15. Rights Without Space – The Existence of a Transnational Minority

The following remarks put up for discussion the unresolved contradictions between nation and state, society and politics, cultural diversity and the rule of law. Even though we live in times after the violent outbreaks of nationalism and national imperialisms, we are still in a period where minorities in majority societies are exposed to these contradictions. Moreover, the resurgence of nationalist movements and the election of nationalist governments in Europe over the past five years has shown the strength of nation-state thinking and the instability of the gains of federalist institutions and thinking. I would argue that although there are civil and minority rights in Europe – unlike after the First World War, as described by Hannah Arendt in her book *The Origins of Totalitarianism* in the chapter "The Decline of the Nation-State and the End of Rights of Man"[1] – there is a lack of a republican attitude to these rights both on the side of the majorities and the side of the minorities. I would like to illustrate this with the example of the most precarious minority, the Sinti and Roma in Europe.

The persecution of a minority

When we speak of minorities in Europe, we think of the Basques in Spain, the Welsh in Great Britain, the Danes in Germany, or religious minorities such as Jews and Muslims. The largest minority in Europe, however, are the Sinti and Roma with about twelve million members in all European states. They differ from all other minorities in the following aspects:

- they do not have a national territory in which they are mainly domiciled;
- they did not have their own representative bodies until the 1970s;
- they have more than 50 languages, some of which are very different from each other;

1 Hannah Arendt: *The Origins of Totalitarianism*, Cleveland: Meridian 1958, pp. 267–302.

- they are for the most part sedentary, but family groups are often spread over several countries and therefore require great mobility;
- they are among the poorest in the respective countries; the literacy rates are still comparatively low, although in South-Eastern Europe, there has been an increase in literacy rates. Of the Roma in Bulgaria, Croatia, Macedonia, Serbia, the Czech Republic and Hungary, at least 80 per cent or more can read and write.[2] Vocational advancement is still practically impossible, health care is inadequate and life expectancy is therefore significantly lower than that of the majority societies surrounding them;
- Sinti and Roma have no political and no social lobby, but encounter overwhelming rejection, discrimination and violence everywhere;
- they are practically invisible; those who manage social advancement often hide their origins for fear of being discriminated against, unless they are well-known musicians such as Django Reinhardt;
- this invisibility creates space for false images: romanticising, literary images, e.g. Carmen, the untameable, dangerously beautiful gypsy in Prosper Mérimée's novella, or demonising images in which the term 'gypsy' is equated with criminality, vagabondism and living in squalor.

These particularities make the Sinti and Roma a difficult minority to grasp under the norms that apply in modern nation states. In their case, *demos* and nation completely fall apart; they are citizens of the respective nation states and at the same time, through their family ties, in part residents of several states, and their oral traditions deprive them of visibility through their own literature and historiography.

With the emergence of nation states, the modern era tried to exclude minorities or force them into the new structures of work and citizenship. To be either a citizen or stateless was the alternative. What Hannah Arendt described in her analysis of the twentieth century as the new phenomenon of statelessness of minorities in new nation states and refugees across Europe applies to the mode of existence of the Sinti and Roma in modern Europe as a whole: "Stateless people are the latest phenomenon in recent history. None of the categories, none of the legal arrangements that arose out of the spirit of the nineteenth century applies to them. They have been excluded both from the national life of their countries and from the class struggle of their societies. They are neither minorities nor proletarians. They stand outside all law."[3]

Measures have also been taken across Europe against the minorities of Sinti and Roma living throughout Europe – from England to France, Germany and the King-

2 Cf. Sabine Homberg Die Europäische Union – eine Solidargemeinschaft auch für Roma? in Anne Broden / Paul Mecheril (eds.) *Solidarität in der Migrationsgesellschaft*, Bielefeld transcript Verlag 2014, pp. 167–194.

