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The legal limbo of (un)recognition

A törvényes el(nem)ismerés bizonytalansága

Abstract

This article examines the intersection of the formation of Roma identity and Roma nation-building through sociological analysis of law, racism and political mobilization. The legal limbo of recognition that the Roma minority is facing across the contemporary nation-states is discussed as an obstacle for a pan-rom identity movement. Racism as an obstacle to access to social goods is analyzed by rethinking the theoretical framework proposed by Mikesell and Murphy (1991). Drawing on their work, I argue that contextualizing the obstacles to access consequently allows one to see how they influence further Roma civil empowerment. Finally, the importance of access to legal labor conditions for political mobilization is unveiled. Concerning the current political tendencies in Europe, it is necessary to rethink basic social issues related to minorities (outlined in this article), before tackling future migration policy goals such as data collection improvement, international leadership, xenophobia prevention, transnational rights and decent labor demands.

Absztrakt

Ez a cikk a törvény, rasszizmus és a politikai mozgósítás szociológiai elemzésen keresztül vizsgálja a roma identitás kialakulását és a roma nemzetépítés kérdését. A törvényes elismerés bizonytalansága, amivel a roma kisebbség a mai nemzetállamokban szembesül, akadályként jelenik meg a pán-roma identitás kialakítását célul kitűző mozgalmakban. A cikk a Mikesell és Murphy (1991) által javasolt elméleti keret újj gondolásával elemzi a rasszizmust, mint a társadalmi javakhoz való hozzáférés akadályát. Munkájukra támaszkodva azt állítom, hogy a hozzáférési akadályok kontextusba helyezése következőképpen lehetővé teszi annak megértését, hogy azok miként befolyásolják a romák polgári szerepvállalásának lehetőségét. Végezetül bemutatásra kerül a politikai mozgósítás jogi eszközeihez való hozzáférés jelentősége. A jelenlegi európai politikai

tendenciákat illetően újra kell gondolni a kisebbségekkel kapcsolatos alapvető szociális kérdéseket (a jelen cikkben körvonalazva), mielőtt a jövőbeni migrációs politika irányelvek célkitűzései – mint például az adatgyűjtés javítása, a nemzetközi vezetés, az idegengyűlölet megelőzése, a transznacionális jogok és az elfogadható munkaerő kereslet – elérhetők lesznek.

Introduction

Progressive enthusiasts may have a romantic view of the Roma as a people who have been resisting the cultural hegemony of the West for centuries. If one steps out of the Eurocentric bubble, there are visible segregation problems that came out of the not so romantic clashes between the Roma culture and the Western world. Given the omnipresent hostility towards this population, it is a real question how they persisted in their lifestyle and social order.

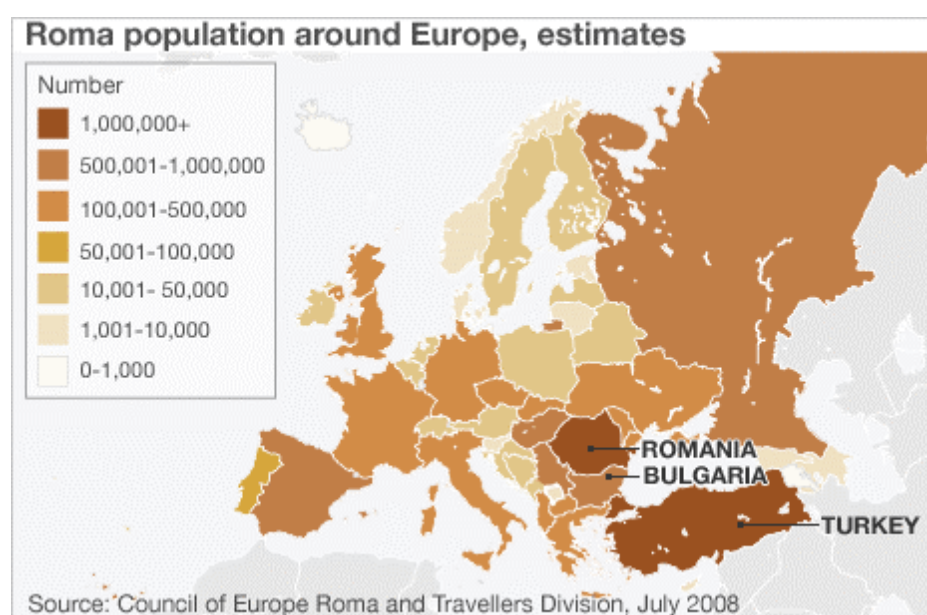
This article will be guided by the questions such as - what are the essential traits and future steps of identity-formation of the Roma now. The Mikesell and Murphy (1991) framework¹ will be applied to the current situation in nation-building without staying too theoretical. Minority aspirations will be discussed through the documents of European institutions and relevant social scientists.

