The Journal of
Law, Social Justice
& Global Development

Developing into equal citizens? Historical re-creation of Roma as an underdeveloped minority

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Article Information

Issue: 26: 2021: Special Issue*: Beyond Development: Local Visions of Global Poverty*
This article was published on: 5 April 2022
Keywords: Roma, Europe, Slovenia, Croatia, underdevelopment, citizenship rights
Journal ISSN: 1467-0437 **Article DOI:** https://doi.org/10.31273/LGD.2022.2606

Abstract

The extreme poverty many Roma experience in Europe sets a dark shadow over the continent considered to have a very high human development index. The contemporary discourse in the EU describes Roma both as a socio-economically disadvantaged group and an ethnically discriminated minority. A number of studies have argued that there is a link between ethnic discrimination and the extreme poverty many Roma experience as citizens in today's Europe. However, the question remains: What are the rationales that the states use to justify this link? In this paper, I argue that local histories show how this link has been perpetuated by the representation of Roma as an underdeveloped minority; such representation has translated into hierarchy of rights according to which Roma would be awarded less rights their fellow citizens belonging to majority population would possess. This paper aims to show there has been a shift to holding Roma responsible for recreating their own position of discrimination and, with it, poverty, instead of acknowledgement that legislation and policies towards Roma contribute to their predicament. Challenging such a position, I look at how minority rights legislation was formulated in two EU Member States, Slovenia and Croatia (with a common history in Yugoslavia), from Minority Treaties after the First World War to the EU accession processes. While both countries have historically formulated uneven minority rights for Roma, Roma themselves demanded equal citizenship rights at the European Court of Human rights, such as the rights to clean drinking water and the right to education. These rights have been similarly denied based on the perception of Roma as an 'underdeveloped minority.'

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Introduction

While the Member States of the European Union have been ranked as having a high human development index (UNDP 2019), the E.U.'s Fundamental Rights Agency (FRA) reported that the E.U.'s largest minority, Roma "face life like people in the world's poorer countries' (FRA 2018). The predicament of Roma as the most socio-economic disadvantaged and ethnically discriminated minority in Europe has thrown a dark shadow on the rich liberal democratic states. The poverty that most Romani minorities experience is not limited only to Eastern Europe but extends across the European Union (Vermeersch 2012, Ram 2013). Many studies have argued that extreme poverty, described as "[p]oor sanitation, hunger and youth unemployment" (FRA 2018), is linked to the discrimination Roma face as a minority group. The question, however, remains how was this connection formed historically. In this paper, I argue that local histories show that the representation of Roma as a poor social group was connected to the perception of Roma as an 'underdeveloped minority' who cannot have rights equal to other citizens in their countries precisely because of their own perceived underdevelopment.

To examine this argument, I scrutinize the historical development of minority rights for Roma in today's Slovenia and Croatia. While both countries are now Member States of the E.U., they have historically been a part of the Socialist Federative Republic of Yugoslavia (SFRY) after the Second World War (WWII) and the Kingdom of Yugoslavia after the First World War (WWI). Officially, according to the Council of Europe's data, Roma constitute a small minority in both countries: 0.42 per cent in Slovenia and up to 1 per cent in Croatia (E.U. n.d.). While there has been a certain recognition of Roma as an ethnic minority in Slovenia and Croatia even when they were a part of Yugoslavia, the discourse on Roma historically framed them more as the most disadvantaged socio-economic group, the poorest part of the population (Sardelić 2016).

To elaborate on this, I offer a socio-legal analysis of how both the first and second Yugoslavia established the ethnic hierarchy of minority rights, which later continued in Slovenia and Croatia as a hierarchy in citizenship rights when both countries became Member States of the European Union. This hierarchy has been based on developmental logic, which took for granted that some minorities need to overcome their own underdevelopment before becoming equal citizens. The fact that countries' representatives sought the source of poverty in what they have perceived as an underdeveloped Romani culture rather than their own discriminatory policies indicated methodological whiteness (Bhambra 2017a) in the policy and legislation making in these countries.

According to Gurminder Bhambra, methodological whiteness…

'is a way of reflecting on the world that fails to acknowledge the role played by race in the very structuring of that world, and of how knowledge is constructed and legitimated within it. It fails to recognise the dominance of 'whiteness' as anything other than the standard state of affairs and treats a limited perspective – that deriving from white experience – as a universal perspective. At the same time, it treats other perspectives as forms of identity politics explicable within its own universal (but parochial and lesser than its own supposedly universal) understandings' (Bhambra 2017a).

Bhambra applied methodological whiteness to the analysis of the scholarly perspective (as well as popular beliefs) that the disenfranchised white working class has formed the main support body of Donald Trump as 2016 U.S. presidential candidate and the U.K.'s movement to leave the E.U. (Bhambra 2017b). As Bhambra showed, this view has driven the debate away from the hidden racism as the underlying principle of these two events in 2016.