3 Hannah Arendt: Active Patience. In: *The Jewish Writings*, New York: Schocken 2007, p. 140.

dom of Bohemia to Spain and Portugal. In a first phase since the 17th century, Sinti and Roma were to be forcibly excluded from territorial states. It was believed that the state order to murder them at any time, wherever they were found on state territory, would suffice for this. Thus in 1661 with the decree of Johann Georg II, Elector of Saxony, in 1721 under Emperor Charles VI in Austria-Hungary, in 1726 under Carlos IV in Spain, in 1727 in Bern in Switzerland, and in 1728 in Mainz in Germany. Under Louis XIV, Sinti and Roma were banished to the French galleys.

However, since expulsion by threat of death did not bring about any lasting success, a second phase relied on forced assimilation. In 1761, in the Age of Enlightenment, Maria Theresa, ruler of Austria and Hungary, ordered the settlement of Roma and the transformation of their way of life. Their mobility was restricted, they had to settle as peasants, were not allowed to speak their language, were no longer allowed to intermarry and had to watch as all children over the age of five were taken away from their families and given to non-Roma families to raise. In Germany, at the beginning of the twentieth century, Sinti and Roma were subjected to total population control, registered by name and forced to settle by not being granted a business permit without a permanent residence.

In a third phase, Nazi Germany attempted to murder all Sinti and Roma in an organised genocide. In the process, 500,000 people perished. At that moment, according to Arendt, "all European nations have become pariah peoples, all are forced to take up the struggle anew for freedom and equality. For the first time our fate has turned out not to be a special fate, for the first time our struggle is identical with Europe's struggle for freedom."[4] But no one in Europe felt connected to the Sinti and Roma in a struggle for freedom at that time. While after the Second World War claims against Germany because of the Holocaust against the Jews were represented by the state of Israel, Sinti and Roma had no representative bodies. In Germany, the same authority as before the war remained unchallenged for their control. The official explanation for the murder of the 500,000 Sinti and Roma continued to be: criminality, not racism and genocide, so that compensation was only paid in ten percent of cases.[5]

With the fall of the Berlin Wall, a fourth phase of the majority societies' policy towards the Sinti and Roma begins: for the first time, their recognition as a transnational nation and at the same time a national minority. i.e. legal recognition as equal citizens. However, this recognition is accompanied by pogroms and anti-gypsy state measures. To name just a few examples:

- After the collapse of communist rule in Romania, about 30 mob arson attacks were carried out against Roma communities until the mid-1990s. Hundreds of

4 Ibid., p. 141.

5 See Jean-Pierre Liégois: *Roma in Europe*. Strasbourg: Council of Europe 2007, pp. 103–134.

houses were burnt down and several people were lynched. A total of eleven people died. In the Czech city of Usti nad Labem, citizens built a wall around houses inhabited by Sinti and Roma. The UN recorded 133 racially motivated crimes against Roma and Africans in the Czech Republic in 1998. According to the European Roma Rights Centre (ERRC), eleven Roma have been killed for racist reasons in the Czech Republic in the past ten years, and a further nineteen murders are suspected to have a racist background. Between 2008 and 2012, according to the ERRC (European Roma Rights Centre), 120 serious attacks against Sinti and Roma were registered in Hungary, the Czech Republic, Slovakia and Bulgaria, i.e. arsons and armed attacks resulting in death. In Hungary, right-wing radicals provocatively patrolled villages with a majority Sinti and Roma population. The well-known anti-Semitic journalist Tsolt Bayer wrote in the Hungarian newspaper *Magyar Hirlap:* "These Roma are animals, and they behave like animals. … They are incapable of human communication. … These animals shouldn't be allowed to exist. In no way. That needs to be solved – immediately and regardless of the method."[6]

- In the Czech Republic, after Slovakia seceded in 1993, the new constitution denied citizenship to Sinti and Roma originally from Slovakia; Sinti and Roma children were educated in special schools.
- In the Czech Republic and Slovakia, about one hundred Roma women were sterilised without being informed about the procedures, a case of multiple discrimination.[7] In Romania, fifty per cent of the population voted in favour of compulsory birth control for Roma in 2005.[8]

The European Union had to react to these forms of violence, some of which were extreme.