Along with having issues in assuming Roma identity come problems in motivating the population to engage with local politics. The number of non-Roma activists that are mobilized for their issue is far too large compared to the actual Roma activists. The lack of their presence in the political life is due to many factors, out of which most are linked to problems of access to social goods (accessible and good quality healthcare and drinking water, for example). Although there is a pan-European Romani elite that is making ethnic discrimination issues more visible, it is more than necessary to further invest in providing the population with the means to engage in public life. To put in context the lack of their political uprising of our time, one must understand how cultural values that are specific to the Roma community interact with the dominant society. The legal status of the Roma will be first mentioned here, as their recognition as a national or ethnic minority varies in Europe. Moreover, there is a legal limbo regarding their official recognition that is in the process of becoming uniform thanks to the Framework Convention for the Protection of National Minorities (FCNM). Secondly, racism issues will be touched upon as an obstacle to access to social goods. With the help of documents issued by the European Commission and a European Parliament study, a theoretical framework of discrimination problems will be shown. A field research done by Janević et al. (2011) will help in comprehending

¹ "We propose a diagnostic formula that focuses on minority-group demands ranging from recognition, access, and participation to separation, autonomy, and independence. We then consider the significance of geographical context and group-state interaction for minority goals." (Mikesell et Murphy 1991)

more specific, down to earth problems that are unfortunately far from the application of international conventions against minority discrimination. These authors' experience provides examples of struggle that Roma women are faced with when trying to access health services. Finally, an effort to comprehend the importance of political mobilization in expanding a pan-Roma consciousness will be touched upon. To be able to rely on relevant demographic data, one must bear in mind that these can be manipulated by governments as they are crucial for nation-building processes.

The legal status of Roma people in Europe



It is widely known that to understand the Roma one has to take into account the cultural context of the society's majority (Liégeois 2008) population. The geopolitical and historical events that shaped majority societies affected the Roma population in many ways. It bears stressing that personal attitudes, public opinion, social tendencies, and policies are constantly changing, and by that automatically affecting this minority group. Before getting into details about the legal status of Roma in different European states, it seems essential to evoke the question of numbers. The reason behind the thinking of numbers (see map Council of Europe 2008) as important in the development of Roma

nation and identity-building is partially explained in Sara Memo's article² (Agarin et al. 2014).

Declaring oneself as Roma at the census and openly assuming personal ethnic/national identity contributes to the advancement of group identity. As in some countries questioning people on their ethnic identity is not legal, population estimations become the only global idea of numbers that one can analyze. Moreover, (...) *the Roma have consistently been portrayed as passive objects in a chess game (...)* (Plaut 2012) which implies that this population needs to become more transparent on both local and public levels to express that they are *fully capable of speaking or acting for themselves*. Plaut shows in her article how efforts to shape the public opinion are essential in positive identity-building and taking control over ethnic representation stereotypes. She uses the outrageous expulsion events that President Sarkozy started in 2007 to give an example of how media representation can be reshaped to suit a certain positive purpose³. The traditional role of the Roma as victims was constantly questioned by Roma news platforms, fora, and officials. While reviewing the English language media since 2001, Plaut notes that any Roma character is practically obliged by the media representation given so far to fit in existing frames - either as criminals or victims. These are only some of the reasons why various strategies for developing a positive identity among the Roma should be in focus. Education, even though often very problematic or segregated, has the potential of playing a decisive role in integrating positive identity attitude into the young people's social representations. As national identity building is an entirely artificial process, good organization and a strong agenda are needed on a pan-Romani level.