Similarly, through adopting a socio-legal analysis, I aim to reveal how policy makers and legislators who formulated different citizenship regimes in Slovenia and Croatia (Shaw and Štiks 2010) applied methodological whiteness to the position of Roma as citizens. While in recent times there has been an increase in racist outcries again Roma

in Europe (Fekete 2014, Sardelić and McGarry 2017), the antigypsyism and Romaphobia have far longer histories and have been embedded within the societies' structures (Sardelić 2014, McGarry 2017). While most countries do not have directly racist laws, the systemic racism based on the perception of cultural/ethnic difference created a hierarchy that persists in the case of Roma (Sardelić, 2014). The critical whiteness perspective has been previously applied while scrutinising the position of non-Romani researchers who take Roma as the subject of their research (Vajda 2015). However, the question I ask here is what the position of Roma in Slovenia and Croatia signifies about the access to certain fundamental rights that all citizens should have in their countries. In other words, I am not taking Roma as the object of my research but rather the policies and legislation that frame their position as citizens (Sardelić 2021). My research aims to understand the legitimization that state representatives use to explain why Roma in their countries are marginalized despite having a status of a traditional minority and certain protected multicultural rights. I aim to show the role that methodological whiteness plays in the development of minority policies. I especially focus on the devolpement of such minority policies when it comes to Roma as citizens of Slovenia/Croatia and in particular, when Roma themselves demand equal access to social rights, such as the right to education and clean drinking water as the other the majority citizens have it.

Historical (non-)development of minority rights for Roma

While a great number of countries today recognize Roma's need for minority protection due to their disadvantaged position, Roma have been, throughout the 20th century, mostly invisible as a cultural minority (Sardelić 2021). It is only a development in the last half of the century (particularly from 1971) when Roma started to be considered more widely as an ethnic minority rather than a poor itinerant social group (Simhandl 2009).

After WWI, when multinational empires disintegrated, the newly established states legitimized the new borders with the aspiration to protect minority rights. The League of Nations supported this process through the so-called Minority Treaties at the end of WWI, also with a belief that defending minority rights would prevent destabilizing territorial conflicts and act as a 'bargaining chip' in international relations (Jackson Preece 1997, Spanu 2019). Maja Spanu showed that the underlying idea of Minority Treaties was that all citizens, regardless of belonging to a minority within a majority community group, would have the same citizenship rights. Nominally, the Minority Treaties strived to achieve equality among citizens: 'The treaties also stated that all those having the same nationality should be equally treated by the state authorities and granted the same guarantees of protection as well as political and civic rights' (Spanu 2019: 250).

The League of Nations primarily applied the Minority Treaties to Central and Eastern Europe. It is reasonable to ask why Western Europe was not under the same scrutiny.

'The answer to this question reflects the same combination of balance-of-power calculations and Western prejudice against East-Central European regimes which underlay the Treaty of Berlin minority stipulations: minority safeguards were deemed unnecessary for politically mature Western European states who could be relied upon to fulfil 'the standard of civilization' (Jackson Preece 1997: 82).

As Hannah Arendt argued in her work *The Origins of Totalitarianism* (1951/1968), the minorities which did not have a state to back them up after WWI ended up as partially stateless. While Jews have actively advocated for their rights to be recognized (Fink 2006), Roma have not been a part of these conversations. The 1921 Treaty of Saint-Germain offered a new framework for minorities-majority relations in the newly established Kingdom of Serbs, Croatians and Slovenes (shorly known as SHS, later named the Kingdom of Yugoslavia) and have recognized Austrians, Bulgarians, Muslims and Hungarians as minorities (Spanu 2019: 251). However, several other minorities remained unrecognized despite

being mentioned as ethnic groups in the 1921 Yugoslav population census. In this census, 34,919 Roma listed Romani language as their mother tongue, which was used as a proxy for ethnicity in the census (Crowe 2007: 213).

Roma have remained to a large extent invisible as citizens also after WWII despite the fact that they have also been victims of the holocaust, which Arendt mentions in her other work (Arendt 1963). While the League of Nations' approach towards minority rights has been abandoned and replaced (as has the League of Nations itself) with the United Nations' universal human rights approach after WWII, some reminiscent of the past Minority Treaties have been continuing in the post-WWII arrangements (Spanu 2019).