Europe reacts

Politically, after centuries of tragic but fortunately failed attempts at forced assimilation and extermination, the decline of nation-state sovereignty in Europe means that for the first time there is a realistic prospect of a place of their own for the Sinti and Roma as a transnational nation and at the same time a recognised national minority. However, there is as yet no example of what such a construction must

6 Bayer's anti-Roma rant draws fire, CEU Democracy Institute, 17 January 2013. https//cmds.ceu.edu/article/2013-01-17/bayer%E2%80%99s-anti-roma-rant-draws-fire (2022/10/3)

7 Amnesty International: *Report 2010 Czech Republic*, 2010.

8 Costel Bercus: The Situation of Roma in Romania. In Max Matter (ed.) *Die Situation der Roma und Sinti nach der EU-Osterweiterung*, Göttingen V&R unipress, 2005, p. 29.

look like politically and legally in order to guarantee inclusion, security, participation and self-determination. Regrettably, there has also been practically no political-theoretical discussion of this to date. In the literature on transnational citizenship, migration, multiculturalism. etc., this minority is simply missing, for example in Bauböck, Brubaker, Benža or Kymlicka.[9] And Agamben's famous *Homo Sacer*, who can be killed with impunity, distorts reality. We are not all outside the law, as Agamben suggests, but the Sinti and Roma have been in their history. Agamben does not even mention them.

In the following, I will first list those points that have changed positively in the meantime and those that reveal a contradiction of formal justice and structural violence, in order to conclude by presenting approaches for possible changes.

Since the end of the Cold War, numerous steps have been taken to create inclusion and security at the political and legal level and to enable participation and self-determination. A great deal has been achieved from the point of view of formal justice. For example, in 1979 the UN recognised the Roma and Sinti as a nation, and in 1993 the "International Romani Union" was given the status of a special UN adviser. From 1989 onwards, the EU began to address the social concerns of Roma and Sinti, and later the EU, the Council of Europe, and the OSCE intensified contacts with Sinti and Roma. In 2004, Roma organisations founded the "European Roma and Travellers Forum" (ERTF), which advises the Council of Europe. The OSCE established the "Contact Point on Roma and Sinti Issues" in the "Office for Democratic Institutions and Human Rights", which has been in charge of monitoring the impact of European and national legislation and policies on Sinti and Roma since 1998, and the EU established an "Inter-departmental Commission and Steering Group on Roma".[10] In 1995, an EU standing group developed "Guiding principles for improving the situation of Roma", and the Council of Europe and the OSCE agreed on binding guidelines for the protection of minorities. All legislation within the EU is committed to the directives against discrimination and for equal treatment and freedom of movement. Finally, to overcome poverty, unemployment and illiteracy, EUR 347 billion was allocated by the Structural and Cohesion Funds from 2007 to 2014. These measures are supported by policy coordination and learning processes in such crucial fields as social inclusion, employment, healthcare and education.

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9 Rainer Bauböck: *Transnational Citizenship. Membership and Rights in International Migration*. Aldershot: Edward Elgar Pub. 1994. Roger Brubaker: *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: *Cambridge* University Press 1996. Mojmír Benža: Ethnic Composition of Present Day Europe, in: *Human Affairs*, Vol. 7, No. 1, 3–14. 1997. Will Kymlicka: National Minorities in Post-Communist Europe: The Role of International Norms and European Integration. In: Zoltan Barany / Robert G. /Moser (eds.): *Ethnic Politics after Communism*, Ithaca: Cornell University Press 2005, pp. 191–217.

10 Aidan McGarry: *Who Speaks for Roma? Political Representation of a Transnational Minority*. New York London: Continuum 2010.

A further escalation of riots and pogroms has so far been prevented by the EU imposing conditions on the new accession countries without which they could not have become members: Recognition of the Roma as a national minority, establishment of government commissioner offices, compliance with all human and civil rights.

But the situation has improved only slightly.

