

**READING RACE IN AND OUT OF LAW – A  
CRITICAL RACE THEORY APPRAISAL OF  
ROMANIAN LAW’S IMPACT ON ROMA**

Andrei Dragan

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Supervisor: Mathias Möschel

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I, the undersigned, Andrei Dragan, candidate for the SJD degree in Law declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

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## ABSTRACT

This thesis aims to analyze Romanian law through the lens of Critical Race Theory with a particular focus on how it affects Roma people. Writing from within a context where race is routinely avoided as irrelevant when discussing the past and present of local Roma, this thesis instead proposes that race is not only useful as a tool to highlight systemic racism which was never properly addressed, but is indeed quite salient even in a profoundly deracialized landscape. If anything, the need for such a critical and race-conscious approach of Romanian law is dire. On the other hand, the contextualist approach in this thesis dictates that Critical Race Theory arguments developed in the United States be adapted in order to explain systemic racism in Romania. As such, this thesis does not aim to blindly transpose external solutions, but to employ and adapt a race-conscious approach to law to Romanian law. Following an introduction into the main tenants of Critical Race Theory and its application in a European setting and a brief overview of the Romanian history of racializing Roma, several important areas of law will be analyzed in order to uncover the mechanisms through which race is “read out” of Romanian law. As its ultimate goal, this thesis purports to “read” race back “into” Romanian law, i.e. introduce a race-conscious approach to Romanian law and its impact on Roma.

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## INTRODUCTION

When one thinks about racial equality and the struggle to reach it, inevitably the United States comes to one's mind, with its history of slavery, Jim Crow laws and the progressive changes brought by the Civil Rights Movement. In a way, present US experience with race is brought forth to and made known on a global scale via news, media and other tools. It is safe to say that at this point, US culture in its entirety, together with its anxieties, is rather well-known globally, inasmuch as it presents a strong influence outside its borders and is internalized by other populations. This becomes even more obvious during events such as the recent killing of George Floyd in 2020<sup>1</sup>, when home-grown outrage and Black Lives Matter protests turned into a global phenomenon. Protests soon erupted in Europe as well, particularly in countries with a past of racial discrimination and colonial practices, such as France<sup>2</sup>, Germany<sup>3</sup> and the UK<sup>4</sup>, which did see an adaptation of anti-racism discourse to fit local issues and struggles for racial equality.

In Central and Eastern Europe (CEE), particularly in post-communist countries, protests also occurred, although fewer in number and participation count. Interestingly, protests in this part of Europe took a less contextualized form, usually involving demonstrations in front of US embassies, as in Hungary<sup>5</sup>, Czechia<sup>6</sup> and Poland<sup>7</sup>, or the defacing of figures linked with

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<sup>1</sup> Chris McGreal, Lois Beckett, Oliver Laughland and Amudalat Ajasa, "Derek Chauvin found guilty of murder of George Floyd", *The Guardian*, April 21, 2020, <https://www.theguardian.com/us-news/2021/apr/20/derek-chauvin-verdict-guilty-murder-george-floyd>.

<sup>2</sup> Cole Stangler, "France's Black Lives Matter Movement", *The Tribune*, June 21, 2020, <https://tribunemag.co.uk/2020/06/frances-black-lives-matter-movement/>.

<sup>3</sup> Billy Perrigo, Melissa Godin, "Racism Is Surging in Germany. Tens of Thousands Are Taking to the Streets to Call for Justice", *Time Magazine*, June 11, 2020, <https://time.com/5851165/germany-anti-racism-protests/>.

<sup>4</sup> Michael Baggs, "Black Lives Matter in the UK: 'We're still not being heard'", *BBC*, August 25, 2020, <https://www.bbc.com/news/newsbeat-53812576>.

<sup>5</sup> Ádám Trencsényi, "Ezren gyűltek össze a Black Lives Matter budapesti tüntetésén" [Thousands gathered at the Black Lives Matter demonstration in Budapest], *Index*, June 7, 2020, <https://index.hu/belfold/2020/06/07/black-lives-matter-budapest-tuntetes/>.

<sup>6</sup> Tereza Patočková, "I přes pandemii v Praze protestovaly stovky lidí. Protest připomínal oběti rasismu" [Despite the pandemic, hundreds of people protested in Prague. The protest commemorated the victims of racism], *Aktuálně*,

colonialism and racism, such as Winston Churchill's statue in Budapest<sup>8</sup>. In very few cases was there any mention of structural racism at home. As one of the few exceptions, a small protest in Bucharest<sup>9</sup> lead by Romani activists raised awareness of anti-Roma racism in Romania. Nevertheless, much of the impetus for demonstrations in CEE countries lay in the violent way in which George Floyd was killed and were aimed at solidarity with protests in the US. Moreover, the protests in this region did not lead to any major rise in awareness of internal structural racism. While the message of Black Lives Matter protests in the US was heard, it was seldomly taken and contextualized in CEE.

There are many aspects to unpack and analyze from this phenomenon. However, what probably explains best this lack of contextualization is the perception in many post-communist or even broader European societies that the type of structural and violent racism that led to the death of George Floyd and which is understood as symptomatic and specific to US society does not exist to the same extent in Europe. As a matter of fact, this perception was voiced by Margaritis Schinas, EU Commissioner in charge of promoting the "European way of life", who said in an interview that there is "no doubt that Europe as a whole has been doing better than the United States in issues of race"<sup>10</sup>. However, from the point of view of many CEE societies, race does not even matter at all in their daily lives. Race, and as a consequence, also issues of race are not what animates public discourse here, unlike in the US, as the argument goes.

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June 6, 2020, <https://zpravy.aktualne.cz/domaci/v-praze-protestovaly-lidi-kvuli-smrti-afroamericana-george-f/r~bd2dda56a70f11eab0f60cc47ab5f122/>.

<sup>7</sup> Mateusz Szmelter, "Protest przed ambasadą USA. Krzyczeli 'I can't breathe'" [Protest in front of the US embassy. They shouted "I can't breathe"], *TVN Warszawa*, June 4, 2020, <https://tvn24.pl/tvnwarszawa/najnowsze/warszawa-protest-przed-ambasada-usa-st4602449>.

<sup>8</sup> *Index*, "Megrongálták Churchill budapesti szobrát is" [Churchill's statue in Budapest was also vandalized], June 16, 2020, [https://index.hu/belfold/2020/06/16/budapest\\_winston\\_churchill\\_szobor\\_rongalas\\_george\\_floyd\\_black\\_lives\\_matter/?token=0db958c55f051fde12ac8b163dc63d9c](https://index.hu/belfold/2020/06/16/budapest_winston_churchill_szobor_rongalas_george_floyd_black_lives_matter/?token=0db958c55f051fde12ac8b163dc63d9c).

<sup>9</sup> Simona Chirciu, "Protest de susținere cu mișcarea Black Lives Matter, în Capitală: 'Culoarea pielii nu e o crimă'" [Protest in support of the "Black Lives Matter" movement, in the capital: "Skin color is not a crime"], *Mediafax*, June 7, 2020, <https://www.mediafax.ro/social/protest-de-sustinere-cu-miscarea-black-lives-matter-in-capitala-culoarea-pielii-nu-e-o-crima-video-19255510>.

<sup>10</sup> Jacopo Brigazzi, "'No doubt' Europe better than US on race issues, EU commissioner says", *Politico*, June 10, 2020, <https://www.politico.eu/article/margaritis-schinas-eu-better-than-us-on-race-issues/>.

Within this context, this thesis aims at exploring precisely the mechanisms by which race is silenced in one particular country that is quite representative for the rest of the region – Romania. This is what I refer to as ‘reading race out’ of Romanian law in the title of this doctoral thesis. While not exaggerating the impact of or giving too much meaning to the Romanian BLM protest, it is certainly fitting that the few protesters in Bucharest made direct links between the oppression of Blacks in the US and that of Roma in Romania. After all, Romania is not only home to one of the largest Roma populations in Europe, but also has a long history of racial violence towards Roma, including the most enduring instances of Roma slavery in Europe, which lasted around five centuries. Moreover, as one of the largest racialized<sup>11</sup> minorities in Romania, discrimination of Roma is still widespread and considered socially acceptable to a large extent.

Notwithstanding the existence of literature on Roma history and culture, as well as growing interest in Romaphobia, very few are centered on how law contributes to structural inequality and how it not only reproduces racial discourse, but codifies it. Critical approaches to Romanian law are rare in any case, while those which focus on race and Roma are even rarer. This thesis aims to fill in this research gap by introducing a race-conscious approach to Romanian law and its impact on Roma. Put again in the words of the title of this doctoral thesis, it is an operation of ‘reading race into Romanian law’. In choosing Critical Race Theory (CRT) to influence the approach of this thesis, I have relied on its literature’s maturity, as such offering a by-now well-defined and comprehensive set of tools, methods and terminology which can help in any critical

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<sup>11</sup> The terms “racialized” or “racialization” throughout this thesis primarily refer to the process by racial elements are attributed to groups and by which such groups are then treated differently by society. In this sense, I use the terms mostly to the same effect as differential racialization is understood in CRT scholarship. Deracialization, on the other hand, refers to the process of stripping away racial identifiers from people or situations. For a long time, deracialization has been used in literature to refer specifically to electoral tactics by which race-specific issues are avoided in order to appeal to parts of society which might otherwise find race issues polarizing. However, in this thesis, I will use the term to refer to stripping race away from or reading race out of situations which otherwise occur due to racialization. As an example which will be developed later, Roma are strongly racialized by Romanian society, but at the same time, their history in Romania is sometimes deracialized, i.e. read to exclude racial thought as a reason for anti-Roma violence while Romanian authorities have been historically framing Roma as a deracialized socio-economic category, again stripping away race as a social signifier.



reappraisal of law. On the other hand, its flexibility allows most of its framework to be used and applied to uncover racial dynamics in countries outside the US.

Given this short introduction, there are three major research questions this thesis aims to answer: **“Does Romanian law racialize and/or deracialize Roma?”**; **“How does race as a social signifier and ground for discrimination of Roma function within the Romanian legal landscape?”**; **“What can explain Romanian law’s understanding of race when applied to Roma?”**.

In answering these questions, **Chapter 1** starts by introducing the main tenants of Critical Race Theory which can show its relevance for the aims of this thesis. It will continue by moving the discussion about race and CRT to Europe in order to identify the situation of race-conscious literature in European countries, as well as the possible gaps that exist. Lastly, we will also see in this chapter a brief attempt at mapping the usage of race in Europe, mostly as a ground for discrimination. This will help in positioning our discussion on Romania within a broader context which could help explain Romanian law’s understanding of race and racialization of Roma.

**Chapter 2** will continue by looking closer at Romanian history and the place Roma have within it. It will explore how tragic chapters of Roma history, such as Roma slavery and the Roma Holocaust have influenced the perception of Roma by Romanian society, as well as by its historiography. Here we will also delve deeper into the sources of present Romanian law’s ambiguous treatment of race when it comes to its Roma communities, with a particular focus on the communist period, with its legacy of framing Roma as a socio-legal category, as well as the present period, not bereft of anti-Roma violence.

Finally, **Chapter 3** will provide the main analysis of important areas of Romanian law<sup>12</sup> that touch on or affect Roma. I have chosen a top-down approach, by first looking into the present

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<sup>12</sup> When referring to Romanian “law”, I take a very broad approach at what this entails, including not only the Constitution and regular legislation, but also governmental decrees, ordinances, acts emitted by local authorities, as

Romanian Constitution and its drafting history, with a focus on minority rights, since that area of law is usually Romanian law's answer to the "solve" Roma integration and inclusion. As this is a contextualist approach, I will also briefly try to uncover some of the patterns within Romanian constitutional and legal history which might help explain its present relationship with race and Roma. Other areas of Romanian law which will be discussed will follow suit: parliamentary representation of minorities; the National Roma Inclusion Strategies; case law pertaining to regular courts, the National Council for Combatting Discrimination (probably the first English-language analysis thereof), as well as the decisions of the European Court of Human Rights; antidiscrimination law; law relating to healthcare, housing rights and education.

