chickera1 2009; Weissbrodt 2008; Waas 2009). Sadly though, these efforts are ignored by the states thus they remain greatly academic and are not translated into protective instruments. Consequently instead of repeating the well documented weaknesses inherent in the existing international legal framework, the paper proposes a new approach. This new approach is agent centered, it primarily focuses on identifying alternative actors who can influence the sovereign state and or extend protection and rights to stateless Roma. Furthermore it acknowledges the deep anti Roma prejudice present in Europe that requires both strong laws backed with public consensus.

The aim of the paper is not to synthesis the European Union initiatives related to Roma's right; such information is easily accessible through the European Union different bodies and the Roma's human right agencies. Rather the aim of the paper is to theorize an approach that can enact such initiatives and bring them to life. The gap between legality and reality in stateless Roma protection is hard to deny and has filled the pages of many studies. (see Goldston 2006; Perks and De Chickera1 2009; Weissbrodt 2008; Waas 2009) The question that arises is what can we do about it? In other words how such gap can be bridged? What are the forces that can bridge the cracks between legality and reality and why can these forces specifically bridge them? In answering these questions, the paper argues that the European Union as well as civil society enjoys sources of power enough to influence the society of sovereign states and most importantly deliver real citizenship – political and social – to Roma. In developing this

line of argument, the paper adopts a twofold approach. With respect to the EU, it demonstrates how the two traditional functions of the EU inflect great influence over states. Finally turning to civil society, it identifies three of its distinct missions that are well known for their success in pressuring states. Taken together, the paper cogitates that enacting the EU functions and the civil society missions has the capacity of bringing freedom and rights closer to the many stateless Roma.

The European Union:

Hannah Arendt wrote seventy years ago a very distinct and programmatic letter to her friend Erich Cohn Bendit in which she anticipated the failure of all minority policies as a result of the continued existence of state sovereignty. (Heuer 2007, 1159) She concluded her letter proposing a European political answer in the form of a new European federal system: "It doesn't seem Utopian to me to hope for the possibility of a union of nations instead of a European parliament, where the Jewish people would also be recognized and represented as a European nation" (Heuer 2007, 1160). In today Europe, Ardent description and analysis remains greatly significant. Similar to Arendt's time, the state is still incapable of solving the fate of stateless people in a humane manner. Mean while Arendt's European federation is arguably becoming a reality in the form of a European Union aware, like her, of the importance of the right to have rights. However the usefulness of the EU in the field of stateless prevention and protection is underestimated and thus remain unutilized.

To this end, a theoretical and empirical analysis of the European Union is presented to demonstrate that the seeds for Roma emancipation through stronger legislation and wider enforcement are found in the traditional functions of the EU. In other words, the sources of the EU power and influence over states are byproduct of the Union's traditional function. Drawing upon the rationalist institutionalist (Farrell and Héritier 2005, 273-290) and the constructivist - also known as "discursive institutionalist" (Schmidt 2008) - theories, the EU appears to carry out two main functions; one is mainly instrumental and efficiency-enhancing following the rationalist approach. The other is greatly constitutive and legitimacy-providing following the constructivist approach.

The Constructivist Constitutive and Legitimacy-Providing Functions

States in Europe have ceased to be wholly sovereign and voluntarily mingle merge and mix with their neighbors while acquiring new techniques to solve conflict amongst them. These changes in the dominant conception of sovereignty are normal, because the international system where it exists is as well dynamic, albeit in Europe they demonstrate a faster progressive path. Political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards this larger centre, whose institutions possess or demand jurisdiction over the pre existing national states.(Mattli 1999, 205) However that does not imply the total absence of state authority but rather describe the process of sharing sovereignty between the state and the EU, where the state only surrender part of its policymaking authority over a transnational issue to the supranational European body. (See Pinder 1996; Wallace 1996; Goldestien 2001) The willingness to submit to this kind of authority is because the Union authority is invested in legalities, procedures, and rules and thus rendered impersonal. This soften tone of sovereignty which accommodates sharing between different actors suggests that the EU might remain something well short of a federal state, yet it becomes something far more than an international organization of independent sovereigns. (See Pinder 1996; Wallace 1996; Goldestien 2001)