Contradiction of formal justice and structural violence

The discriminatory attitude of the populations in Europe remains practically the same. Since Hungary's accession to the EU in 2004, the situation of civil and human rights has worsened, without the European institutions being able to intervene ineffectively.

The implementation of decisions of the European Court of Human Rights in favour of Sinti and Roma, such as in the case of reparation for damages suffered as a result of the pogroms in Romania or in the case of school segregation in Greece, Croatia, Hungary, and the Czech Republic, remains extremely deficient.[11]

The joint declaration of a "Roma Decade of Inclusion" 2005–2015 signed in 2005 by the governments of the countries with the greatest social problems – Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Romania, Serbia and Slovakia – has not gone beyond drawing up general plans to eliminate discrimination and promote inclusion.

The increased influx of Roma families from Kosovo, Bulgaria and Romania into Western Europe has led to unlawful reactions: in 2008, three Italian regions declared a state of emergency in order to be able to act against Roma "nomad camps" with the help of extraordinary powers to combat disasters. One of these camps was set on fire by a mob and its inhabitants were evicted without any legal consequences.[12] The Berlusconi government then wanted to register all Roma and Sinti – including children – in a database with biometric data, which led to a unanimous rejection by the European Parliament.

When France was confronted with the entry of more than eight thousand Roma from Romania and Bulgaria Roma in 2010, President Sarkozy not only expelled them, which massively violated the right to free movement within the EU, but he also wanted to deprive immigrant French people of their citizenship in the future under certain conditions, which is incompatible with European laws.

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11 István Haller: The Mendacious Government: Implementation of the Romanian Pogrom Judgments. In: *Roma Rights Quarterly*, 7(1) 2010: pp. 23–28.

12 Elisabetta Vivaldi: The Wind of Intolerance. *Pogrom, Journal for Threatened Peoples*, 254, 3/2009, pp. 36–39.

When more Roma families from Romania, Bulgaria and Serbia came to Germany in 2012, some city administrations reacted with alarmism. The German government then confronted Serbia, which is not a member of the EU, with the alternative of either withholding further Roma who were willing to leave the country or again facing a visa requirement to enter Germany. Since the government of Serbia hopes for EU membership, it is prepared to make concessions at the expense of the Roma. In general, according to a survey, more than eighty percent of Sinti and Roma living in Germany have suffered discrimination, and more than half feel "intimidated" and "badly treated or discriminated against" when dealing with authorities[13].

These examples indicate that a persistent struggle is needed to defend and enforce formal justice throughout the EU. However, they still say nothing about structural violence, which means social structures such as norms, values, institutions and power relations that condition coercive social relations, rather than not direct physical violence.[14] Unlike Foucault, whose description of these very structures gives the struggle for justice, recognition and equality little chance of success, a critical-practical examination of the components of structural violence not only promotes awareness of the forms of everyday discrimination, but also promotes a change in everyday practice in favour of personal and social recognition and self-representation of minorities.

What path should the Sinti and Roma follow according to the European institutions? How open is this path actually, or to what extent are the parameters of assimilation into the majority society already fixed from the outset? If, despite the monitoring of the OSCE, national laws harm Sinti and Roma interests by increasingly restricting the right to roam, i.e. nomadic freedom of movement, as for example the land ownership laws in Great Britain and Ireland? Which norms and values, what linear development of the minority into the majority society shape the support programmes for Sinti and Roma in employment, education, health and housing, as well as in the desired cooperation with minority organisations? How ethnocentric do the teaching contents remain? And above all: to what extent are all these programmes characterised by a welfarism that starts from norms and values of assimilation and in attitude and choice of words from an attitude of superiority pushes the recipients of welfare into the passivity of the "disadvantaged" and "deprived" and "socially underprivileged"?[15]