Before engaging with the first chapter, however, there are a few remarks which need to be made regarding methodology. The main theoretical framework used throughout this thesis is provided by Critical Race Theory. As such, this thesis seeks to analyze the impact of Romanian law on Roma through the lens of race. To explain the racializing potential of Romanian law, I will first rely on CRT's assumption that racism is permanent and not episodic or a deviation from the norm. From this assumption, this thesis holds that racism towards Roma has always characterized Romanian society to various extents and with diverse consequences. Another consequence of this hypothesis is that present forms of racism are both structural, i.e. do not need individual acts of racism to exist, and deeply engrained in Romanian society, with a continuum that links past forms of race-based violence and oppression with contemporary ones. Ultimately, this thesis purports to operate with a race-conscious approach, one which is aware of and seeks to highlight the social, historical and legal salience of race in Romanian society.

Another theory borrowed from CRT scholarship and which I use extensively is the idea of interest convergence. Interest convergence aims to explain progress in human rights, racial

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well as the international and human rights law that is part of Romanian positive law. In addition, I will also look into select policies which, albeit not law in the ordinary sense, are the source of many other laws and measures taken by central or local Romanian authorities.

equality and social change more generally through a temporary meeting of interests between minorities and the majority. I believe that interest convergence can clarify to a great degree the evolution, form and functioning of Romanian law which targets or affects Roma and explain its faults, hesitations and rushed development. Also, by employing a contextualist approach to law, this thesis is not only sensitive to the peculiarities of Romanian society and history, but uses them extensively to explain the way race functions in present-day Romanian law. As a matter of fact, in its attempts to briefly introduce the Romanian context on race and racialization of Roma, this thesis relies on critical approaches to Romanian history.

This thesis further uses comparative law tools to explore and understand the evolution of Romanian law, as well as to show that a framework for analyzing law developed in the United States can be successfully applied to a Romanian context. One particular idea on which I rely in order to explain in particular the sometimes rushed and ineffective nature of Romanian law that targets or affects Roma is that of urgency. Here I use the theory proposed by Manuel Guțan in his work on legal transplants as a tool for socio-cultural engineering in Romania<sup>13</sup> for tracing a historical preference of 19<sup>th</sup> and 20<sup>th</sup> century Romanian elites for transplanting European legal concepts, institutions and frameworks. Guțan refers to urgency as a feeling that Romanian elites had which drove them to adopt swift constitutional reforms with the hope that society will modernize as well. In this sense, I believe it can be a particularly useful tool which can help explain a multitude of issues that several areas of Romanian law suffer from, especially when boosted by highlighting the consequences of interest convergence. Without these tools, it would otherwise be very difficult to understand why Romanian law, with its apparent neutrality, impacts Roma differently than it does the majority or why there is a mimetic compliance of Romanian governments and lawmakers towards external actors, such as the European Union.

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<sup>13</sup> Manuel Guțan, “Legal Transplant as Socio-Cultural Engineering in Modern Romania”, in *Konflikt und Koexistenz: Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert Band 1: Rumänien, Bulgarien, Griechenland*, eds. Gerd Bender, Michael Stolleis, Jani Kirov (Klostermann, 2015), 485.

As for the methods used, I am primarily relying on a race-conscious, contextualist and critical analysis of law. To a lesser degree, I will also employ quantitative analysis (in particular in mapping race across Europe in **Chapter 1** and in analyzing the NCCD's case law in **Chapter 3**), linguistic analysis (especially for explaining certain linguistic choices by Romanian historians in **Chapter 2** and by the NCCD in **Chapter 3**) and political discourse analysis (in the case of declarations from Romanian dignitaries discussed in **Chapters 2 and 3**.)

## 1. CRITICAL RACE THEORY AND RACE

This first chapter seeks to establish the framework of discussion firstly by introducing the main tenants of Critical Race Theory literature, as well as its methods. In short, Critical Race Theory (CRT) emerged as a response to the limitations of traditional legal analysis in addressing issues of race and racism. In order to properly show the aims of this thesis, it is essential to first have an understanding of what CRT is and where it emerged from, as will be briefly summarized in **Section 1.1** Afterwards, we shall see which could be the reasons for trying to apply it to a context outside its place of birth. Moreover, I deem this important also because my aim is to introduce it to a context that is rather unfamiliar to it and to expand academic debates on race, racism and Roma in Romania.

In the second part of this chapter, **Section 1.2**, I will move the context to (mostly continental) Europe and see why CRT has not taken a hold there and what are the main hurdles to race conscious legal analyses. I will also look specifically into Central and Eastern Europe (CEE)<sup>14</sup>, especially into post-communist countries in the region and try to offer arguments for why the area is resistant to similar race-conscious approaches in law and in general. This will help in my later mapping of the Romanian context and its relationship with race, as well as its treatment of

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<sup>14</sup> When mentioning Central and Eastern Europe, I am including all post-communist countries in Eastern Europe, as well as the Balkans.

Roma as a group that suffers from racial oppression, as Romania is no exception to the region, although it has certain specificities which I think make it one of the more interesting countries to analyze from this perspective.

Finally, **Section 1.3** of this chapter will focus specifically on the race-ethnicity divide and will include an analysis of why there is a preference in Europe for using the latter as a category for analysis and not the former. Besides these, there are other frames for analyzing discrimination against Roma, although probably one of the most common in the CEE region, as well as in Romania, is that of national minority. We shall see in this chapter to which extent European countries use or underuse race, especially through their special antidiscrimination bodies. I will later zoom into the Romanian context more specifically in **Chapters 2 and 3**, where we shall see how the Roma have been historically construed as a national minority and as a socio-economic group (**Chapter 2**), as well as how this framing can lead to colorblindness in certain regards (**Chapter 3**).

## 1.1 Short history and tenants of Critical Race Theory

The origins of Critical Race Theory (CRT) can be broadly traced to the context of a Cold War United States. In the wake of the Civil Rights Movement and influential decisions such as *Brown v. Board of Education*<sup>15</sup> which were chipping away at a profoundly segregated country, several scholars formed a network called The Conference on Critical Legal Studies (CLS)<sup>16</sup> in 1976, which repositioned legal discussions and focused on the way law was not in fact neutral and objective, but a tool which is often used to subdue critical voices and preserve the *status quo*. To a great extent, CRT owes much to this movement, especially its challenge to existing institutional frameworks, to the latter's perceived neutrality, as well as CLS's overall tendency for deconstruction. On the other hand, much like in the case of other large movements, CLS ended

<sup>15</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>16</sup> Mathias Möschel, *Law, Lawyers and Race: Critical Race Theory from the US to Europe* (Routledge, 2014), 33.

up losing its focus and, almost a decade into the movement's existence, in 1987 a group of CLS scholars organized a panel within the tenth National Critical Legal Studies Conference entitled "The Minority Critique of CLS Scholarship (and Silence) on Race"<sup>17</sup>. Two years later, in 1989, this group would hold their first independent CRT workshop, where Kimberlé Crenshaw, one of the group's members, would also coin the term 'Critical Race Theory'<sup>18</sup>.

CRT scholars such as Derrick Bell, Kimberlé Crenshaw, Richard Delgado, and Mari Matsuda, among others sought to tackle the limitations of traditional legal analysis in addressing issues of race and racism. Much like their CLS colleagues, albeit focusing on race, they recognized that the law was not a neutral or objective system, but rather a tool that perpetuated racial inequality and maintained the existing power structures.

Although CRT is quite a diverse enterprise and can be labeled at the same time a discipline, a methodology for analyzing law, a school of thought or an academic or political movement, there are a few common aspects on which most CRT scholars tend to agree or focus on. I will elaborate on these points in what follows, inspired especially by the accounts given by Richard Delgado and Jean Stefancic in "Critical Race Theory: an introduction"<sup>19</sup>, as well as by the seven tenants of CRT noted by Stephanie Phillips in "The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History"<sup>20</sup> and identified during the Second CRT Workshop held in 1990.

1. CRT scholars believe that racism is endemic rather than a deviation from American norms. As probably one of the key starting points for grasping CRT writings, this idea holds that racism is a broad society-wide phenomenon that affects almost every aspect of

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<sup>17</sup> *Id.*, 40.

<sup>18</sup> *Ibid.*.

<sup>19</sup> Richard Delgado, Jean Stefancic, *Critical Race Theory: an introduction* (3<sup>rd</sup> Edition, New York University Press, 2017).

<sup>20</sup> Stephanie L. Phillips, "The Convergence of the Critical Race Theory Workshop with LatCrit Theory: A History", *Miami L. Rev.* 53 U. (1999), [https://digitalcommons.law.buffalo.edu/journal\\_articles/269](https://digitalcommons.law.buffalo.edu/journal_articles/269).

life for racialized minorities. In two publications<sup>21</sup>, Derrick Bell showed how racism is far from being episodic or a relic of past times, but something that is permanent and at the core of American society;

2. CRT bears skepticism towards the dominant claims of meritocracy, neutrality, objectivity, and racial colorblindness. CRT scholars consider that American society was built on liberal values such as those mentioned and that in effect they are blind towards the positions that racialized minorities have. Instead, American society is built around the default of “whiteness”, a concept that predates and inspired CRT and which was used most famously by W. E. B. Du Bois writing in the late 19<sup>th</sup> and early 20<sup>th</sup> century to describe the white supremacist grounds on which America was built<sup>22</sup>. Later, colorblindness would be used to describe approaches used by institutions such as courts or other authorities using law as their instrument by which race is disregarded and not taken into account as a valid legal category or as a factor which might influence one’s position in society. CRT scholars argue that colorblindness is not an effective strategy for addressing racial inequality and discrimination and that it fails to recognize the systemic and structural nature of racism and the ways in which race continues to shape social, economic, and political outcomes. Instead, colorblindness often perpetuates existing racial hierarchies and maintains the *status quo* by ignoring the historical and ongoing effects of racism.

At the heart of CRT’s skepticism towards the liberal order lies also the theory of interest convergence, first coined by Derrick Bell in 1980<sup>23</sup>, which links progress and social change for racialized minorities with essentially temporary overlaps of interests between

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<sup>21</sup> Derrick Bell, *Faces At the Bottom of the Well: The Permanence of Racism* (Basic Books, 1992) and Derrick Bell, “The Racism Is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide”, 22 *Cap. U. L. Rev.*, (1993).

<sup>22</sup> W.E.B. Du Bois, *Writings* (Library of America, 1987), pp. 923-38, originally published in *The Independent*, August 10, 1910, and revised for the collection *Darkwater: Voices from Within the Veil*, (1920), [https://loa-shared.s3.amazonaws.com/static/pdf/Du\\_Bois\\_White\\_Folk.pdf](https://loa-shared.s3.amazonaws.com/static/pdf/Du_Bois_White_Folk.pdf).