Positive identity reputation helps gain more visibility on several important levels. Moreover, it puts pressure on the representatives, as much on the Roma political parties as on the majority government officials. A bigger critical mass could be, from the authorities' perspective, both an advantage and a democratic power threat. As mentioned

² For more information please see Memo, Sara. "Roma as a Pan-European Minority? Opportunities for Political and Legal Recognition." In *When Stereotype Meets Prejudice: Antiziganism in European Societies*. Stuttgart: ibidem, 2014. <http://nbn-resolving.de/urn:nbn:de:101:1-2015062910281>.

³ For more information on the subject see, for example – Plaut, Shayna. "Expelling the Victim by Demanding Voice: The Counterframing of Transnational Romani Activism." *Alternatives: Global, Local, Political* 37, no. 1 (February 2012): 52–65. URL: <https://doi.org/10.1177/0304375412439676>.

in the introduction, the legal status of this minority group varies based on demographic data, but also on other political factors. Hence, the numerical proportion of the Roma population partially clarifies the differences between their constitutional statuses in Europe. Their legal neglect, uncertainty, the so-called 'legal-limbo' exists because their status as a national minority group is not granted everywhere. This is a big issue since it influences their coexistence with other groups and their group's image. Apart from these everyday factors, as Memo states, *it predetermines political and social recognition* (Agarin et al. 2014).

Memo also claims that in European domestic jurisdiction there are four constitutional approaches to regulate the legal status of the Roma minority. Nuances apply to this division:

1. repressive national systems
2. liberal agnostic systems indifferent to differences
3. promotional systems
4. multinational equal systems

Back in 1998 the member states started to change the legal status of the Roma thanks to the effect of FCNM. So far, out of the 47 member states, 39 have ratified the convention and recognized the Roma as a minority group (Council of Europe 1995). In 8 states the concept *national minority* is not legally acknowledged, and 4 out of those 8 did not specify on the Roma minority status for different reasons. For example, Denmark did not do so considering full integration, while the Netherlands and Portugal didn't do it because of the lack of clear territorial features (Agarin et al. 2014). Among the states that signed or ratified the convention, there are certainly significant differences in the way they apply it and the way they define the status of Roma. Inequalities are also due to various conceptions of ethos and demos that shaped the national identity of most member countries. However, defining the legal status is one of the important steps to recognition, the first minority key aspiration defined by Mikesell and Murphy (1991). In practical terms, legal unrecognition is a direct obstacle to a series of investments into a more equal access to education that would in turn better the social mobility of Roma people, and consequently their living standard. Some crucial investments come from government

subsidies that try to assure a wide range of institutional support for national minority communities.

Racism as an obstacle to access to social goods

Rethinking Mikesell and Murphy, one thinks of contextualizing the obstacles to *access* and see how they influence further Roma civil empowerment. Probably the most striking of all obstacles is racism, the basis of a series of problematic consequences that are discussed by the following statement of the European Commission:

“In all countries where statistics are available or surveys have been carried out, they show that Roma have substantially lower levels of education, much higher rates of unemployment, significantly lower levels of income and poorer health than the rest of the population.” (Europäische Union 2014)

Even though racism is a recurring issue of the old continent, today's ways of expressing it are more complex than they used to be in the previous centuries. Institutionalized racism directly blocks access to social goods to any stigmatized minority, and so the Roma also suffer serious physical, emotional and political consequences. Attempting to tackle these problems, the world has developed several defense mechanisms for various types of discrimination. Inclusion is, according to the European Commission (2017), one of the ways of facilitating access to social goods for the Roma.

According to a European Parliament study, a multidimensional approach is necessary to seriously address the long-term marginality that keeps this population far from social goods (Europäische Union 2014). To understand both exogenous and endogenous variables, a field research in Serbia and Macedonia will be reviewed. Janević and her colleagues nicely illustrate the problems in accessing health systems in the Balkans. Poorly informed about facilities, rights, and obligations, Roma women in these countries have difficulties in preserving their mental and physical health as well as dignity. The majority is often poorly informed about the minority culture and therefore judges the culture-specific actions without knowing what they stand for. For example, when a Roma woman shows up at the hospital accompanied by half of her family, the staff will be judgmental, and in some cases even restrict the husband's physical access to places where he is free to enter (Janevic et al. 2011). It is important to note that even if we imagine that the same rules would apply to any patient, the subjective experience of a