13 Daniel Strauss: *Ten Results of the Education Study and Recommendations*, RomnoKher 2011.

14 Johan Galtung: *Structural Violence. Contributions to Peace and Conflict Research*. Reinbek: Rowohlt 1982.

15 Jean-Pierre Liégois: *Roma in Europe*, op. cit., p. 196.

Empowerment

It is striking,

- that all funding programmes at best speak of "empowerment", i.e. becoming active as an assisted minority;
- that the reports of the European authorities are increasingly devoted to addressing cultural differences, neglecting social and economic problems;
- that, as in research, there is no conceptual, theoretical clarity vis-à-vis the political place of this minority in the European institutions;
- Finally, it is noticeable that Roma organisations should be active partners in all measures, but support measures are treated almost exclusively from the point of view of technical feasibility within the existing institutional framework.[16]

In her analysis of the situation of the Jews in Germany in modern times, Hannah Arendt criticised the illusionary hope of the Jewish minority for assimilation as a political and legal gift from the majority society.[17] The reason for this illusion was the apolitical tradition of seeing themselves only as a cultural and religious minority. In Arendt's view, the immigrants from the Eastern European *shtetl* were particularly apolitical. The situation of the Roma today is not very different. Even though the "International Roma Union" has existed since the 1970s, and the "European Roma Rights Centre" since 1993 as an association of European Roma NGOs, political awareness, commitment both to their own group and to the many other Sinti and Roma communities is still underdeveloped.

To represent oneself politically and not to be represented formally and with little determination by the majority society requires four things.

Firstly, to be, in Arendt's words, rebellious pariahs, that is, to be self-confident, to actively speak out as a person and no longer be visible as an inaudible individual or at best a cliché. For example, by publicly professing to be Roma, as Romnia Cristiana Grigore did in the *New York Times* in 2010: "Pride in being Roma liberates the Gypsy in me. It expresses itself through the full range of emotions. It gives me courage and empowers me: I see no limits to developing my potential and performing at the highest level."[18] Many Roma living in European majority societies hide

16 Martin Kovats: The emergence of European Roma policy. In: Will Guy (ed.): *Between Past and Future: The Roma of Central and Eastern Europe*. Hatfield: University of Hertfordshire Press. 2001, p. 102f.

17 Hannah Arendt: *The Origins*, op. cit., part one: Antisemitism.

18 Cristiana Grigore: Bringing Out the Gypsy in Me, in: *New York Times*, 2 November 2010. ht tp://www.nytimes.com/2010/11/03/opinion/03iht-edgrigore.html?_r=0. (2022/10/3)

their identity. Hannah Arendt, in her essay "We Refugees"[19] and in her remarks on plurality and action, gave a political-philosophical explanation for the fact that self-awareness, a mutually recognising plurality, freedom and responsibility and active judgement are the conditions for a humane society. Developing this is not only the task of minorities, but of all citizens. This requires a change of perspective, to see the world from the point of view of others and to perceive with heart and mind the ever-present segregation of others, as it constantly happens in everyday language, at the workplace, in kindergartens, schools and restaurants.

Secondly, representing oneself politically requires critical interaction, not only criticism of the majority society, but also criticism of minority behaviour. "It is very difficult to be a friend of an oppressed people," Arendt explained from the point of view that a non-Jew would take.

> It is doubly difficult when one has never been one of the oppressed. It is very sad to learn that every slave has a tendency to dream of owning slaves, and that the oppressed masses… learn the language of freedom only slowly and with difficulty.… The friend of the oppressed will always need that great confidence in our fellow men which teaches us to laugh, the calm courage that makes untiring protest easy, and a casual detachment from those baneful, bloody alternatives that always seems so appropriate wherever there are oppressors and oppressed. … Friends of the oppressed will always end up in conflicts with the oppressed themselves. Every great friend of the Jews has had trouble with the Jews – and it is in these very conflicts that the Jewish people have been able to tell their genuine friends from false patrons.[20]

This critical dialogue does not exist, the language of clichés still prevails. Even self-critical voices are hardly heard.