<sup>23</sup> Derrick Bell, “Brown v. Board of Education and the Interest Convergence Dilemma”, in Kimberlé W. Crenshaw et al. (eds.), *Critical Race Theory: The Key Writings that Formed the Movement*, (The New Press, 1995).

those minorities and the majority. Feminist CRT scholars such as Kimberlé Crenshaw also have noted how law tends to overlook the position of specific groups, such as women from racialized minorities, and have instead proposed intersectionality<sup>24</sup> as a way to take into consideration the intertwining between multiple grounds for discrimination, such as gender and race;

3. CRT challenges ahistoricism and insists on a contextual and historical analysis of the law. Ahistoricism is another possible consequence of a liberal system which prefers formal equality instead of more context-dependent solutions. CRT scholars, such as Neil Gotanda, hold that American history (and American constitutional history) is imbued with racial ideas from its very inception<sup>25</sup> and important institutions like citizenship were very early on tied with racial requirements. In this sense, CRT scholars promote a race-conscious revision of history<sup>26</sup> and a reexamination of American society's foundations;
4. CRT challenges the presumptive legitimacy of social institutions. CRT literature is naturally suspicious of preexisting power structures and institutions and tries to highlight the subtle and yet systemic ways in which they maintain racialization of certain groups and privilege white majorities;
5. CRT scholarship insists on recognition of both the experiential knowledge and critical consciousness of people of color in understanding law and society. In line with CRT scholars' activist and essentially subjective approach to law, legal storytelling is used as a method to allow for counter-storytelling and for giving voice to a unique voice of color<sup>27</sup>. Lived experiences and counter-storytelling are used to challenge dominant legal narratives and expose the hidden biases and assumptions within the law;

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<sup>24</sup> Kimberlé W. Crenshaw, "Demarginalizing the Intersection of Race and Sex", *University of Chicago Legal Forum*, Vol. 1989.

<sup>25</sup> Neil Gotanda, "A Critique of 'Our Constitution Is Colorblind'", in Kimberlé W. Crenshaw et al. (eds.), *Critical Race Theory: The Key Writings that Formed the Movement* (The New Press, 1995).

<sup>26</sup> Delgado, Stefancic, *Critical Race Theory: an introduction*, 25.

<sup>27</sup> *Id.*, 11, 49.



6. CRT is interdisciplinary and eclectic (drawing upon, *inter alia*, liberalism, poststructuralism, feminism, Marxism, critical legal theory, postmodernism and pragmatism), with the claim that the intersection of race and the law overruns disciplinary boundaries. While focusing on law, CRT literature is at the same time quite diverse in its sources and crosses roads with other disciplines;
7. Finally, CRT works toward the liberation of people of color as it embraces the larger project of liberating oppressed people. CRT scholars are committed to certain political ideals including social and racial justice as well as dismantling systemic racism.

It is important to understand that CRT is not a monolithic or static theory and that it encompasses a range of perspectives, debates, and approaches within its framework. Over time, CRT has evolved and expanded to address various aspects of racial inequality, including education<sup>28</sup>, criminal justice<sup>29</sup>, housing<sup>30</sup>, healthcare<sup>31</sup> and even psychology<sup>32</sup>. Scholars continue to engage in critical dialogue and refine the theory to address emerging issues and challenges in the pursuit of racial justice. Moreover, as we shall see in the next section, although CRT has clear beginnings in the United States and most CRT scholars analyzed that context, this does not

<sup>28</sup> See for example Gloria Ladson-Billings, William F. Tate, "Toward a Critical Race Theory of Education, in Teachers College Record: The Voice of Scholarship in Education", *Teachers College Record* 97(1) (1995). <https://doi.org/10.1177/016146819509700104>. See also more recent contributions such as Adrienne D. Dixon, Celia R. Anderson, "Where are We? Critical Race Theory in Education 20 Years Later", *Peabody Journal of Education* 93:1 (2018).

<sup>29</sup> See for example Richard Delgado, Jean Stefancic, "Critical Race Theory and Criminal Justice", *Humanity and Society*, Vol. 31 (2007), [https://journals.sagepub.com/doi/pdf/10.1177/016059760703100201?casa\\_token=2hn0Jpyrj80AAAAA:X1vXvLj\\_d8sjEnFZOuQRhD4LFR\\_F1C1YaS9SWk\\_f-8bXlXvYk1I8nddGLsNF13pm83j97--cod3b](https://journals.sagepub.com/doi/pdf/10.1177/016059760703100201?casa_token=2hn0Jpyrj80AAAAA:X1vXvLj_d8sjEnFZOuQRhD4LFR_F1C1YaS9SWk_f-8bXlXvYk1I8nddGLsNF13pm83j97--cod3b). See also Ann A. de Bradley, "Homeless Educational Policy: Exploring a Racialized Discourse Through a Critical Race Theory Lens", *Urban Education* Vol. 50(7) (2015), [https://journals.sagepub.com/doi/pdf/10.1177/0042085914534861?casa\\_token=w8hBeaErvikAAAAA:We5sf\\_me\\_rH7C\\_eZBq627-1Y4Dyc9m28v4I1LRjYcIN8ea5FEoCye-DAzLZBOwTRHYCA3YKfVqQod](https://journals.sagepub.com/doi/pdf/10.1177/0042085914534861?casa_token=w8hBeaErvikAAAAA:We5sf_me_rH7C_eZBq627-1Y4Dyc9m28v4I1LRjYcIN8ea5FEoCye-DAzLZBOwTRHYCA3YKfVqQod).

<sup>30</sup> See for example Janet J. Smith, David Stovall, "Coming home' to new homes and new schools: critical race theory and the new politics of containment", *Journal of Education Policy*, 23:2 (2008), [https://www.tandfonline.com/doi/full/10.1080/02680930701853062?casa\\_token=SKLNbVUrDeMAAAAA%3AUG0LzOlbu-mVWJ1BtuEEG4zbfAHbVSh69RdpLSkn6NDY9bv2gFjk9QrGbPe\\_ZBirTe1VajEeIBbr](https://www.tandfonline.com/doi/full/10.1080/02680930701853062?casa_token=SKLNbVUrDeMAAAAA%3AUG0LzOlbu-mVWJ1BtuEEG4zbfAHbVSh69RdpLSkn6NDY9bv2gFjk9QrGbPe_ZBirTe1VajEeIBbr).

<sup>31</sup> See for example Comfort T. Adebayo, Erin S. Parcell, Lucy Mkandawire-Valhmu, Oluwatoyin Olukotun, "African American Women's Maternal Healthcare Experiences: A Critical Race Theory Perspective", *Health Communication*, 37:9 (2022), [https://www.tandfonline.com/doi/full/10.1080/10410236.2021.1888453?casa\\_token=ZktkgHbyxUsAAAAA%3A\\_ooyB6CGR\\_RkbY7ojJDWuhKs9YEHVryn6bRrTxwtuNniydr1EjSSzWkrTeBaPYde-UVMt1DRYmYDg](https://www.tandfonline.com/doi/full/10.1080/10410236.2021.1888453?casa_token=ZktkgHbyxUsAAAAA%3A_ooyB6CGR_RkbY7ojJDWuhKs9YEHVryn6bRrTxwtuNniydr1EjSSzWkrTeBaPYde-UVMt1DRYmYDg).

<sup>32</sup> Phia Salter, Glenn Adams, "Toward a Critical Race Psychology", *Social and Personality Psychology Compass*, 7 (2013), <https://compass.onlinelibrary.wiley.com/doi/full/10.1111/spc3.12068>.

preclude it from being applied to other countries and contexts where racialization of minorities exists as a phenomenon.

## 1.2 Applying Critical Race Theory in Europe

Critical Race Theory is not without its critics<sup>33</sup> and backlash in the United States. As a matter of fact, at the moment of writing this thesis, there is a full-blown nation-wide state-by-state backlash<sup>34</sup> occurring in the US, spearheaded mostly by Republican and other conservative political elements. Bills masked by the language of education and protecting children from ‘harmful’ or ‘divisive’ concepts have been introduced in almost all US states and have even succeeded in entering into force in about half. They have managed in banning either CRT directly or concepts related to CRT, including teaching “that one race or ethnic group is inherently superior, that individuals are racist because of their race” (Arizona)<sup>35</sup> or “teaching ‘divisive concepts’, including that ‘one race is inherently superior to another race’ and that ‘the United States of America is fundamentally racist’” (Georgia)<sup>36</sup> or other related concepts. To a certain extent, it was to be expected that some resistance would exist towards a movement such as CRT which essentially seeks to change paradigms and highlight systemic oppression that many in the majority are reluctant to accept. However, the extent of the backlash as well as the general misconceptions about CRT that permeate public discourse<sup>37</sup> shows that there are immense anxieties in American society when it comes to the country’s racial history. In a way, the silencing of CRT or sensitive race-related topics is occurring in a context that is profoundly permeated by discourse on racial issues.

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<sup>33</sup> See Delgado, Stefancic, *Critical Race Theory: an introduction*, 102-113.

<sup>34</sup> Vivian E. Hamilton, “Reform, Retrench, Repeat: The Campaign Against Critical Race Theory, Through the Lens of Critical Race Theory”, 28 *Wm. & Mary J. Women & L.* 61 (2021).

<sup>35</sup> Bill AZ SB1532/2021, <https://legiscan.com/AZ/text/SB1532/id/2390101>.

<sup>36</sup> For more information, see Emily Jones, “State Education Board Passes Resolution On Teaching Race”, *GBP*, June 3, 2021, <https://www.gpb.org/news/2021/06/03/state-education-board-passes-resolution-on-teaching-race>.

<sup>37</sup> According to a 2021 poll, 7 out of 10 Americans find it difficult to articulate what CRT is. See Alauna Safarpour et al., “The COVID States Project #73: American Attitudes Toward Critical Race Theory”, (2021). <https://www.covidstates.org/reports/american-attitudes-toward-critical-race-theory>.

On the other side of the ‘pond’, in Europe, the situation is rather different. In Europe, especially on the continent, race is far from being as ubiquitous a concept and category for discourse as it is in the United States. We shall see in the next subsection<sup>38</sup> that race, while existing as a legal category, most often as a ground for discrimination in European antidiscrimination legislation, is often avoided by European countries. Instead, they either prefer other concepts, such as ethnicity, origin, nationality or background or, when they do use it, more often than not authorities such as Equality Bodies disassociate it from Roma applicants complaining of discrimination. For now, however, having this situation in mind, it is appropriate to ask why race is not a functional legal category and how the European context might receive CRT in general.

From among the very few scholars preoccupied with applying CRT to European scenarios, Mathias Möschel makes the case for using it in a European context and takes stock of the factors which probably explain why Europe is hesitant towards race and CRT in general in “Law, Lawyers and Race: Critical Race Theory from the US to Europe”<sup>39</sup>. According to him, there are a few concepts with which CRT also operates and which are indeed present in European scholarly discourse and beyond, such as intersectionality and a limited usage of CRT in the United Kingdom<sup>40</sup>. However, some crucial elements are lacking in both cases, such as the lack of a focus on race in intersectionality discourse and a lack of focus on law in CRT debates in the UK. As Möschel mentions, possible European legal analogues to CRT could be found in feminist legal theory, antidiscrimination discourse and migration law<sup>41</sup>. Again, however, he rightfully points out that none of these could be truly considered as full equivalents of CRT, since feminist legal theory lacks usually the race-conscious element, antidiscrimination and equality scholarship is overly positivistic and has an uncomfortable relationship with the concept of race, while migration law is not as concerned with racialization as CRT.

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<sup>38</sup> See Subsection 1.3.

<sup>39</sup> Möschel, *Law, Lawyers and Race*, 125.

<sup>40</sup> *Id.*, 81-83.

<sup>41</sup> *Id.*, 83-88.