Roma woman is emotionally far more aggressive than a person socialized in a more individualistic cultural environment. Therefore, it is the goal of social scientists to warn the society about potential racialized health treatment that must be more seriously addressed in European states. Nevertheless, mistreatment of the Roma by the health workers shows the complexity of *multiple disadvantaged people's* issues, as some European governments like to call them. Janević shows that health staff is aware of institutionalized racism as a shameful behavior, as they are trying to prove to the researchers that there is no such thing. Doctors' view is very different from the patient's, and the latter constantly feels the general hostility while asking for basic social rights. Moreover, identity problems step in at this point of interaction, as Janević quotes several interviewees who were blaming themselves for being culturally different. Ashamed of their own ethnic identity (Janevic et al. 2011 - there are shocking quotes in the article where women are justifying the verbal aggressors), Roma women try to excuse the doctor's inappropriate actions and attitudes by assuming the guilt of not being assimilated enough. These negative identity auto-representations could be quite easily avoided by facilitating access to decent housing and financial services. It bears stressing that if the Roma don't enjoy basic human rights and social benefits it is hard to imagine any type of social and political empowerment. Claiming rights to equal access would bring confidence and dignity to the people in question and help develop a positive identity formation. Access to the education system and to the labor market could be crucial in expanding the network of Roma intellectuals and future activists. Nation-building, in the long run, depends to a large extent on the outcome of the efforts for equality in access.

The importance of political mobilization

To facilitate identity-building processes and make them seem more natural to the population concerned, it is utterly urgent to invest in political mobilization of the Roma. Positive associations are needed to ensure the reproduction of existing activism and promote further development. There are countries, such as Romania that guarantee Parliament seats to national minorities, but is this as effective as it sounds? Granting formal influence without going through the regular democratic processes holds its

symbolic importance, but it certainly does not change the generally negative attitude of the Roma towards politics. Access to political participation is one of the key factors for civil emancipation. Therefore, different ways of identity-building emerge and are slowly mobilizing into more global political empowerment and nation-building. In addition to the difficulties of avoiding the legal limbo, state politics have burdened Roma political activists by another obstacle:

'Unlike other minorities in the European countries, the Roma have no kin state and are not politically mobilized. This not only makes them a truly "transnational" minority but also, makes improvement of their status largely dependent on the policies of European Union.'
(Europäische Union 2014)

These transnational characteristics must find their way to be used for a good cause in the time of multiculturalist tendencies within the EU. Since there is no way of relying on a kin state, Roma activists and European policymakers could try relying on the population itself. The latter is very hard to track demographically, and this is where education, communication, and information could be key strategies. People need to be taught how to claim the rights and benefits they are entitled to, for their sake on an individual level, but also on a macro-political level. Declaring oneself as Roma, can, on a larger scale, give numeric arguments to Roma lobbyists. Populist governments that are, officially, anti-minority oriented represent a big threat to the implementation of projects under the roof of the EU and other international NGOs. Numbers extracted from budgets and demographic data are often decontextualized and manipulated for the sake of a negative outcome. It is a discouraging fact that even today in one of the most developed parts of the world people do not know how to read numbers and critical thinking is an alarming issue among the voters in many cultures. It is, therefore, easy to feed ethnic hatred and anti-Roma attitudes through the mass media.

A pan-Roma consciousness is one of the biggest tasks of political activists who engage in nation-building. Deepening the sense of belonging and trust in a community wider than one's neighborhood is an abstract and, if one may add, not necessarily logical or natural way of thinking for the humankind. It will be interesting to observe the transmission of national myths in the XXI century and see what the population's feedback is. Unfortunately, anti-discrimination laws are not sufficient mechanisms of defense. However, where the law fails, education can help. Imposing social-science classes in

schools could be a good starting point for future change in xenophobia and social exclusion. Uncontrolled eruptions of hate speech and ignorance regarding minority issues can be witnessed today, and one must take civil responsibilities in countries whose governments are not acting accordingly.

Conclusion

Identity is the key notion capable of making every individual relate to it, regardless of their social status. Therefore, not having a clear kin-state could be a problematic thing when developing an international activist agenda for Roma people, but as it was stated before by numerous scholars, nation-building is an utterly artificial process, consequently it should be possible to implement in the wider societies. Reusing Mikesell and Murphy's framework of minority aspirations makes us aware of the long way to go that is before Roma nation-building. Fully applying these aspiration concepts to Roma population would require further research. Some of the notions and ideas that would be important to focus on in the future will be listed in this part, as an opening to new layers and perspectives of the problem is essential in social sciences.