The history of early European integration in itself high lights the success of the EU in taking up the role of articulating and diffusing new ideas, which implied a voluntarily shift to shared sovereignty between the EU and the member states over a number of issues. The European Court of Justice (ECJ) is a very fruitful ground to study this kind of institutional influence. Anne-Marie Slaughter Burley and Walter Mattli(1998) show how the European Court of Justice (ECJ) has had an unexpectedly large impact on the politics of European integration, transforming political into legal issues with the aid of transnational networks of lawyers and judges. In fact the ECJ has gone far to convert the Treaties of Rome into a constitution for the EU, with the result that EU law now reaches deeply into the domestic law of member states (O. Keohane and Lisa L. Martin 1995, 48).

The Rationalist Instrumental and Efficiency –Enhancing Functions:

Relatedly, the shift to this supranational level has led to social rights taking precedence over political rights among European member states. This shift arguably takes place when short-run domestic costs of accepting an adverse decision are outweighed by broader social benefits the country derives from free trade. (Barnett and Finnemore 1999; Farrell and Héritier 2005; Hass 1996) Although it can be claimed that this rational choice/ game theory rational is relevant to all International organizations, i.e.; it is not a particular source of power to the EU. However the fact that the EU is internally borderless facilitates this line of thinking and encourages greater concessions. The absence of borders and the inevitable resulting spillover effects reduces cheating concerns and legitimate regional attention to and intervention into what might be called internal problems. For instance an economic depression in one member state will negatively affect the EU economy as a whole. Similarly ethnic discrimination in one state might create an influx of refugees in the region; hence the European Union's attention to the issue won't likely steer controversy.

To further the argument creditability, it is worth noting the empirical success of the EU in the tobacco control. Until 1986, tobacco control was under the exclusive jurisdiction of EU Member States. However, over the past 20 years there has been an increased European Union decision-making capacity over the issue. Today Tobacco control laws are part of the *acquis communautaire*; a body of existing EU law and a number of EU treaties accord the formal responsibility of the EU in tobacco control. (Mamudu and Studlar 2009, 73-97) This new trend was exemplified during the 2003 WHO Framework Convention on Tobacco Control (FCTC) negotiations, where the EU Commission acted on behalf of the Union pursuing the interests of the member states, as an equal actor. (Mamudu and Studlar 2009, 73-97) In fact the FCTC in itself positively reinforces our argument. The FCTC represents the first time whereby the WHO has used its constitutional powers to lead the development of a formal treaty (Mamudu and Studlar 2009, 74), which affirmed the WHO as an agent enjoying relative sovereignty and not merely a structure facilitating the states interest.

In the light of the foregoing analysis the realization and restatement of the prospects of EU functions and influence over the states is important in the field of Roma statelessness prevention and Roma protection for a couple of reasons. It encourages a greater and a confident involvement by the EU, the frustration over the inability to help stateless persons is not limited to the stateless people only but it is also felt by sympathetic politicians, Brussels' bureaucrats and states who despite being part of the unjust structure, are caught up in it and unable to help, thus in turn indirectly contributing to the Roma plights. We can then expect more progressive EU role utilizing "hard laws" and "soft laws" as well as continuing the Union's successful human right accession rules condition. On the other hand, the European Union involvement is legal not presented as interventionist or crossing the lines of norms but rather part of the contract between the EU and the member states thus steering less resistance.