To this I would add that minorities rights scholarship can also be mentioned alongside the functional legal analogues for CRT, although in this case too, while there is a concern for racialized minorities, it is not the main subject of debate, nor does most minorities rights literature incorporate a Marxist critique of power structures as CRT. Moreover, minorities rights frameworks themselves function within a different paradigm of improving rights of minorities without taking into account racialization. The consequence of this predominant framework for analysis in most European countries is that the specific situation of racialized minorities, such as the Roma, is lost and instead equated with white minorities, such as Germans or Hungarians (in the case of Romania). Those discourses in Western European countries which focus on multiculturalism in former colonizing countries are probably the closest to CRT in subject matter, yet even this concept is often discredited and does not always touch on race<sup>42</sup>. However, the subject of how the minorities rights paradigm is not doing justice to racialized minorities will be more thoroughly analyzed in the context of Romania's framing of Roma as minorities later in the thesis<sup>43</sup>.

A few non-legal analogues were identified as well. European philosophers such as Gramsci, Fanon, Derrida and Foucault have inspired to a certain degree CRT writings, in particular the latter with his focus on power structures, governmentalities, as well as sexuality and identity<sup>44</sup>.

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<sup>42</sup> Alana Lentin, "Europe and the Silence about Race", *European Journal of Social Theory* 11(4) (2008) 409. Lentin points out the following: "The current anxiety about the perceived failure of multiculturalism as a response to living together in the ethnically diverse post-immigration societies of Europe has brought about a call from public figures and policy makers for adherence to prescribed 'national values' as a solution to the dissolution of what were once known as race relations". Moreover, and although not the focal point of this thesis, I will mention that multiculturalism has been abandoned as a rhetorical tool in many European countries who still nevertheless maintain multicultural policies. This is mostly due to the association between multicultural policies "done wrong" and the increased ethnic (racial) tensions in countries such as the UK, Germany or Italy to which they lead. See, for example Kenan Malik, "The Failure of Multiculturalism: Community Versus Society in Europe", *Foreign Affairs*, March/April (2015), <https://www.foreignaffairs.com/articles/europe/2015-02-18/failure-multiculturalism>. Some authors have even debated whether interculturalism could be a better replacement for multicultural policies, although some, such as Will Kymlicka, have suggested that this change might be just rhetorical, given multiculturalism's tarnished political reputation. See ed. Nasar Meer, Tariq Modood, Ricard Zapata-Barrero, *Multiculturalism and Interculturalism* (Edinburgh University Press, 2016).

<sup>43</sup> See Chapter 3.

<sup>44</sup> Möschel, *Law, Lawyers and Race*, 88.

Foucault tackles law often, but it is never the focal point of his discourse analysis<sup>45</sup>, and he also does not view power as necessarily repressive<sup>46</sup>. Postcolonial studies are also mentioned as occupying a similar position in European scholarly debate as CRT does in the United States, as does sociology<sup>47</sup>. However, these disciplines rarely focus on analyzing law's part in maintaining oppression based on race. Moreover, while there are a few arguing for using postcolonial theory to analyze spaces not traditionally covered by such endeavors<sup>48</sup>, such as Central and Eastern Europe (including Romania), there is a general lack of such scholarship.

There are, of course, some exceptions. Some authors writing from a social sciences perspective, such as Alana Lentin in "Europe and the Silence about Race"<sup>49</sup> have also signaled, much like other race-conscious writers, a very broad European intellectual push for brushing off race from academic usage (and arguably also every-day parlance):

"Accepting that race is socially constructed rather than scientifically meaningful, it is nevertheless understood that race has become a central ordering principle of modern western societies. This is because race has produced racism, which today functions independently of the race idea proper. Racism manifests itself in a variety of institutional and societal discriminations, stereotypings, and injustices that in many instances (although by no means always) are dissociated from their origins in the race projects of the eighteenth and nineteenth centuries (slavery, colonialism, eugenics, genocide...). Race is significant, not in itself, but because of its inability to exist solely conceptually and in the absence of racism. Indeed, the applicability of the idea of race beyond its origins in 'science' means that it has become most relevant in the political sense."<sup>50</sup>

Thus, although some elements used by CRT are present in some parts of Europe (mostly in ex-colonial Western countries), there is a general colorblindness and racial skepticism<sup>51</sup> permeating

<sup>45</sup> Gerald Turkel, "Michel Foucault: Law, Power, and Knowledge", *Journal of Law and Society* 17(2) (1990).

<sup>46</sup> John D. Caputo, Mark Yount, eds., *Foucault and the Critique of Institutions* (Studies of the Greater Philadelphia Philosophy Consortium, 1993).

<sup>47</sup> Möschel, *Law, Lawyers and Race*, 89-90.

<sup>48</sup> Bogdan Popa, "Ethnicity as a category of imperial racialization: What do race and empire studies offer to Romanian studies?", *Ethnicities* 0(0) (2020).

<sup>49</sup> Alana Lentin, "Europe and the Silence about Race".

<sup>50</sup> *Id.*, 491-492.

<sup>51</sup> Möschel, *Law, Lawyers and Race*, 96.

the continent and a popular conception of Europe as a non-racial space, where racist ideologies have died off and have been discredited since the Holocaust.

However few, there are some CRT-inspired legal analyses in Europe. As a fairly recent example, the German-English blog on international law, *Völkerrechtblog*, had a symposium entitled “Critical Race Perspectives on International Law”<sup>52</sup>, where European scholars have contributed on topics ranging from whiteness in EU law<sup>53</sup>, anthropology’s possible contributions to legal analyses of race<sup>54</sup>, to broader discussions on promoting the use of race in Europe and the values of CRT<sup>55</sup>. Notwithstanding the immense importance of such contributions, those that focus on Europe mainly deplore the current state of things and the underusage of race<sup>56</sup> and do not necessarily engage in specific CRT projects. Other explicit CRT contributions have analyzed, amongst others, how French law racialized the *gens du voyage* and Roma<sup>57</sup> or have promoted using a race-conscious approach in European antidiscrimination law<sup>58</sup> or have engaged in a comparative analysis of the evolution of Roma rights in Europe and of civil rights for African Americans in the US<sup>59</sup>. Others have looked into how racism is externalized from European culture<sup>60</sup> or into the historical reasons for race’s dismissal from Europe<sup>61</sup>, albeit through analyzing policies or history and only brushing with law on occasion.

<sup>52</sup> *Völkerrechtblog*, “Critical Race Perspectives on International Law”, *Völkerrechtblog*, <https://voelkerrechtsblog.org/symposium/critical-race-perspectives-on-international-law/>.

<sup>53</sup> Adam Weiss, “Whiteness as international citizenship in European Union law”, *Völkerrechtblog* (March 2, 2018), <https://voelkerrechtsblog.org/whiteness-as-international-citizenship-in-european-union-law/>.

<sup>54</sup> Ricarda Rösch, “Learning from anthropology: Realizing a critical race approach to (international) law”, *Völkerrechtblog* (February 19, 2018), <https://voelkerrechtsblog.org/learning-from-anthropology/>.

<sup>55</sup> See, for example Cengiz Barskanmaz, “Framing race and law in Europe” *Völkerrechtblog* (February 26, 2018), <https://voelkerrechtsblog.org/framing-race-and-law-in-europe/>. See also Dana Schmalz, “We need to talk about ‘race’”, *Völkerrechtblog* (February 26, 2018), <https://voelkerrechtsblog.org/we-need-to-talk-about-race/>.

<sup>56</sup> See also as an example Cengiz Barskanmaz, “Reading antidiscrimination law with Crenshaw, but without Rasse?”, *Gunda Werner Institute* (May 31, 2019), <https://www.gwi-boell.de/en/2019/05/31/reading-antidiscrimination-law-crenshaw-without-rasse>.

<sup>57</sup> Mathias Möschel, “Race in French “republican” law: The case of *gens du voyage* and Roma”, *International Journal of Constitutional Law*, Vol. 15, Issue 4 (2017).

<sup>58</sup> Mathias Möschel, Costanza Hermanin, Michele Grigolo, eds., *Fighting Discrimination in Europe The Case for a Race-Conscious Approach* (Routledge, 2013).

<sup>59</sup> Felix B. Chang, Sunnie T. Rucker-Chang, *Roma Rights and Civil Rights: A Transatlantic Comparison* (Cambridge University Press, 2020).

<sup>60</sup> Silvia R. Maeso, Marta Araújo, “The (im)plausibility of racism in Europe: policy frameworks on discrimination and integration”, *Patterns of Prejudice*, 51:1 (2017).

Notwithstanding the contributions just mentioned, CRT literature or race-conscious legal analyses tend to be much more sporadic in Europe than in the US, and even where they do appear, they tend to focus on Western European countries. Most of the reasons Möschel highlights for a lack of CRT scholarship in Europe are indeed also applicable to countries in Central and Eastern Europe (including the Balkans). Much like in the rest of Europe, here law and legal practitioners are also quite reluctant to use race, instead preferring ethnicity, nationality, origin or even brushing off racial elements from discrimination cases and lumping them under social or disadvantaged category (especially in the case of Roma). This is also due in part to the legacy of the Holocaust. Following it, European history has been publicly construed as an era of rebuilding and progress, where the vestiges of nationalism made way for the project of a European Union. Race had no place in this narrative. The issue with this view is that unless there are truly overt forms of racism occurring, other, more institutional forms can go unnoticed. This is probably the single most problematic issue with Europe when it comes to race discrimination and racialization. However, the situation in Central and Eastern Europe is arguably even trickier.

If we return to the Holocaust as the single event that is thought to have discredited race as a category for analysis, we see that it is generally considered to be the core of European remembrance and the strongest collective memory on which post-1945 Europe was built on<sup>62</sup>. In many CEE countries, in particular post-Communist countries, on the other hand, the Holocaust is not the “hottest” collective memory anymore, but instead the memory of Stalinism and Communist totalitarianism<sup>63</sup>. This period has left marks which are still being felt today and the full extent of crimes perpetrated then is still being uncovered. In post-Communist Europe, it is not nationalism and its exacerbations which poses the greatest threat, since memories of the

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<sup>61</sup> David T. Goldberg, “Racial Europeanization”, *Ethnic and Racial Studies*, 29:2 (2006).

<sup>62</sup> Gergely Romsics, “The Roma Holocaust and Memory Games The clash of governmentalities and Roma activism in an imperfectly Europeanized arena”, Evelin Verhás, Angéla Kóczé, Anna Lujza Szász, eds., *Roma Resistance during the Holocaust and in its Aftermath: Collection of Working Papers* (Tom Lantos Institute, 2018).

<sup>63</sup> See Philomena Essed, Karen Farquharson, Kathryn Pillay, Elisa J. White, eds., *Relating Worlds of Racism: Dehumanisation, Belonging, and the Normativity of European Whiteness* (Palgrave Macmillan, 2019), 118 and Stephen Humphreys, *Racism in Central and Eastern Europe and Beyond: Origins, Responses and Strategies* (Open Society Institute, 2000).

pre-1945 era have been suppressed and partly erased during the almost half a decade of Communism. Discussions on race, racialization and oppression of minorities, as well as on local participation in the Roma Holocaust therefore do not garner enough public attention, although there are slow attempts at coming to terms with this dark past.

On the whole, if Western Europe has confronted itself, albeit imperfectly, with the Holocaust, colonialism and the factors which lead to these developments, CEE countries see themselves in even firmer non-racial and non-colonial terms. If anything, most post-Communist countries in Europe have adopted to a certain degree a historical narrative that paints the majority ethnic group or nation in each country as inheritors of small nation-states that were always oppressed by regional imperial powers (such as the Ottoman, Russian and Habsburg polities). If colonial projects can be found in this part of the world, they are generally attributed to these imperial powers, with their language policies, their history of encouraging population changes and oppression of certain religious, linguistic or cultural groups. Within this logic, the states that split from these empires or inherited some of their territories do not see themselves as colonizers or oppressors, since they never wielded the power to allow them to engage in such long-term projects.