Minority Treaties established certain ethnic hierarchies that continued in the post-WWII multi-ethnic Socialist Yugoslavia. The Constitution of the Socialist Federative Republic of Yugoslavia distinguished between constitutive nations, nationalities and ethnic groups. Constitutive nations were named in the Constitutions and were considered to have ownership of Yugoslavia as they were the ones perceived to have established Yugoslavia through the anti-fascist fights. The second ethnic category was nationalities (narodnosti), which were roughly the kin-state national minorities based on certain parts of Yugoslav territories, such as Hungarians in Vojvodina and Albanians in Kosovo. Both of these nationalities were also mentioned in the Yugoslav Constitution. The distinction between nationalities and constitutive nations was that the constitutive nations did not have any other kin state apart from Yugoslavia. However, as Tibor Várady, comments: 'This criterion cannot explain all the distinctions that were made, since Ruthenians or Gypsies (Roma), for example, have no state anywhere, and yet were not considered 'nations' (Várady 1997:10).

The third category mentioned in the Yugoslav Constitution was the ethnic groups, who were considered groups with a distinct ethnic identity but too territorially dispersed to have claims to minority rights in a particular part of the Yugoslavia territory. While not named in the Yugoslav Constitution, other sources have categorized Roma and Jews as ethnic groups (Friedman 2014). For Roma, this was an important recognition as previously they were not recognized as an ethnic group despite, for example, having their own distinct language (Matras 2004). The Yugoslav League of Communists also officially supported the International Romani Movement and sent delegates to the 1971 Roma Congress in London (Sardelić 2015), in which Romani representatives chose their name Roma (rather than previous name Gypsy, which was considered to be derogatory), their own flag and anthem as well as proclaimed Roma as a non-territorial nation. The Yugoslav newspapers embraced the name Roma and incorporated the idea of Roma becoming a more developed ethnic group as a success of the Yugoslav socialism (Sardelić 2016).

In comparison to other Socialist countries, it was in Yugoslavia where Roma obtained the most recognition as as an ethnic group (see Donert 2017). It supported the creation of some Romani-led media, especially in Macedonia and Kosovo (Barany 2002). At the same time, the Yugoslav ethnic hierarchy of constitutive nations-nationalities-ethnic groups provided Roma the narrowest scope of group-differentiated rights to ethnic groups (Sardelić 2015). They had much less rights recognized as an ethnic group in comparison to constitutive nations and nationalities. The reason for this was an understanding taken from the Romani leaders themselves, that is, that Roma are a non-territorial nation and hence dispersed to an extent they cannot be given territorial minority rights. Of course, Romani leaders did not argue for the lesser degree of rights, but their own words were used to restrict Roma's rights.

Despite the reality in Yugoslavia that many Romani groups had been settled for centuries on the same territory, such as in the Macedonian capital of Skopje (Crowe 2007), there was still a predominant view that Roma were primarily nomadic and hence had less developed ties to the territory than other more settled minorities. Newspaper reports on Roma in Yugoslavia included a description of poor nomads who are to

be developed in terms of the Yugoslav 'Brotherhood and Unity', that is an idea of a multicultural Yugoslavia where different groups live in solidarity with each other (Sardelić 2016). While Romani leaders endeavoured to obtain et Roma the same status as Hungarian and Albanian nationalities in Socialist Yugoslavia, such recognition was never included in the Constitution until its disintegration.

The above historical overview shows how the minority developed regarding the position of Roma when Slovenia and Croatia claimed independence in the early 1990s. In the Kingdom of Yugoslavia before WWII, Roma remained invisible in terms of minority rights discussions. In Socialist Yugoslavia, they were constitutionally unrecognized despite an increasing societal recognition as an ethnic group. While in the 1990s, they gained partial constitutional recognition in Slovenia and Croatia, it was with the EU negotiations when the position of Roma as a minority gained more prominence in debates. The basis for these negotiations were the 1993 Copenhagen Criteria included the "rule of law and protection of minorities" as a part of EU conditionality (Guglielmo and Waters 2005). While in a different time period, the 1993 Copenhagen Criteria was again based on a similar developmental discourse as the discussion during the drafting of the minority treaties. The Central and East European countries were put under scrutiny as their human rights regimes were deemed not to be developed enough to protect the most vulnerable minorities due to their socialist legacies. The older EU Member States have not been put under a similar test as it was simply assumed that they had reached the standard they had imposed on other countries (Parker 2012, Ram 2013), which was not the case when it came to the Romani minorities.

The 1991 Constitution of Republic in Slovenia recognized Roma as a 'community' in Article 65 and referred to further legislation that should define their rights as a minority. In comparison to Article 64 acknowledges the Hungarian and Italian' national community's rights and gives constitutional recognition to their specific minority rights. While this was the first constitutional recognition of Roma as a minority in the territory of Slovenia, the newly independent Slovenia kept the previous ethnic hierarchy from Yugoslavia and gave a broad scope of rights to those minorities who it designated as national communities (previously nationalities). No mention of specific rights for 'communities', a term reserved for Roma in the Constitution rather than 'national communities' the term that was used for Hungarian and Italian minority. In later legislation, further distinctions were made where Roma were referred to as an ethnic community in contrast to a national community, which became decisive for the scope of rights. Furthermore, the further legislation developed after 1995 made an arbitrary distinction between 'autochthonous' and 'non-autochthon' Roma (Janko Spreizer 2002) and gave rights to the Romani community, which has allegedly been in Slovenia since 'time immemorial'.