The *Avant- Guarde* of Civil Society:

It is becoming clear that without public support, strong laws do not necessarily resolve many of the deep seated problems and discrimination that the Roma face in Europe. Despite the repeated confirmation of the principle of equal treatment for all by international and regional human rights courts and mechanisms, there remains a large gap between the rights that international human rights law guarantees to stateless and the realities stateless Roma face in Europe. Civil society owing to its sources of power can step in and bridge this gap by influencing states' policy and spreading tolerance among citizens. Ball and Knight's definition of civil society restate this understanding of civil society as an influential societal agent capable of bringing about change to formal policies and social practices:

> Civil society creates a capacity for leadership within communities that, if harnessed and nurtured, can transform local democracy and reshape the balance of power in favor of greater social inclusion, justice, dignity, equality of opportunity, and respect. (in Hassan 2001,423)

Such conceptualization of civil society also draws our attention to its capacity to forge alliances among a broad range of potential constituencies. In the case of the Roma a strong civil society has the capacity to unify diverse different actors sharing sympathy for Roma, or may be only one aspect of the Roma issue. In other words, the seeked alliance does not only take place between organizations working on the Roma solely but the alliance reach out to organizations working on the general issues of human right. By so doing the number of potential partners is expanded and various expertises are provided. Among these potential partners are NGOs, virtual groups, Roma leaders, media, a school teacher or a stay at home British mom who refuses to vote for racist leaders. Collectively they are the avant-garde deconstructing the internal borders constructed by bricks of racism and wires of exclusion.

Depending on their physical and social location, they enjoy different sources of power and exert varied degree of direct or indirect influence on the state. Broadly speaking, the civil society enjoy three sources of power namely; name and shame, accountability and diffusion of norms.

The Power of Name and Shame:

Name and shame is the most widely used technique by civil society; they mobilize shame through exposing the atrocities of the state globally and locally. In fact it is becoming more powerful with the increase in incidents of humanitarian intervention and the spread of new norms such as the responsibility to protect (Knight 2003; Knight and Propovski 2008) and conditional sovereignty. Furthermore unlike accountability- which will be discussed next- it is effective in embarrassing the different forms of governments, after all a dictatorship will be embarrassed over tortured videos at least on the international arena. Thanks to the internet, the plight of Roma is widely spread and exposed which gave rise to 'virtual Roma communities' whose member might reside in different physical areas but cooperate and coordinate their efforts. The loudest of theses virtual spaces is the Kosovar Roma Oral Histories Project, The European Roma Rights Center and Open society (Atanasoski 2009, 210). These are public grass-roots initiative aimed to provide the international Roma community and friendly non-Roma organizations and individuals with useful information on Roma issues in variety of languages via the Internet. They are actively helping to facilitate the cooperation and exchange of information within Roma organizations and individuals, between Roma and non-Roma organizations and individuals and also between Roma NGOs and official institutions. They deal with a variety of Roma-related political, cultural, economic and social issues on local and international levels. It aims to support the improvement of the Romani situation in Europe and other parts of the world. Most importantly, they deploy internet technologies to give voice to the Roma as well as expose and condemn abuses to Roma in European nations with the aim of influencing and developing policy and rights standards in an enlarged Europe.

Interestingly, this development in turn inspired some scholars such as Neda Atanasoski(2009) to envision the internet as a transnational and democratic public sphere that have the potential of pressing for change through exposing human rights violations and thus embarrassing democracies. The same line of thinking was expressed earlier by the Centre for Democracy which asserted the vital connection between the internet and human rights. Was it a self fulfilled prophecy that already proved right with the facebook organized revolutions in the Middle East? May be, but for the purpose of our argument, the internet is vital in uniting the efforts of pro Roma organizations and individuals. More over it is an excellent mean for exposing incidents of human rights violation that thus shame the state authorities and mobilize greater support for the Roma cause.

The Power of Accountability:

Broadly speaking accountability is the most powerful source to influx influence over state actions in democratic society. After all, the president in a democratic state is in essence the highest public servant appointed by the citizen. His loyalty is first and foremost for the citizens, and the citizens can held him accountable for racism or non compliance with the rule of law. Accountability can be understood as the political cost that citizens impose on state if the state fails in respecting the law or acted against the public interest. However in the Roma case, accountability at the local level loses a lot of its practical and theoretical strength. There is already wide spread racism and prejudice against the Roma among non Roma citizens, in fact a lot of political leaders use the anti Roma card precisely to win voters. Yet there is an alternative venue for holding state officially accountable through the European Court of Human Rights. The court rules on individual or state applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998 it has sat as a full-time court and individuals can apply to it directly. (Anagnostou and Psychogiopoulou 2010) In short the court provides an alternative legal floor where by the Roma plight can be investigated and accordingly fairness might be brought to the shores of reality.