Another element which distinguishes to an extent Western countries from their post-Communist counterparts is the way ethnic, national and cultural diversity is seen. CEE countries are indeed quite diverse and there is no coincidence that the two most important European treaties on minorities rights – The Framework Convention for the Protection of National Minorities (hereinafter, the Framework Convention)<sup>64</sup> and the European Charter for Regional or Minority Languages<sup>65</sup> – have been adopted after the fall of the Iron Curtain. Central and Easter Europe has been seen for some time as a space marked by its diversity and certainly as less homogenous

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<sup>64</sup> Council of Europe, Framework Convention for the Protection of National Minorities, ETS No. 157 (1995).

<sup>65</sup> Council of Europe, European Charter for Regional or Minority Languages, ETS No. 148 (1992).



as western nation-states such as France, Spain or the Portugal<sup>66</sup>. However, diversity in CEE countries is almost never portrayed in racial lines, but as competing national projects usually between one majority ethnic group that tends to define the rest of the country and several smaller ethnic groups which are often supported by kin states or have been decoupled from the latter in the past due to territorial changes. Since most of the minorities in CEE countries have neighboring kin states, public discourse tends to function within the terminological framework of minorities rights and bilateral diplomacy and not through the language of race.

One obvious standout from the narratives and discourses that CEE countries have are the Roma. As a highly heterogenous group present in most CEE countries, the Roma do not fit the previously described narratives neatly. Roma lack a kin state and are arguably not in the same position of competition as other national groups, even other minorities. Their position in a space where Romaphobia is a normalized occurrence<sup>67</sup> is markedly different from other white minorities. As Chang and Rucker-Chang notice in their comparison between the Roma rights and the Civil Rights movements<sup>68</sup>, Roma were not even considered a minority in many CEE countries during Communism due to their perceived immaturity, but also due to their perception as a social category, a legacy that is still very much present today<sup>69</sup>. In such a space, where the concept of racializing Roma is seen so out of place and such an improper lens for research, it is even more difficult to find or introduce a Critical Race Theory approach. As Anikó Imre very aptly points out, albeit from a postcolonial studies vantage point:

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<sup>66</sup> For example, when signing the FCNM, Portugal understood that the treaty will mostly apply to CEE, yet that it will nevertheless sign it as a sign of solidarity. See Council of Europe (Advisory Committee of the Framework Convention for the Protection of National Minorities) Report Submitted by Portugal Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 23 December 2004, ACFC/SR(2004)002, p. 2: “At the time, in the light of the recent far reaching political, economic and social changes in central and east European countries, the representatives of the Council of Europe member States had decided to introduce a convention-type legal instrument geared to protecting national minorities settled in central and eastern Europe because of the ‘historical upheavals’, thus helping to secure peace and stability continent-wide.”

<sup>67</sup> Huub van Baar, “Europe’s Romaphobia: Problematization, Securitization, Nomadization”, *Environment and Planning D: Society and Space*, 29(2) (2011).

<sup>68</sup> Chang, Rucker-Chang, Roma Rights and Civil Rights.

<sup>69</sup> This will be discussed further in Chapter 2.

“One of the primary difficulties of using Western theories of ethnicity, race, and colonialism to mark whiteness and contest ethnocentric nationalisms in Eastern Europe is that in East European languages, state politics, and in social scientific studies of Eastern Europe, the category of ‘race’ has remained embedded within that of ‘ethnicity’. (...) Race and racism continue to be considered concepts that belong exclusively to discourses of coloniality and imperialism, from which Eastern Europe, the deceased ‘second world’, continues to be excluded, and from which East European nationalisms are eager to exclude themselves. For instance, seeing my interest in the current racist backlash against the Roma, white Hungarians repeatedly anticipated my ‘American’ reaction, and vehemently warned me not to set up an analogy between Gypsies in Eastern Europe and African Americans in the United States. I have been told not to confuse a racial minority, whose ancestors were forced into slavery, with an East European ‘historical’, ethnic minority such as the Roma; not to force the “white guilt” that Americans ‘rightly’ feel about the extinction of Native Americans on innocent East Europeans, for whom both colonization and whiteness are distant concepts; and not to hold up misguided American racial policies such as affirmative action as ideals for Eastern Europe, freshly liberated from the burden of censorship. At the same time, in Hungarian, it is perfectly acceptable to use the phrase ‘It’s not for white people’ to describe hard physical labor, and it is considered to be free of contradiction to say, ‘I hate Gypsies, but I am not a racist’.”<sup>70</sup>

This is not to say that Romaphobia and racism towards Roma are not studied phenomena. Besides the comparative analysis by Chang and Rucker-Chang, which focuses on law, there are a few attempts to introduce critical discourses on racialization of Roma, usually under journals such as the *Romani Studies Journal*<sup>71</sup> or the *Critical Romani Studies Journal*<sup>72</sup>. The latter is particularly of interest for the scope of this thesis, since it aims to be a platform for “cross-fertilization of Romani studies with the fields of critical race studies, gender and sexuality studies, critical policy studies, diaspora studies, colonial studies, postcolonial studies, and studies of decolonization.”<sup>73</sup> On the other hand, journals such as these, while indeed offering probably the closest examples of CRT literature on Roma in Europe, do not always focus on legal aspects. Other similar contributions have focused on segregation of Roma in Eastern Europe<sup>74</sup>, on how

<sup>70</sup> Anikó Imre, “Whiteness in Post-Socialist Eastern Europe: The Time of the Gypsies, the End of Race”, in Alfred J. Lopez, ed., *Postcolonial Whiteness: A Critical Reader on Race and Empire* (State University of New York Press, 2005).

<sup>71</sup> *Romani Studies*, <https://www.liverpooluniversitypress.co.uk/journal/rost>.

<sup>72</sup> *Critical Romani Studies*, <https://crs.ceu.edu/index.php/crs/index>.

<sup>73</sup> Maria Bogdan et al., “Introducing the New Journal Critical Romani Studies”, *Critical Romani Studies*, 1(1) (2018).

<sup>74</sup> Giovanni Picker, *Racial cities: Governance and the Segregation of Romani People in Urban Europe* (Routledge, 2017).

the Roma ethnicity has been excluded from narratives on the origin of Romanians<sup>75</sup>, or have analyzed Romanian racism towards Roma in an interdisciplinary fashion<sup>76</sup>. A few have even more specifically analyzed the application of US CRT-related frameworks to the education of Roma in Europe and have pushed for a race-conscious approach to these policies<sup>77</sup>, however such contributions are rare. In short, legal analysis of race and racialization of groups such as the Roma are equally uncommon in Central and Eastern Europe as they are in the West.

There are a few reasons why I consider that a race-conscious approach similar to the one advocated for by CRT scholars is needed in a Central and Eastern European context. Much like in the United States, maintaining effective rights for marginalized and racialized communities in CEE is a challenge. Moreover, there is no guarantee that these previously secured formal rights will remain or that they are effective. A vigilant eye is needed to spot possible rollbacks or a corrosion of rights. I believe that one way of doing that is by taking inspiration from the more mature and extensive experience of CRT literature.

A race-focused perspective is also useful in revealing a less visible and more diffuse form of racism that permeates entire systems. This thesis also starts from CRT's conceptualization of racism as endemic, permanent<sup>78</sup> and representing the norm, not as episodic, temporary and deviant. In this perspective, it becomes essential to look at how institutions which are otherwise tasked with assessing and combatting discrimination on the basis of race, can themselves fall prey to the same fallacies surrounding racial discrimination as the societies they are inextricably linked to.

When it comes to CEE, I see a particular need for an approach such as that advocated for by CRT scholars because of its uneasiness with the concept of race itself. Rather than embracing its

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<sup>75</sup> Popa, "Ethnicity as a category of imperial racialization".

<sup>76</sup> Oana Dorobanțu, Carmen Gheorghe, eds, *Problema românească: o analiză a rasismului românesc* [The Romanian problem: an analysis of Romanian racism], (Hecate, 2019).

<sup>77</sup> Maja Miskovic, "Roma education in Europe: in support of the discourse of race", *Pedagogy, Culture & Society* 17:2 (2009).

<sup>78</sup> Bell, *Faces At The Bottom Of The Well*.

validity and usefulness as a tool for examining discrimination and access to rights, amongst others, some legal systems in the region reject the term altogether and omit it from their antidiscrimination legislation. Other systems fall into the fallacy that giving validity to race as a social construct and tool for analysis would somehow validate biological racism. This fear is already clear from the preamble of the Racial Equality Directive (RED) which heavily inspired European antidiscrimination legislation and which expressly tries to dispel the notion that using the term racial origin in any way validates racial theories on human beings<sup>79</sup>. Similarly, the European Court of Human Rights (ECtHR) has made a distinction between race and ethnicity in *Timishev v. Russia*<sup>80</sup>:

“Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.”<sup>81</sup>

Importantly, I am aware that my contribution might also raise concerns as to the introduction of CRT concepts or perspectives into a European context as yet another “trojan horse” of American imperialism as other authors have raised this issue<sup>82</sup>. Without ignoring the obvious perils of universalizing one country’s experience and histories over others, the aim of this thesis is rather an exercise in mapping out the ways in which one European country might disregard the otherwise important legal tool that is race. Thus, a race-conscious lens that is perceptive to colorblind approaches such as that proposed by CRT literature can be (and has been) applied to non-US scenarios<sup>83</sup> in useful ways.

<sup>79</sup> See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, para. (6).

<sup>80</sup> *Timishev v. Russia*, Apps. nos. 55762/00 and 55974/00 (ECtHR, 26 July 2007).

<sup>81</sup> *Id.*, para. 55.

<sup>82</sup> Pierre Bourdieu, Loïc Wacquant, “On the Cunning of Imperialist Reason”, *Theory, Culture and Society*, Vol. 16 (1999).

<sup>83</sup> Costas Douzinas, Adam Gearey, *Critical Jurisprudence: the political philosophy of justice* (Hart Publishing, 2005), 259.

This lack of critical race legal literature addressing Central and Eastern Europe is one of the primary reasons for which I have decided to focus this thesis on how Romanian law racializes (or conversely, deracializes) the Roma. Romania, in this sense, is a particularly interesting context to use a race-conscious approach on. Not only is the country representative for the rest of CEE, with its history of being a territorially divided space and hence quite diverse and home to one of the largest Roma communities in the world, but it is also the only one to have had long-lasting and fully institutionalized slavery that became very early on identified with being Roma. In addition to this, given the country's independent participation in the Roma Holocaust and its troubled recent history marked by anti-Roma violence<sup>84</sup> and wide discrimination against Roma on many fronts<sup>85</sup>, it is interesting to see that, much like in the case of their neighbors and European counterparts, race plays almost no part in the dominant narratives regarding Roma and their history in Romania.

Of course, notwithstanding the fact that I myself am not Roma, after much reflection on the usefulness of such an attempt at highlighting the racializing aspects of Romanian law, I have concluded that, at least at this point in time, my contribution would likely benefit the general debate that exists on race and racism against Roma in Romania. As other authors have also noted, working 'on' Roma can be just as useful to the discourse as those who work 'with' or 'for'<sup>86</sup> and in any case, the value and novelty of my contribution should be considered based on its future impact on the discourse of race and anti-Roma racism in Romania, as Smits suggests in his book, "The Mind and Method of the Legal Academic"<sup>87</sup>. Of course, throughout this thesis, I rely on works by Roma authors themselves and I also single out contributions that reproduce

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<sup>84</sup> Adrian Bridge, "Romanians vent old hatreds against Gypsies: The villagers of Hadareni are defiant about their murder of 'vermin'", *The Independent* (October 18, 1993), <https://www.independent.co.uk/news/world/romanians-vent-old-hatreds-against-gypsies-the-villagers-of-hadareni-are-defiant-about-their-murder-of-vermin-adrian-bridge-reports-1511734.html>.