The main piece of legislation on the rights of Roma was developed in 2007 after Slovenia has already joined the EU and after a pogrom happened against a Roma community near the village of Ambrus (Vidmar Horvat, Samardžija and Sardelić 2008; Sardelić 2013). In 2007, the Slovenian Government at the time introduced a Romani Community Act that had been intended in the 1991 Constitution; the Constitution itself did not define the rights of Roma, but just mentioned a need for a future legal act that would define these rights. The 2007 Romani Community Act reconfirmed the division between autochthonous and non-autochthonous (migrant) Roma privileging rights of the former group. For example, while autochthonous Roma had a right to a municipal representative, the non-autochthonous Roma did not. The division between autochthonous and non-autochthon Roma in Slovenia was arbitrary as there was no clear definition of what distinguishes one group from another (Sardelić 2013). There was no clear proof that one was settled 'since time immemorial' and the other being more recent immigrants. Yet, the division was made in a similar spirit as the Minority Treaties, which aimed to distinguish between traditional national minorities and migrants. In the Slovenian case, such a distinction was made between two groups that

have been in Slovenia before its independence (Sardelić 2012). The main reason for the distinction between autochthonous and non-autochthonous Roma was the aim of the Slovenian political elite to reposition Slovenia outside the Yugoslav context and not to recognize the rights of those Roma who have been internal migrants within Yugoslavia (Sardelić 2012): despite the fact that they migrated towards Slovenia for similar reasons as other migrants, the image of Roma as poor nomads has been reproduced in this context as well.

While Slovenia has included Roma in its Constitution since 1991, the Croatian Constitution initially did not include Roma in 1991. In 2000 Croatia amended the Constitutional Law on Human Rights and Freedom and the Rights of National, and Ethnic Communities or Minorities (Petričusić 2004: 610) presented a more elaborate list that included 22 minorities, also Roma. This amendment was done after Croatia signed and ratified the Council of Europe's Framework Convention on the Protection of National Minorities (FCNM). However, a discrepancy remained within the Constitution, which named only ten national minorities that were included initially in 1991. The Constitution of Croatia was amended several times, most notably in 2010, a year before Croatia concluded its EU membership negotiations. In these amendments Roma had been named as a national minority in the Constitution and given the same rights as other national minorities. Roma were finally recognized in the Constitution and their minority specific rights stipulated in the 2002 Constitutional Act on the Rights of National Minorities (which replaced the previous Act). This Act came into power just before Croatia concluded its negotiations with the EU. This seemed like an 'upgraded status' for Roma from how they were positioned in former Socialist Yugoslavia. However, one of the reasons for extending rights to many minorities in Croatia was the power struggle between the Croatian majority and a Serbian minority, which was previously recognized as a constitutive nation in Croatia. In practice, it was only on paper that Roma have equal rights as other minorities. For example, on the one hand, Croatia recognized 5th November as a day of Romani language and introduced Romani language courses at the University of Zagreb. On the other hand, this did not lead to the wide spread usage of Romani languages in the educational system as the right was stipulated under the Constitutional Act. This was a longstanding view that the Romani minority does not have individuals who would be educated enough to codify the diverse Romani language.

Claiming rights, disadvantaging majority? The right to equal water access

Romani individuals were not just passive observers of their own position, but also claimed their rights through different means as activist citizens (Isin 2009). They uses the highest European courts to claim their rights were at the highest European courts, such as the European Court of Human Rights (ECtHR). It may seem at first instance that Romani individuals were looking to claim the special rights belonging to them as an ethnic minority. However, looking at the majority of cases at the ECtHR, most Romani applicants are actually seeking equal treatment with all other citizens (Sardelić 2021). Yet the governmental represenatives argued that Roma seek to be except from laws that all other citizens have to abide by. This specifically happened in the ECtHR case of Hudorović and Others v. Slovenia and whether the Government has provided two Romani settlements in Slovenia with adequate access to drinking water and sanitation, as I will further explain in the next paragraphs.

The 2016 FRA research showed that 30 % of Roma in the European Union live without access to tap water (FRA 2016). Another study conducted by the European Roma Rights Centre (ERRC) has pointed out that in the case of the Romani community, both old and newer EU Member States are failing in the achieving the UN Sustainable Development Goal number six: according to which all people should have access to drinking water and sanitation. it is the most developed countries which have failed to provide Romani minorities with access to clean water. The ERRC has connected this to 'everyday racism' (Rorke, 2018). In Sweden's case, researchers have called Roma being without access to drinking water as an example of the 'inconvenient human

rights' meaning that such a predicament of Roma sheds a negative light on a country mostly with an excellent track record on human rights (Davis and Ryan 2016). There is no reliable overall data on how many Romani communities around Europe are without access to drinking water. However, data collected by ERRC suggest that even in cases where there were no infrastructural problems for the Romani communities to be connected to the public water system, the political reasons remained: while the public water system was reasonably close to Romani settlements, there was no political will to provide this essential service to them.