The Power of Norm Diffusion:

Finally norm diffusion is an important albeit complex source of power through which civil society can exert an influence over the state. It is complex process as these norms are usually clashing with the existing one and sometimes it takes long years to diffuse them. The civil society 1980's and 1990's anti Tobaco campain in Europe is a famous example of their success in influencing states through norm diffusion. The Nongovernmental Coalition against Tobacco and the International Network of Women against Tobacco actively diffused knowledge about

tobacco use and tobacco control through conferences, workshops, country visits, publications, and online sources such as GLOBALink; which is an important global online source for tobacco control experts and advocates. (Atanasoski 2005, 78-80)

In fact in the case of stateless Roma, norm diffusion is the most effective remedy for nationalistic and racist prejudice. It also can pave the way for the Roma attainment of social not only political citizenship. The importance of the European governments' commitment to enforcing anti-discrimination laws and policies which facilitate access of Roma people to mainstream education, employment and housing is indispensable. However as mentioned earlier, a full and effective implementation of these policies requires the civil society to diffuse norms of tolerance among the population. For instance introducing special classes on anti-racism and tolerance in schools and universities will enrich fairness and tolerant beliefs in societies. Similarly NGOs can provide state officials as well as public service workers with anti-discrimination, anti-racism and cross-cultural communication training to raise the awareness of the unacceptability of prejudice and discrimination in implementing legislations. The Media plays an important rule too, for instance by showing 'the other side' of the Roma as individual human beings and presenting the true essence of their culture, the public will start to humanize them. At this point it is important to stress on the influence of civil society on the Roma through the diffusing of norms, because of their neutrality they are more credible to the Roma. For instance in building trust between the Roma and non Roma societies, culturally sensitive NGOs play an important role in educating the Roma about the importance of respecting local laws to sustain accomodation and tolerance in the societies.

Overall, the importance of strong legal system in protecting the stateless Roma is unquestionable, however to stop at the point of stressing the importance of legal frameworks alone is dubious. The sharp contrast between reality and legality reveals that the protection of Roma rights is not an abstract concept. It is given life by legislative enactments, it is given permanence and protection by the Constitutions and it is given meaning by the national will of a generous and tolerant societies. Thus the accompanying efforts of the *avant- garde* in the civil society are important as it influences both the state and the public.

Conclusion

Statelessness is a corrosive, soul-destroying condition that colors almost every aspect of the stateless person's life. A stateless person once described its harsh consequence as:

> Being said 'No' to by the country where I live; being said 'No' to by the country where I was born; being said 'No' to by the country where my parents are from; hearing 'you do not belong to us' continuously! I feel I am nobody and don't even know why I'm living. Being stateless, you are always surrounded by a sense of worthlessness" (Batchelor and Leclerc 2007, 15).

Despite residing in one of the pillars of democracy, stateless Roma in Europe suffer an ongoing tragedy where a huge gap between rights and reality exists. On the national level they are treated as "non-persons" (Leclerc and Colville 2007, 7) denied even the most basic rights; and, on the international level they are treated as "legal ghosts" (Leclerc and Colville 2007, 6) overlooked and little protected against state's violations and public prejudice.

As the paper had sought to demonstrate the European Union as well as civil society have the capacity to ease this harsh realities suffered by the stateless Roma. They thus should assume a greater role and influence the states to implement the international legal frame work addressing statelessness. The European Union hold much promised hope to the question of Roma statelessness as the process of European integration softened the language of sovereignty and introduced common interests among member states, thus enabling the EU to articulate and enforce new norms. Relatedly, the civil society through naming and shaming state racism and discrimination against Roma and holding them accountable for it while diffusing the norms of tolerance and inclusion among the public can greatly alter states racist policies. This vertical and horizontal enforcement of the stateless protection and prevention norms expand both citizenship access and citizenship effectiveness. It will bring millions of people closer to freedom while reducing refugee flows, and this will truly give the region its best hope for sustained peace.

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