<sup>85</sup> Council of Europe, European Commission Against Racism and Intolerance (ECRI), "ECRI Report on Romania (fifth monitoring cycle)", CRI(2019)20, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

<sup>86</sup> Michael Stewart, "Nothing about us without us, or the dangers of a closed-society research paradigm", *Romani Studies*, Vol. 27, No. 2 (2017).

<sup>87</sup> Jan M. Smits, J., *The Mind and Method of the Legal Academic* (Edward Elgar Publishing Limited, 2012).

racist discourse or tend to misrepresent the position of Roma in Romanian society, usually by stripping away race from the discussion<sup>88</sup>.

### 1.3 Race, ethnicity or national minority?

While race is a cornerstone of many policies in the United States, as well as a widely-used legal category, albeit not one lacking controversy, the same cannot be said of Europe. Due to their experience with the Holocaust and colonialism, European countries tend to be much more circumspect in adopting race as a functioning legal category. The most popular line of argumentation here is that since these large-scale tragedies occurred due to a preexisting background marked by racial prejudices and hierarchies and were legitimized by racist ideologies and a biological understanding of race, the way to make sure they never occur again is to delegitimize race as a tool for categorizing humanity. Thus, in order for European countries to distance themselves from this past, the “language of race” should disappear from legal tools, a phenomenon that is already occurring in many European countries, albeit in very different and uneven ways.

It should also be borne in mind that race is not always suppressed in a systematic or organized fashion, but, as Mathias Möschel points out<sup>89</sup>, it is selectively silenced. One of the most widespread practices of silencing of race is realized through its replacement with ethnicity, national minority or variations thereof.

Notwithstanding the various societal sensitivities in Europe and the fact that ethnicity can also be a useful legal category, there are a few arguments why it might not be the most appropriate category when it comes to discrimination against Roma. Firstly, ethnicity has been described as a

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<sup>88</sup> See in particular Chapter 2.

<sup>89</sup> Mathias Möschel, “Race in mainland European legal analysis: towards a European critical race theory”, *Ethnic and Racial Studies* (2011), 1656.

cushier<sup>90</sup> or more benign<sup>91</sup> term that does not capture the same elements as race but is instead meant to avoid the supposedly more rigid and discredited scientific tones of the latter<sup>92</sup>. Ethnicity presented an alternative that seemed to allow for more choice of self-identification rather than the exonymic logical consequences of race<sup>93</sup>, which has been seen as reducing everything down to physical appearance and other visible differences. Additionally, ethnicity is more closely associated with discourses on culture, while race is linked more with descent<sup>94</sup>.

However, much of the backlash against race occurred due to the experience of the Holocaust and its subsequent banishment following the Second World War has lead to its replacement with ethnicity. Racial groups became “cultural” or “ethnic”, especially in Western Europe<sup>95</sup>. Switching the vocabulary to ethnicity through this language of self-identification and cultural choice can nonetheless have some perverse repercussions, such as considering otherwise imposed racialized identities as the result of a choice made by the racialized groups<sup>96</sup>. The fallacy of this shift is signaled in even in European literature, albeit from a social sciences perspective: “By anaesthetizing race and labelling it ‘ethnicity’ or ‘culture’, it becomes something that is possessed, rather than something that is unwillingly acquired”<sup>97</sup>. It is becomes apparent that the shift occurred so as to mask the exonymic logic of race with the perceived choice associated with softer term such as culture or ethnicity. However, this is not a new phenomenon, with anthropologists such as Claude Lévi-Strauss already pushing in the 1970’s for replacing race and racism with ethnicity and ethnocentrism<sup>98</sup> with the consequence of banishing the word race from European vocabularies.

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<sup>90</sup> Mathias Möschel, *Lam, Lanyers and Race*, 125.

<sup>91</sup> David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Blackwell Publishing, 1993), 75.

<sup>92</sup> Sneja Gunew, “Postcolonialism and Multiculturalism: Between Race and Ethnicity”, *The Yearbook of English Studies*, Vol. 27 (1997), 3.

<sup>93</sup> Gunew, “Postcolonialism and Multiculturalism”, 29.

<sup>94</sup> Goldberg, *Racist Culture*, 76.

<sup>95</sup> Alana Lentin, “Europe and the Silence about Race”, 496.

<sup>96</sup> Lentin, 498. See also Mark Bell, *Racism and Equality in the European Union* (Oxford University Press, 2009), 9, where he calls “ethnicity” in this sense as a “politically correct code word for ‘race’”.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Id.*, 496.

Unlike other groups that are also categorized as ethnicities, Roma are arguably a visible group in most European societies and, as such, might not be as able to “pass” as the white majority. Beyond this, Roma also tend to be perceived through a “cultural lens”, whereby their behavior is seen as inextricably determined by their culture, as a sort of “cultural robots”, unable to resist the imperatives of tradition<sup>99</sup>. Ascribing immutable characteristics in the same logic and pattern as physical features in the case of a biological understanding of race is one perception which can be better combatted if the latter concept is used, rather than the more euphemistic ethnicity. Brushing the racial aspects aside only robs Roma of what Du Bois has referred to as the “badge of race”<sup>100</sup>, the shared common memory and experience of marginalization, segregation, slavery (in Romania in particular), forced sterilization and physical genocide in the case of the European Roma. These particular patterns of discrimination are all hallmarks of racial thought.

The already contested<sup>101</sup> memory of Roma Holocaust would also be better served through the more subversive concept of race which confronts European narratives more than ethnicity does, especially in the case of the colorblind Central, Eastern and Balkan countries. Integrating Roma discrimination under the categories of ethnicity, nationality or national/ethnic minority, amongst others, avoids remembering the European experiences of racial theories as well as discussing those in a continuum of European history, since many of the elements that lead to racial theories being accepted and the Holocaust being perpetrated are still present in European society today.

On a European scale, although most countries use the concept of race in their legislation, a few countries, namely Austria, Finland, France, Norway and Sweden do not expressly protect it under their antidiscrimination legislation. Austria’s law implementing the RED, the 2004 Federal Equal Treatment Act, eliminated race as a protected ground, replacing it with ethnic belonging<sup>102</sup>, as a means to fight racial thought by eliminating the word race from legislation. Related efforts in

<sup>99</sup> See Anne Phillips, *Multiculturalism without culture* (Princeton University Press, 2007).

<sup>100</sup> W.E.B. Du Bois, *Dusk of Dawn* (Harcourt Brace & Co, 1940) and Alana Lentin, “Europe and the Silence about Race”, 498.

<sup>101</sup> Gergely Romsics, “The Roma Holocaust and Memory Games”.

<sup>102</sup> Mathias Möschel, “Race in mainland European legal analysis”, 1651-1652.



France, Norway and Sweden have yielded similar effects. In Sweden, race was removed in a similar fashion in 2009<sup>103</sup>, a move which was criticized for preferring a symbolic repudiation of race over legal clarity and more substantive changes<sup>104</sup>. Finland instead preferred to use the term “origin” to include racial and ethnic origin, as well as skin color<sup>105</sup>, while Norway’s General Equality and Anti-Discrimination Act avoids using race since it starts with the presumption that eliminating the idea of racial categorization of humans is the first step towards combatting racism<sup>106</sup>. Thus, with the exception of Finland and, as we shall see, France, all the other five countries mentioned here prefer to use a variation of ethnicity.

On the other hand, in France, both race and ethnic origin, the latter being seen a euphemism for race<sup>107</sup>, are considered prohibited under ordinary and constitutional legislation and instead French antidiscrimination law operates with the term “nationality of origin”<sup>108</sup>. Although France stands out from the previously mentioned countries as particularly reluctant to give validity to differentiation and categorization of its citizenry, especially on the basis of race or ethnicity, it too followed a similar pattern of removing race due to the perception that the word itself perpetuates either an outdated biological notion or a dangerous social construct. When it came to integrating the RED into its national legislation, discussions in the French legislative revolved around these two understandings of race. Among others, one senator even pointed out to the

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<sup>103</sup> Paul Lappalainen, “Sweden. Country report. Non-discrimination”, *Equality Law*, 2022, 15, <https://www.equalitylaw.eu/downloads/5729-sweden-country-report-non-discrimination-2022-1-49-mb>.

<sup>104</sup> *Id.*, 15-16.

<sup>105</sup> In Finland, for example, the Government’s proposal on the Non-discrimination Act considers “origin” to cover race as well. See Rainer Hiltunen, “Finland. Country report. Non-discrimination”, *Equality law*, 2022, 16, <https://www.equalitylaw.eu/downloads/5733-finland-country-report-non-discrimination-2022-1-04-mb>.

<sup>106</sup> Lene Løvdal, “Norway. Country report. Non-discrimination”, *Equality law*, 2022, 16, <https://www.equalitylaw.eu/downloads/5728-norway-country-report-non-discrimination-2022-1-36-mb>.

<sup>107</sup> Sophie Latraverse, “France. Country report. Non-discrimination”, *Equality law*, 2022, 19-20, <https://www.equalitylaw.eu/downloads/5734-france-country-report-non-discrimination-2021-pdf-1-88-mb-2>.

<sup>108</sup> *Ibid.*

“pernicious and devastating” uses that a social construct notion of ‘self-reported race’ has in the United States and how the only proper usage of race should be when referring to animals<sup>109</sup>.

Attempts to remove the word race have occurred in Germany as well<sup>110</sup>, where the concept of *Rasse* is a particularly sensitive topic. Besides proposals to remove race from the constitution of Berlin included in the local Senate’s policy guidelines for 2021-2026<sup>111</sup> and successful excisions of race from the state constitutions of Brandenburg (2013)<sup>112</sup> and Saxony-Anhalt (2020)<sup>113</sup> and further attempts and proposals in Lower Saxony (2014)<sup>114</sup>, Rhineland-Palatinate (2020)<sup>115</sup> and Bremen (2020)<sup>116</sup>, there are also attempts at a national level to remove the word from the German Constitution<sup>117</sup>. In most of the proposals and successful amendments, race is replaced usually with “racial grounds” while the term “racism”, like in the case of France<sup>118</sup>, can still be used to refer to the phenomenon itself, while avoiding the legal category of race. While the death of George Floyd in the US and debates surrounding it have likely contributed to this wave in

<sup>109</sup> Debate in the French Senate regarding an amendment to the Labor Code. See in particular the reactions of Guy Fischer, member of Groupe Communiste, Républicain, Citoyen et Écologiste (CRCE). “Seance du 9 Janvier 2001”, *Senat*, <http://www.senat.fr/seances/s200101/s20010109/sc20010109007.html>.

<sup>110</sup> Möschel, “Race in mainland European legal analysis”, 1651-1652.

<sup>111</sup> See the website of the Mayor of Berlin. “Richtlinien der Regierungspolitik 2023-2026” [Government Policy Guidelines 2023-2026], accessed March 25, 2023, <https://www.berlin.de/rbmskzl/regierende-buergermeisterin/senat/richtlinien-der-politik/>. Among others, the Berlin Senate aims to work “with communities affected by racism to develop proposals for replacing the term “race” from Article 10 of the Berlin Constitution and other state law provisions in favor of a wording that encompasses the scope of protection of racially motivated discrimination”.