Article 71a of the Constitution of the Republic Slovenia states that the access to clean drinking water is a public good and that everyone in Slovenia should enjoy non-profit access to drinking water. Access to clean drinking water as a Constitutional right was included as an amendment in 2016 after successful campaigning of the environmentalist civil society (Szilvasi 2019). Yet Amnesty International raised an alarm that several Romani communities in Slovenia lacked access to clean drinking water and struggled to collect water despite this being a constitutionally guaranteed right in this country (Amnesty International, 2016). That is why members of two Romani communities of Goriča vas and Dobruška vas, in the municipalities of Ribnica and Škocjan (both approximately an hour drive south from the Slovenian capital of Ljubljana) decided to take the Slovenian Government to the European Court of Human Rights (ECtHR). They claimed Slovenia had violated Article 8 (a right to a private life), Article 3 (prevention of degrading treatment) and Article 14 (right not to be discriminated).

The Government representative started her defence of Slovenia by stating that the case should be dismissed altogether due to the procedural mistakes applicants have made when bringing the case to ECtHR. She claimed that one of the underaged applicants was listed under a 'false name' and that his father did not have a power of attorney to represent him due to shared custody of the child (78). The Government representative was thus trying to suggest that Romani applicants were trying to deceive the Court. The Court dismissed the allegations of the Government and allowed the applicants to correct the mistake in the name of one of the applicants and the power of attorney issue.

According to the Court transcripts (5-26), the two Romani communities, Dobruška vas and Goriča vas, had been constructed in the time of the former Socialist Yugoslavia. In one case, Roma had moved to the land themselves and remained there. In the other, the municipality in Socialist Yugoslavia assigned where they could live on the communal land. This land was afterward denationalized and split between municipal and private company land.

The two settlements, mostly with wooden huts, were tolerated despite never being formalised. The practice of not formalizing Romani settlements was prevalent throughout former Yugoslavia and other Socialist countries, such as Czechoslovakia (Donert 2017). According to the Government Representative, there was no possibility that these two settlements could be 'legalised'. The land where they were based was designated for agricultural use, which did not allow construction of residential buildings following the municipal spatial plans. According to the Government representative, that was why the members of the two settlements could not be granted access to the public water connection. The government representative claimed that even though the Roma are a recognized ethnic community with special rights in Slovenia, they could not have exception from from the law that applies for all citizens as this would be discriminatory towards the majority population. 'The Government pointed out that illegally constructed buildings were not allowed to be connected to public utility infrastructure facilities such as drinking-water supply and the discharge of wastewater, emphasising in this regard that the applicable laws applied uniformly to everyone and further arguing that any provisions to the contrary would amount to discrimination again the majority vis-à-vis the Roma population' (127).

The Government representative claimed that giving access to public water to the Romani

applicants in question, that the rights everyone should have in Slovenia, would put the non-Roma majority in a disadvantaged position.

Furthermore, they argued that there are members of the Slovenian majority living in distant remote villages that do not have access to the public water system (125). These arguments ignored the fact that Romani applicants lived near access to the public water system and the historical disadvantage Roma had a result of living in the places where they had settled. While there is a public imagination of Roma being free non-territorial nomads, their movement and where they could settle has very often been strictly controlled (Donert 2017, Sardelić 2018). the applicants argued this point in the ECtHR case. In one of the settlements, it was the municipality that designated where they could live, while at the same time, they were not given an opportunity to formalise their settlement.

During the impending ECtHR trial, the Government and municipalities offered some possible solutions. In one instance, they offered Romani applicants the opportunity to relocate to other settlements but, in this case, the majority population protested against their relocation. They also offered the possibility of the settlement being connected to the public water supplies, but the neighbours did not allow applicants to connect. The applicants were obliged as a result to accesswater from a nearby polluted stream, cemetery and a water fountain located far from ther community. The Government then decided to bring water tanks into one of the settlements and to provide their access to water in this way. However, as the applicants claimed, the quality of water in the tanks was not controlled, and it became mouldy. The Government representative then claimed it was the Romani applicants themselves who sold the water tanks, which was why their water supply was discontinued (18).