As it has been noted, recognition is the starting legal point that makes room for deeper development of the Roma matter. Naturally, further work on demographic data is extremely important for fruitfully lobbying for equal access to social goods. Also, institutionalized racism must be addressed more forcefully through educational systems unlike only relying on anti-discrimination mechanisms developed in European governments until now. What is more, the aspiration that is central to nation-building certainly is political participation. Aside from building pan-Roma consciousness underlining the importance of confronting internal gender segregation in the process of political empowerment is necessary. Gender issues bring us to contemplate the more severe aspirations described by Mikesell and Murphy (1991) in order to see how they apply to Roma identity and nation-building.

On a legislative note, the separation or exemption from the rules that apply to everyone else could be done on religious or cultural grounds in some countries. Observing the impact of Romanian Roma leaders' attempts to redefine the legal marriage age will be very interesting. This type of dilemma puts feminist points of view in direct conflict with the multiculturalist ones. Imagining the negative consequences on the physical and mental health of young women makes them scapegoats of the Roma and non-Roma communication. It thus a serious decision to be made by political elites through the continent, with much at stake.

Concerning the current political tendencies in Europe, one can only hope for cultural pluralism to (re)become a relevant social solution in the eyes of the officials. Added to that, it is essential for the governments across the world to understand the importance of having experts in migration and minority policy-making. Future migration policy objectives such as data collection improvement, international leadership, xenophobia prevention, transnational rights and labor demands (Goldin, Cameron, et Balarajan 2011) could bring significant change to the society. In the meantime, the bloody outcomes of unprofessional interethnic management and over-protective border controls sadly became parts of our social reality.

Bibliography

1. Agarin, Timofey, Matthew Kott, Katharina Crepaz, Markus End, Julija Sardelic, Huub van Baar, Sara Memo, Ioana Vrabiescu, Timofey Agarin, et Diana Popescu (2014): *When Stereotype Meets Prejudice: Antiziganism in European Societies*. Stuttgart: ibidem. [online] Available at: <http://nbn-resolving.de/urn:nbn:de:101:1-2015062910281>. (Accessed on: March 6, 2018)
2. Council of Europe (2008): « Roma population around Europe, estimates ». Roma and Travellers Division. [online] Available at: <http://a.cs.coe.int/team20/cahrom/documents/Glossary%20Roma%20EN%20version%2018%20May%202012.pdf>; (Accessed on: March 9, 2018)

3. Council of Europe, Conseil d'Europe (1995): Framework Convention For the Protection of National Minorities. [online] Available at: <https://rm.coe.int/16800c10c>; (Accessed on: March 6, 2018)
4. Europäische Union, éd. 2014. Poverty and Employment: The Situation of Roma in 11 EU Member States. Roma Survey - Data in Focus. Luxembourg: Publ. Off. of the Europ. Union
5. European Commission. 2017. « Evaluation of the EU Framework for National Roma Integration Strategies up to 2020 ». Ref. Ares (2017)1716166. [online] Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1716166_en; (Accessed on March 12, 2018)
6. Goldin, Ian, Geoffrey Cameron, et Meera Balarajan (2011): *Exceptional People How Migration Shaped Our World and Will Define Our Future*. Princeton, N.J.: Princeton University Press
7. Janevic, Teresa, Pooja Sripad, Elizabeth Bradley, et Vera Dimitrievska (2011): « "There's No Kind of Respect Here" A Qualitative Study of Racism and Access to Maternal Health Care among Romani Women in the Balkans ». *International Journal for Equity in Health* 10 (1): 53. [online] Available at: <https://doi.org/10.1186/1475-9276-10-53>; (Accessed on: March 10, 2018)
8. Liégeois, Jean-Pierre (2008): *Roma in Europe*. Strasbourg: Council of Europe Publishing
9. Mikesell, Marvin W., et Alexander B. Murphy (1991): « A Framework for Comparative Study of Minority-Group Aspirations ». In: *Annals of the Association of American Geographers* 81 (4): 581-604.
10. Plaut, Shayna (2012): « Expelling the Victim by Demanding Voice: The Counterframing of Transnational Romani Activism ». *Alternatives: Global, Local, Political* 37 (1): 52-65.