<sup>112</sup> Thorsten Metzner, “Brandenburgs Grundgesetz modernisiert: Brandenburg tilgt „Rasse“ aus Verfassung” [Brandenburg's Basic Law modernized: Brandenburg erases “race” from constitution], *Tagespiegel*, September 19, 2013, <https://www.tagesspiegel.de/potsdam/brandenburg/brandenburg-tilgt-rasse-aus-verfassung-7325665.html>.

<sup>113</sup> Carolin Henkenberens, “Ein streitbarer Begriff. Die Grünen wollen das Wort „Rasse“ aus dem Grundgesetz streichen” [A contentious term. The Greens want to remove the word “race” from the Basic Law – and other parties are also open], *Weser Kurier*, June 12, 2020, <https://www.weser-kurier.de/politik/streitbarer-begriff-parteien-wollen-rasse-aus-grundgesetz-streichen-doc7e4jdcsymw390p5adij>.

<sup>114</sup> Michael Hanschke, “SPD will Begriff „Rasse“ aus Niedersachsens Verfassung streichen” [SPD wants to remove term “race” from Lower Saxony's constitution], *Braunschweiger Zeitung*, July 3, 2020, <https://www.braunschweiger-zeitung.de/niedersachsen/article229440160/SPD-will-Begriff-Rasse-aus-Niedersachsens-Verfassung-streichen.html>.

<sup>115</sup> See a report made for the Landtag of Rhineland-Palatinate, “Streichung des Begriffs „Rasse“ aus der Landesverfassung – Alternative Formulierungen und Vermeidung von Schutzlücken” [Deletion of the term “race” from the state constitution – alternative Formulations and avoidance of protection gaps], *Landtag RLP*, [https://www.landtag.rlp.de/fileadmin/Landtag/Medien/Gutachten\\_WD/17\\_Wahlperiode/2020-08-26-SPD-CDU-FDP-GRUENE-Streichung-des-Begriffs-Rasse.pdf](https://www.landtag.rlp.de/fileadmin/Landtag/Medien/Gutachten_WD/17_Wahlperiode/2020-08-26-SPD-CDU-FDP-GRUENE-Streichung-des-Begriffs-Rasse.pdf).

<sup>116</sup> Carolin Henkenberens, “Ein streitbarer Begriff”.

<sup>117</sup> Volker Witting, “Germany’s heated debate over ‘race’ in the constitution”, *Deutsche Welle*, June 13, 2020, <https://www.dw.com/en/race-has-no-place-in-the-german-constitution-or-does-it/a-53790056>.

<sup>118</sup> See Opinions of the Defender of Rights nos. 13-05 (2013), 20-11 (2020), and 21-17 (2021) regarding race.

2020, it is mostly an internal phenomenon marked by a post-racial paradigm that excludes *Rasse* as an antiquated legal category at best and dangerous at worst<sup>119120</sup>.

All in all, this mapping of how race is used (or not) in European antidiscrimination legislation paints a rather uneven picture, with most countries expressly consecrating this ground for discrimination in their legislation, while a few have chosen different terminology mostly due to public sensitivity towards the word race or a social perception of it as outdated or reinforcing a racist biological notion. Understandably, in some countries, race is a controversial concept and some have opted to remove it from their legislation, while some have attempted to do so, with mixed results. What is clear is that there are movements within certain European societies which object to having this concept operationalized, mostly in Western and Northern Europe.

When it comes to the Central-Eastern and Balkan regions, to which Romania is generally ascribed, race is generally available as a legal category, yet it usually occupies a less prominent space in legal instruments. Indeed, most of the countries in the region are either members of the European Union or are in the process of adhering to the block and thus have adopted RED-inspired antidiscrimination legislation and as such, race was introduced by almost all of them into their legislation if it had not existed prior to this. However, this does not mean that race has been rendered operable and that it is legitimized through usage as a legal category. Formal establishment in positive law does not equate functionality.

This is quite clear in the region, where the preference is for either using ethnicity or national minority to refer to Roma cases of discrimination. Equality bodies that deal with discrimination on the basis of race (or other similar grounds) can be relied on for an insight into how the legal landscape in many countries in the region treats race. In this sense, the only country in the region that stands out is Albania, whose equality body has been consistently registering and solving

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<sup>119</sup> Cengiz Barskanmaz, “Framing race and law in Europe”.

<sup>120</sup> Cengiz Barskanmaz, “Reading antidiscrimination law with Crenshaw, but without *Rasse*?”.

cases involving Roma under race<sup>121</sup>, even though ethnicity is also provided for in legislation. Equality bodies in Greece<sup>122</sup> and Moldova have also found instances of Roma being discriminated on because of race, although their usage of the term is rather rare and their cases are limited in number. In Croatia<sup>123</sup>, Czechia<sup>124</sup>, Poland<sup>125</sup>, Slovakia<sup>126</sup>, Slovenia<sup>127</sup>, North Macedonia<sup>128</sup>, Hungary<sup>129</sup> and Serbia<sup>130</sup>, on the other hand, race is either used interchangeably with ethnicity or national minority or the latter two are preferred when dealing with cases involving Roma.

Romania belongs to this latter group, as its equality body has a clear tendency to avoid using race, unless there are cases involving non-Roma racialized minorities that are not autochthonous to Romania. Much like in the case of Serbia and Hungary, the Romanian equality body, the National Council for Combatting Discrimination (NCCD) prefers to externalize much of the language of race by using it only sporadically and almost never when dealing with cases involving people of Roma origin. The extent of the NCCD's case law on race will be discussed in a later sub-section<sup>131</sup>. Yet, for the purposes of this section, it is important to remember that while

<sup>121</sup> Irma Baraku, "Albania. Country report. Non-discrimination", *Equality Law* (2022), 20, <https://www.equalitylaw.eu/downloads/5718-albania-country-report-non-discrimination-2022-1-41-mb>.

<sup>122</sup> Ombudsman of Greece, "Equal Treatment. Special Report" (2021), 17. <https://www.synigoros.gr/en/category/ethsies-ek8eseis/post/annual-report-2021>.

<sup>123</sup> Ombudswoman of Croatia, "Annual Report of the Ombudswoman of Croatia for 2018" (2018), 2, <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=6408edc601ead1678306758>.

<sup>124</sup> Lilla Farkas, "The meaning of racial or ethnic origin in EU law: between stereotypes and identities", Publications Office of the European Union (2017), p. 146.

<sup>125</sup> The Commissioner for Human Rights, "Report on the activities of the Commissioner for Human Rights in 2021 and on the state of observance of human and civil rights and freedoms", 81-83, <https://bip.brpo.gov.pl/en/content/summary-ombudsman-annual-report-2021>.

<sup>126</sup> Slovak National Centre for Human Rights, "Odborné stanovisko. Výklad pojmov „rasový pôvod“ a „etnický pôvod“ (2019) [Expert opinion. Interpretation of the terms "racial origin" and "ethnic origin"]", <http://snslp.sk/wp-content/uploads/2019-20-Odborne-stanovisko-obsah-chranenehodovodu-rasy-a-etnicity.pdf>.

<sup>127</sup> Slovenian Advocate of the Principle of Equality, "2021 Annual report. Case review", 34-39, <https://zagovornik.si/wp-content/uploads/2022/08/Annual-Report-2021-%E2%80%93-CASE-REVIEW-1.pdf>.

<sup>128</sup> See cases 3 and 6 in, North Macedonian Commission for Prevention and Protection against Discrimination, "Annual Report", 42-44, 45-46, <https://kszd.mk/wp-content/uploads/2022/03/CPD-Annual-Report-2021.pdf>. There, it catalogues Roma cases under race, skin color, social background, ethnicity and affiliation to a marginalized group.

<sup>129</sup> András Kádár, "Hungary. Country report. Non-discrimination", *Equality law* (2022), 17, <https://www.equalitylaw.eu/downloads/5732-hungary-country-report-non-discrimination-2022-1-63-mb>.

<sup>130</sup> Ivana Krstić, "Serbia. Country report. Non-discrimination" *Equality law* (2022), 17, <https://www.equalitylaw.eu/downloads/5740-serbia-country-report-non-discrimination-2022-1-42-mb>.

<sup>131</sup> See Subsection 3.6.2.

Romanian antidiscrimination law does codify race among other grounds, it is very likely that this option was chosen due to an understanding that having a more expanded list of grounds equals more effective legislation or better protection. At the time of adoption of its antidiscrimination legislation, as we shall see<sup>132</sup>, Romania had barely started its road towards EU accession and as such, was most likely aiming at that point to harmonize its legislation with that of the EU. Similarly to its neighbors, it ended up with more grounds for discrimination than are effectively used by bodies and authorities fighting discrimination. In practice, other legal categories, such as ethnicity and national minority, are much more frequently employed when engaging with the Roma. Thus, much like in other contexts, retreat from the language of race or aversion to it could signal something deeper than linguistic preferences. It could reveal a studied, albeit selective censoring of racism.

## 2 THE ROMANIAN CONTEXT – CONFLICTING AND UNRESOLVED NARRATIVES

In the previous chapter, we have established some of the main limits of this thesis, as well as the theoretical background for what we are about to explore. While this thesis aims to continue the dialogue for a race-conscious approach to law in Europe, it does so in a contextualist fashion, as many critical approaches to law and race do. As such, we have already hinted at some of the difficulties inherent in such an endeavor in the previous chapter. We have seen how, despite not being necessarily unfamiliar with race as a legal category or as a social marker, European legal systems tend to view racially aware interpretations of law as suspicious at best, if not outright indicative of racist thought.

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<sup>132</sup> See Subsection 3.6.1.

This next chapter continues the discussion by focusing even more intimately on the particular context of race in Romania, as well as how Roma have been historically framed in and out of race. **Section 2.1** will start by examining the historical association of race with Roma in the territories that make up present-day Romania, especially in context of two phenomena that profoundly influenced not only Romanian race relations, but also Romanian society as a whole – Roma slavery and the Roma Holocaust (*Porajmos* or *Samudaripen*). While avoiding cataloguing them as mere events to be isolated from their past and future contexts as well as from their present consequences, the main aim of this part is to familiarize ourselves with the historical context of racial hierarchies in Romanian society. Later, in **Section 2.2**, we will take note of certain trends within historiography and societal discourse on Roma in Romania and try to establish to what extent the position of Roma in Romanian society is debated under a racializing lens or, conversely, whether the opposite also occurs, namely a colorblind or deracializing discourse, which disconnects race as a social signifier from the realities of Roma marginalization and oppression or, in other words, reads race out of Roma experiences and histories. Previously, this approach has been termed formal-race unconnectedness<sup>133</sup> in order to signal attempts to decouple law from its context when racial discrimination or even more generally racial classification are concerned. While a later Chapter 3 will try to highlight how these attempts at reading race out plays out in selected legal areas, this chapter will focus more on how race was used or downplayed in connection to Roma throughout history. Nevertheless, in order to understand the way race plays out in today's Romanian legal landscape, it is essential to first have a good grasp of the socio-historical context.

Afterwards, **Sections 2.3** and **2.4** will go beyond Roma slavery and the Roma Holocaust and concentrate instead on the most recent periods of Romanian history – the communist era and the present time following the 1989 Romanian Revolution. **Section 2.3** will first attempt to flesh out the legacy of the communist regime on Romanian law's framing of Roma as a national

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<sup>133</sup> Gotanda, "A Critique of 'Our Constitution Is Colorblind'".

minority and to help in understanding how racial stereotypes and categorizations of Roma have not only resisted change, but have even been refashioned to fit the ideology of the new regime following the end of the Second World War. Of particular interest here will be the conceptualization of Roma in Romania as an apparently “raceless” socio-economic category, with many Roma benefiting from economic integration, all the while racial discrimination and power relations were not questioned. While this framing device was not invented by the communist regime, it certainly left its mark in it the most. Finally, **Section 2.4** will move to the more recent times of post-communist transition to democracy and the trappings of neoliberal logics. We will see that as the previous regime was collapsing, so was the socialist order it established. In this new world, however, Roma emerged as convenient scapegoats in the face of a new rediscovery of Romanian national identity. This section will thus address the new vulnerable position the many Roma communities in Romania found themselves in following the carving up of the socialist welfare state.