The Court recognized that the dispute focussed on the actions taken by the Government to give access to the drinking water. the majority of judges concluded in favour of the Slovenian Government. They stated that despite not being clear that water was supplied adequately to the Roma settlements, the state provided welfare benefits to the Romani applicants in question. According to the Government, the inhabitants of the two Romani communities could have used those to move and arrange their access to water in the municipality's social housing. Two ECtHR Judges wrote a dissenting opinion arguing that the status of the informal buildings (that is those that were built without permits) in the Romani communities could be solved quickly to provide the constitutional right to access drinking water. The majority of judges, however, failed to recognize that poverty and discrimination are not only about having or not having monetary benefits but that it is also about having opportunities to live a dignified life and having other kinds of resources that enable the ability to live such a life. Through both historical neglect and active systemic discrimination, Romani applicants had neither of those. It was because of the normalization of whiteness; it was considered more appropriate for Romani communities not to have access to drinking water than to perceive the majority being discriminated in spatial planning (that is that Romani community could have water access in some of the houses built without permits). There was however no reconsideration of priviledges majority population had historically in comparison to Roma who were in many instances not given the right to settle where they legally wanted to. The Romani individuals in this case claimed that they deserve the same constitutional rights as all other citizens, that is the right to clean drinking water that should supersede all other legal arrangements. They were not claiming some special minority rights.

Yet to be developed to be deserving of equal rights: The right to equal education in Croatia

Before Croatia joined the EU in 2013, its Romani citizens took it to ECtHR claiming discrimination in the education process. In the ECtHR case *Oršuš and Others v. Croatia*, the Romani applicants who attended primary schools in Macinec and Podturen municipalities (which are located in the Međimurje county, with the largest number of Roma), were not requesting special treatment (for example, to be educated in Romani language), but equal treatment. These applicants were placed in

Roma-only classes with a lower quality of curriculum than in the mixed classes. The Court did not acknowledge that segregation per se would amount to discrimination. It let Croatian representatives prove that it was for the benefit of the Romani applicants that they were placed in these separate classes (Sardelić 2021). The Government representative claimed that these classes were indeed constructed for the applicants' benefit. The applicants placed in these classes were told that they had a lack of sufficient knowledge of the majority language and needed 'special treatment' to catch up with the majority of students.

In theory, it was possible for the applicants placed in Roma-only classes to be transferred into mixed classrooms after they would have successfully passed the Croatian language requirements. However, in practice, that has not happened as Romani applicants were not tested on whether their knowledge was sufficient enough to be placed in the mixed classes. The Government representative further claimed that these classes were not designed specifically for Romani children but for all children who had not had the required majority language level to follow instructions. However, the evidence from the ground showed no other children (such as recently arrived immigrants) would be placed in such separated classes. It was only Romani children.

Furthermore, the teaching staff interviewed by the Court suggested that the problem was not only the Croatian language but also that they had to teach these children other basic 'cultural habits' that the majority of children would already have (60). At the same time, the Croatian Government claimed that the schools in question were doing their best to inform non-Romani children of Romani culture despite the fact that these children were in separate classes. 'The Schools in question also organized special activities for all pupils to improve non-Roma children's understanding of Roma traditions and culture. These activities included celebrating Roma Day, organising visits to Roma, informing pupils about the Romani language and the problems Roma faced in everyday life, and encouraging Roma pupils to publish texts and poems in school magazines' (135).

The ECtHR Grand Chamber, however, recognized that the dispute here was not around the special rights that the Roma would have as a minority, but the same rights as the majority. They decided that the Croatian state did violate the European Convention of Human Rights as it did not introduce safeguards for Romani children to continue education in mixed classes after they had mastered the majority language and because there were no other children but Roma in these classes.

While most Judges agreed with this decision, a group wrote a dissenting opinion expressing the view that the judgement had not considered about the human rights of the majority students and how their education was interrupted by Romani students who lacked majority language proficiency in the majority language: 'That should not have been set aside without balancing also the interests of the Croatian-speaking children: the importance for Croatian-speaking pupils of being able to progress properly at school is not mentioned at all in the judgement.' (9)

While this dissent was not mentioned in the judgement, the Croatia media showed a hegemonic perspective that it is, in fact, Croatian children who are discriminated against as they seemingly obtain a worse quality of education when they have Romani children in their classroom. Following this logic, it would mean that at least some Romani children would need to stay in segregated classes so that the majority could receive a higher quality of education. The Government and the Croatian media (Sardelić, 2016) presented Romani children in segregated classes as in need of development (and only entitled to a lower quality of education) before they could mix with the majority children. When demanding equal access to education, Croatia's prominent discourse was that this would put majority children in a disadvantaged position.