Thirdly, it is necessary to determine the location of the minority – not the social one of city peripheries, closed doors and police controls, but the political one at the European level: as a national minority, as citizens of their respective countries and as European citizens and nation without territory. What representative bodies the Sinti and Roma need in their respective states and in Europe, how much, conversely, European courts need the support of Roma NGOs, how they can use European institutions for their emancipation in their respective states, and how they themselves can fight for access to education and prosperity, all this depends on the fourth point.

Seyla Benhabib recommends this with regard to migrants in the form of a democratic iteration with "complex processes of public argument, deliberations, and exchange through which universalist rights, claims, and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and

19 Hannah Arendt: We Refugees. In: *The Jewish Writings*, op. cit., pp. 264–274.

20 Hannah Arendt: Pro Paul Tillich, In: *The Jewish Writings*, op. cit., p.168f.

political institutions, as well as in the associations of civil society"[21], in order to find the way to concretise what it means to be a European nation and national minority.

Whatever the conditions of this iteration and whatever path it will take, one thing is certain: there will only be an equal place for a partner if in the process all participants take their places again.

New places

Taking the places anew, however, means more than friendliness. In view of the concrete problems of the Sinti and Roma in Europe, one should not forget that the differences between state and nation and society and politics mentioned at the beginning concern the core of all minority problems. With the emergence of the modern nation-states, European peoples transformed themselves into nations, endowed themselves with an identity and a fitting historiography, and thus at the same time tried to eliminate everything that was not fitting.[22] It was in this sense that the French Revolution created the unified and indivisible nation. The nation conquered the state, and scholars like Max Weber and Georg Jellinek posited the trinity of state territory, state people and state power as the hallmark of the European nation state. For Arendt, this results in a subordination of democracy to the nation, "a disastrous tendency of the nation-state to sacrifice actual political freedom for the sake of national interests, and to force people into a unanimous, uniform public opinion in dictatorships of the most divergent kind and provenance."[23]. Democracy as "the right for all people to participate in public affairs and to appear in the public realm and make their themselves heard"[24], can only be realised in a limited way. "Real democracy – and this is perhaps the decisive point in this context – where the centralization of power of the nation-state has been broken, and replaced with the diffusion of power into the many power centres of a federal system."[25] This applies not only to the federal division of power within a state structure, but also to the relations between states. The European federation is a response to two centuries of partly devastating actions by nation states, because nation cannot be thought of without sovereignty, without arbitrariness and without nationalism and wars. What Arendt proposes refers to another tradition in Europe, that of federal thinking, which is

21 Seyla Benhabib: *The Rights of Others. Aliens, Residents and, Citizens*, Cambridge UK: Cambridge University Press 2004, p. 179.

22 Benedict Anderson: *Imagined Communities, Reflections on the Origins and Spread of Nationalism*, London: Verso 1983.

23 Hannah Arendt: Nation-state and Democracy, in: *Thinking Without a Banister*, New York: Schocken 2018, p. 260.

24 Ibid.

25 Ibid., p. 261.

about more than administrative or cultural-political problems, including more than the elimination of structural causes for wars. This tradition includes Switzerland, the Founding Fathers of the USA, thinkers such as Althusius and Montesquieu, Albert Camus and the co-founders of a federal Europe, who pleaded for a Europe of regions, and precisely Hannah Arendt, for whom the chance of a federation lies in overcoming the division into majorities and minorities.[26]

A broad field opens up here that seems to go beyond the problems of the Sinti and Roma. Conversely, however, it seems to me that the status of this minority will only be satisfactory if it is thought of from a European perspective. We would do well to think of Europe's freedom in terms of its unsolved problems in order to be able to permanently reduce the constant temptations of nationalism, racism and violence.

Written in 2007. First published: Rechte ohne Raum. Der Fall der transnationalen Minderheit der Sinti und Roma in Europa, In Wolfram Stender (ed.) *Konstellationen des Antiziganismus. Theoretische Grundlagen, empirische Forschung und Vorschläge für die Praxis*, Wiesbaden Springer 2016, pp. 267–279.

26 Cf. chapter 13 in this volume: Federalism – A Hidden Treasure.