Conclusion

This paper had two goals: first, to look at the

hierarchical development of minority rights for Roma in Slovenia and Croatia; second, to examine the position of Romani individuals who demanded the same rights l rights as majority citizens. The historical analysis of the development of minority rights in Slovenia and Croatia shows that Roma were not included among minorities who would be considered to need minority rights. When the states recognized them as minorities, they initially granted them a limited scope of minority rights. They justified this on the basis that Roma were not a 'developed' minority as they do not have an attachment to a specific territory or codified language and had no particular connection to any kin-state. After the minority rights have been granted to Roma, it became obvious that despite these minority rights, Roma do not enjoy equal rights as other citizens and remained in the poverty cycle perpetuated by the discourse still positioning them as underdeveloped citizens. When demanding equal rights in education, the state representatives adopted a discourse that Roma are not developed enough as a minority and that giving equal rights to Roma would put a majority in a disadvantaged position. This decontextualized the privilege the majority enjoyed both in the present situation as in history, while at the same time positioning Roma in the socio-economic disadvantage and blaming them for such position due to their own alleged underdevelopment (not acknowledging they have not been afforded equal rights because of their perception of underdeveloped citizens). While Slovenia and Croatia are among the states with the highest development index in the world, equal access to education as well as basic living conditions, including the access to clear drinking water, remain hindered for some of their citizens.

References

Amnesty International (2016) Slovenia: Constitutional right to water "must flow down to" Roma communities. https://www.amnesty.org/en/latest/news/2016/11/slovenia-constitutional-right-to-water-must-flow-down-to-roma-communities (Accessed: 4/08/2021).

Arendt, H. (1963) *Eichmann in Jerusalem: A report on the banality of evil*. London: Faber.

Arendt, H. (1968) *The Origins of Totalitarianism*. New York: Harcourt, Brace & World.

Bhambra, G. K. (2017a) 'Brexit, Trump, and "Methodological Whiteness": On the Misrecognition of Race and Class', *The British Journal of Sociology*, 68(1): 214–32.

Bhambra, G.K. (2017b) 'Methodological Whiteness', *Global Social Theory*. https://globalsocialtheory.org/concepts/methodological-whiteness/ (accessed: 20/01/2021).

Barany, Z. D. (2002) *The East European Gypsies: regime change, marginality and ethnopolitics*, Cambridge: Cambridge University Press.

Crowe, D. (2007) *A history of the gypsies of Eastern Europe and Russia*, Palgrave Macmillan/St. Martin's Griffin.

Council of Europe (2021) CASE OF HUDOROVIC AND OTHERS v. SLOVENIA (European Court of Human Rights) – LawEuro. https://laweuro.com/?p=10273 (accessed: 4/08/2021].

Davis, M.F. & Ryan, N. (2016) Inconvenient Human Rights: Access to Water and Sanitation in Sweden's Informal Roma Settlements. Rochester, NY. https://ssrn.com/abstract=2814707 (Accessed: 4/08/2021).

Donert, C. (2017) *The rights of the Roma: The struggle for citizenship in postwar Czechoslovakia*, Cambridge University Press.

EU (n.d.) 'Roma and the EU. European Commission - European Commission': https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/roma-and-eu_en (accessed 20/01/2021)

Fekete, L. (2014) 'Europe against the Roma', *Race & Class*, 55(3): 60–70.

Fink, C. (2006) *Defending the rights of others: the great powers, the Jews, and international minority protection, 1878-1938*, Cambridge University Press

FRA (2016) 80% of Roma are at risk of poverty, new survey finds. https://fra.europa.eu/en/news/2016/80-roma-are-risk-poverty-new-survey-finds (accessed 20/01/2021).

Guglielmo, R., & Waters, T. W. (2005) 'Migrating Towards Minority Status: Shifting European Policy

Towards Roma*’. *JCMS: Journal of Common Market Studies*, 43(4): 763–785.
Hayden, R.M. (1992) ‘Constitutional Nationalism in the Formerly Yugoslav Republics’, *Slavic Review*, 51(4): 654–673.
Isin, E. F. (2009) ‘Citizenship in flux: The figure of the activist citizen’, *Subjectivity*, 29(1): 367–388.
Jackson Preece, J. (1997) ‘Minority rights in Europe: from Westphalia to Helsinki’, *Review of International Studies*, 23(1): 75–92.
Janko Spreizer, A. (2004) ‘“Avtohtoni” in “Neavtohtoni” Romi v Sloveniji: socialna konstrukcija teritorialnega razmejevanja identitet’, *Treatises and Documents: Journal of Ethnic Studies*, 45: 202–25.
Joppke, C. (2007) ‘Transformation of Citizenship: Status, Rights, Identity’, *Citizenship Studies*, 11(1): 37–48.
Lucassen, L., Willems, W. and Cottaar, A. (1998) *Gypsies and Other Itinerant Groups: A Socio-Historical Approach*. Houndmills, Basingstoke: Palgrave.
Matras, Y. (2004) ‘The Role of Language in Mystifying and De-Mystifying Gypsy Identity’. In N. Saul and S. Tebbutt (eds.) *Role of the Romanies Images and Counter Images of ‘Gypsies’/Romanies in European Cultures*. Liverpool: Liverpool University Press, pp. 53–78.
Mcgarry, A. (2017) *Romaphobia: the last acceptable form of racism*, London: Zed Books.
McGarry, A., & Sardelic, J. (2017, March 21) ‘How the refugee crisis is dealing another blow to Europe’s Roma’. *The Conversation* https://theconversation.com/how-the-refugee-crisis-is-dealing-another-blow-to-europes-roma-74000 (accessed 20/01/2021)
Oršuš and Others v. Croatia Application no. 15766/03 (ECtHR, 16 March 2010). Available at: https://hudoc.exec.coe.int/ENG#{%22EXECIdentifier%22:[%22004-10085%22]} (accessed: 9/08 2020).
Parker, O. (2012) ‘Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance*’, *JCMS: Journal of Common Market Studies*, 50(3), 475–491. https://doi.org/10.1111/j.1468-5965.2011.02238.x (accessed 20/01/2021)
Petričušić, A. (2004). ‘Wind of change: the Croatian government’s turn towards a policy of ethnic reconciliation’. European Diversity and Autonomy Papers–EDAP. http://aei.pitt.edu/6163/1/2004edap06.pdf (accessed:20/01/2021).
Ram, M. H. (2013) ‘European Integration, Migration and Representation: The Case of Roma in France’, *Ethnopolitics*, 13(3): 203–224.
Sardelić, J. (2012) ‘Constructing “New” Minorities: An Evaluation of Approaches to Minority Protection in Postsocialist Slovenia from the Perspective of Liberal Multiculturalism’, *Treatises and Documents: Journal of Ethnic Studies*, 67: 100–22.
Sardelić, J. (2013) ‘Romani Minorities on the Margins of Post-Yugoslav Citizenship Regimes’, CITSEE Working Paper no. 2013/31. SSRN. DOI: https://doi.org/10.2139/ssrn.2388859 (accessed:20/01/2021).
Sardelić, J. (2014) Antiziganism as Cultural Racism: Before and After the Disintegration of Yugoslavia. In: Agarin, T. (ed.) *When Stereotype Meets Prejudice: Antiziganism in European Societies*. Stuttgart: Ibidem Press, pp. 201-222.
Sardelić, J. (2015) ‘Romani Minorities and Uneven Citizenship Access in the Post-Yugoslav Space’, *Ethnopolitics*, 14(2), 159–179.
Sardelić, J. (2016) ‘Roma between ethnic group and “underclass” as portrayed through newspaper discourses in Slovenia’, In P. Stubbs (Ed.) *Social Inequalities and Discontent in Yugoslav Socialism,* London and New York, Routledge: 95–110.
Sardelić, J. (2021) *The fringes of citizenship: Romani minorities in Europe and civic marginalization*. Manchester: Manchester University Press.
Shaw, J., & Stiks, I. (2011) ‘The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia: An Introduction’, *SSRN Electronic Journal*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1914387 (accessed 20/01/2021)
Spanu, M. (2019) ‘State Formation Under International Supervision and the Construction of Hierarchies in National Membership: A Balkan Story’, *Ethnopolitics*, 18(3): 247–263.
Szilvasi, M. (2018) ‘Parallel claims for the human right to water: The case of Roma in Slovenia’. In: Routledge *Claiming Citizenship Rights in Europe: Emerging Challenges and Political Agents*. London: Routledge, pp. 148-168.

UNDP. (2019) 2019 Human Development Index Ranking. http://hdr.undp.org/en/content/2019-human-development-index-ranking (accessed:20/01/2021).

Vajda, V. (2015) 'Towards "Critical Whiteness" in Romani Studies', *Roma Rights*, 2: 47–56. http://www.errc.org/roma-rights-journal/roma-rights-2–2015-nothing-about-us-without-us-roma-participation-in-policy-making-and-knowledge-production (accessed: 22/08/2020).

Varady, T. (1997) 'Minorities, Majorities, Law, and Ethnicity: Reflections of the Yugoslav Case', *Human Rights Quarterly*, 19(1): 9–54.

Vermeersch, P. (2012) 'Reframing the Roma: EU Initiatives and the Politics of Reinterpretation, *Journal of Ethnic and Migration Studies*, 38(8): 1195–1212.

Vidmar Horvat, K., Samardžija, M. and Sardelić, J. (2008) 'Balancing the Roma Voice: The Ambrus Drama and Media Construction of Intercultural Dialogue in Slovenia'. In K. Vidmar Horvat (ed.) *The Future of Intercultural Dialogue in Europe: Views from the In-Between*. Ljubljana: Filozofska Fakulteta, pp. 153–72.

Yıldız, C., & De Genova, N. (2017 ‚Un/Free mobility: Roma migrants in the European Union', *Social Identities*, 24(4), 425–441.

Yuval-Davis, N., Wemyss, G., & Cassidy, K. (2018) 'Introduction to the special issue: racialized bordering discourses on European Roma', *Ethnic and Racial Studies*, 40(7): 1047–1057.

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