## 2.1 Roma and race in Romania

Much like in the case of its Central and Eastern European neighbors, the territories forming modern-day Romania have their fair share of troubled pasts and unresolved anxieties which contribute greatly to present-day conflicts and towards crystalizing diverging narratives of nation, belonging, as well as power and race relations. Specifically, important parts of Romanian historiography has traditionally emphasized a narrative of historical victimhood and that of being always crushed between more powerful geopolitical actors. When it comes to being colonized (or, more appropriately, self-colonize) by regional and international powers, Romanian historiography tends to build the image of powerless Romanian geopolitical entities<sup>134</sup> which have been subjected to more or less systematic attempts at assimilation. The same narrative is to

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<sup>134</sup> Be them the Romanian principalities of Moldova and Wallachia, which have never been fully or entirely incorporated by neighboring powers, or other regions, such as Transylvania, Banat or Partium, which have been fully integrated in other kingdoms or empires.

be found in school manuals and it generally permeates other forms of “memory games”<sup>135</sup> with which successive Romanian governments have engaged. This prescription has been adopted by mainstream society with very few influential attempts at deconstructing it. As such, at this point in time, this image is accepted by the majority society and considered a reasonable given.

It becomes apparent that in this case, it is understandably difficult to dislodge the dominating narratives. More specifically, attempts to raise awareness of instances when Romanians themselves have been oppressors and colonizers or to chip away at this convenient “underdog” myth have always operated in a hostile and conservative environment. For example, Romania’s independent participation in the Holocaust, even starting to organize death camps in Transnistria for Jews and Roma before Nazi Germany started its systematic genocide, is a particularly painful memory that has not been accepted in the entirety of its aspects by mainstream society. To make things even more complicated, unlike other former Axis allies who were directly occupied by the German military during the Second World War and obliged to deliver its “undesirables”, Romania remained rather independent in its actions throughout the war, including in the decision to exterminate Jews and Roma, among others. Thus, making the plea of inability to prevent genocide is harder to sustain, although there are ways of simply overlooking this episode of Romanian history.

One other aspect of even more significant particularity for understanding the Romanian context is that of Roma slavery, which, in its longevity and institutionality, sets it apart from neighboring countries. As an institution sanctioned by law, slavery in Wallachia and Moldova has its origins around the 13<sup>th</sup> and 14<sup>th</sup> centuries when legal documents for the selling and buying of *Tsigans*<sup>136</sup> (or Gypsies) started to appear between rulers, boyars (the aristocracy) and the church. One of the first of such written acts was an edict issued by Dan I of Wallachia in 1385 by which he gifted 40

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<sup>135</sup> Gergely Romsics, “The Roma Holocaust and Memory Games”.

<sup>136</sup> In Romanian, *țigani*. At this point, it would be opportune to mention that, while in most parts of this thesis, I will be using the term “Roma”, I will also employ terminology as it is found in the sources I am analyzing, without endorsing the other terms.



families of Gypsies to the Tismana Monastery<sup>137</sup>. Almost five centuries later, we find not only that slavery (in Romanian, *robie*) had been institutionalized, but that slaves (*robi*) and Roma people (*țigani*) had become synonymous with one another<sup>138</sup>. As a matter of fact, by the second half of the 15<sup>th</sup> century, *Tsigans* have been fully associated with the institution of slavery<sup>139</sup>.

Constitutionally speaking, by the first half of the 19<sup>th</sup> century, we find that in Wallachia and Moldova, some of the first encompassing codes of law started to appear. The Caragea Civil Code (also known as the Caragea Law or *Legiuirea Caragea* in Romanian) of 1818, for example, otherwise known for (and taught as) being one of the first examples of modern legal codifications in the Romanian principalities, mentions that slaves are those owned by others and that “it is in this way that Gypsies are in Wallachia”<sup>140</sup>. In Moldova, even if the 1817 Calimach Code, of similar purpose and stock, considers it “against natural law”, it nevertheless regulated Roma slavery in a nearly identical fashion<sup>141</sup> due to it having been practiced since ancient times<sup>142</sup>.

Liberation from slavery would come in the second half of the 19<sup>th</sup> century, only a few years before slavery ended in the US, when Romanian intellectuals educated particularly in France and part of the elite sensed the embarrassment that the institution was creating them in the eyes of Western Europeans. Achim, for example, recounts the case of a Swiss intellectual called Emile Kohly de Guggsberg who, having seen Roma slavery in action in Moldova, published his work in 1841 and staunchly criticized its backwardness: “slavery is the country’s greatest shame, a black stain in front of foreigners”<sup>143</sup>. This struck a cord with many Western-educated Romanian elites.

<sup>137</sup> Petre Petcuț, *Romii din România Documente* (Kriterion, 2009), 62-63.

<sup>138</sup> Sam Beck, “The origins of Gypsy Slavery in Romania”, *Dialectical Anthropology* Vol. 14, No. 1 (1989), 53-61.

<sup>139</sup> Viorel Achim, *The Roma in Romanian History* (CEU Press, 2004), 29.

<sup>140</sup> Caragea Civil Code of 1818, Chapter VII, paragraph 1 (in Romanian): “Robi sunt câți sunt dobândă altuia. Acest fel sunt țiganii în Țara Românească”.

<sup>141</sup> Calimach Code of 1817, art. 27.

<sup>142</sup> Viorel Achim, *The Roma in Romanian History*, 41.

<sup>143</sup> *Id.*, 97.

Early signs of a new current of emancipating Roma started to show in the 1840s with small attempts by Romanian rulers in Wallachia and Moldova to free certain categories of slaves<sup>144</sup>. In 1848, Romanian revolutionaries in Wallachia then proposed and even included in the political program of their short-lived revolutionary government the abolition of slavery. Later, in the 1850s, the emancipationist movement started to gain more track and this culminated with the 1855 and 1856 laws in Moldova and Wallachia, respectively, which abolished Roma slavery in its entirety, of course without any compensation to the former slaves themselves<sup>145</sup>. It became quite popular, one might say fashionable, in the aftermath of the emancipation laws for boyars to release Roma slaves as a kind “generous” gesture, sometimes even waiving their right to compensation from the state<sup>146</sup>. Such “gallant” gestures would, of course, be received as being very *à la mode* and progressive, but ultimately they were both means of promoting one’s image and, more pragmatically, getting exempted from paying tax for former slaves for a period of 10 years<sup>147</sup>.

However, what is probably more interesting to note in all of this is that, besides some undeniable humanist reasoning behind releasing Roma slaves, the main rationales had more to do with increasing the number of taxable population available for the state and a general wish to modernize the two principalities. By modernization, I of course mean adhering to Western ideals of Enlightenment which became popular in the first half of the 19<sup>th</sup> century through intellectuals, scholars and elites who went and studied in Western Europe and consequently wished to reproduce the same advancements back home. Shame is another catalyst which prompted a sort of early interest convergence. Having seen how badly slavery is perceived in high Western European intellectual circles, Romanian elites sought to remove an institution they saw as

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<sup>144</sup> *Id.*, 109.

<sup>145</sup> As a matter of fact, tax-paying freed Roma would actually contribute to the compensation fund intended to benefit boyars who had to release their slaves. See *Id.*, 110-111.

<sup>146</sup> *Id.*, 111-112.

<sup>147</sup> *Id.*, 111.

backward and staining the image of their country. As we shall see in a later section<sup>148</sup>, this marks the beginning of what will become a more general and long-lasting Romanian anxiety with proving the modernity and stability of their country and their ability to self-govern. Modernization in this sense was perceived not only as a to benefit society at large, but also as a way to prove to the European powers that the Danubian Principalities could present themselves on the international stage as worthy dialogue partners. This would become even more acute in 1859 when both Principalities elected the same ruler, Alexandru Ioan Cuza, and thereafter sought to keep and even further the union of the two entities by making sure to gain the approval of the European powers at that time.

In any case, what is essential to mention is that besides these two distinctive aspects of Roma history in Romania – the independent participation of Romania in the Roma Holocaust and the institution and legacy of slavery – the current situation of the Roma in Romania and its link with these and other past injustices is what poses the most difficulties for Romanian authorities, the mainstream society and traditional national narratives. In this context, the place of the Roma minority in Romanian historiography and collective memory poses a particular challenge to the mainstream national narrative, which does not allocate much space to the Roma. Even if public acknowledgments of the participation of Romania in the Roma Holocaust do exist and school history manuals mention this and Roma slavery, they are treated as episodes of history and, for different reasons, not relevant in present times. In the case of the Roma Holocaust, the tendency is to present it as a historical anomaly caused by particularly vicious political and military figures and circles which diverged from the norm, such as the *de facto* dictator (or *conducător*, a title akin to *Führer*) of the country during the Second World War, Ion Antonescu, or the Fascist Iron Guard (or the Legion of Archangel Michael), both forces now more or less<sup>149</sup> generally stigmatized for

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<sup>148</sup> See Section 3.1.

<sup>149</sup> It should be mentioned however that the figure of Ion Antonescu noticed an increase in popularity after 1989 with widely-seen films such as Sergiu Nicolaescu's *Oglinda - Începutul adevărului* (The Mirror – The beginning of truth)

their association with Hitler and Nazi Germany. Roma slavery, its extent and duration, on the other hand, is barely known to the general populace and is usually treated in school history manuals as a distant episode in history with, again, little influence on today's society. In broadly accepted historical narratives, no link is drawn between slavery, the generally hostile past attitudes of Romanian society and state towards Roma, the Holocaust and the present discrimination and racialization that most Roma face.

Gergely Romsics remarks this in *The Roma Holocaust and Memory Games*<sup>150</sup>, where, although focusing on the remembrance of the Roma Holocaust in Germany and Hungary, he makes a few points which are also valid for Romania. Much like in Hungary, and in many other ex-Communist Bloc countries, remembering the Roma Holocaust (and to a lesser extent, the Jewish Holocaust) in Romania as a tragic event in which the local society and authorities participated with attitudes ranging from passive approval to enthusiasm and which was facilitated, if not triggered, by already existing animosities towards the Roma strikes at the core of a national narrative which relies on a deeply sedimented myth of historical majority victimhood<sup>151</sup>. As such, the authorities' and the mainstream society's interpretation of the Roma Holocaust too tends to frame it as a mere episodic anomaly owed to powerful foreign intervention and even if the local population or leadership participated, it did so due to a few extremist elements which function as an exception rather than as a rule, thus isolating the event from a broader narrative of continuous persecution<sup>152</sup>. Similarly, the difficulty in accepting this blame is accentuated by what many Romanians see as a Western European culture of remembrance focused on the Holocaust which does not seem to leave enough space for or show much empathy towards the communist experience which is felt as "hotter" and still haunts collective memory<sup>153</sup>.

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reinforcing the already popular image of Antonescu as an unrelenting stoic patriot fighting for his country. The Iron Guard's public image is less ambivalent and more easily condemned.

<sup>150</sup> Gergely Romsics, "The Roma Holocaust and Memory Games".

<sup>151</sup> *Id.*, 131.

<sup>152</sup> *Id.*, 207.

<sup>153</sup> *Id.*, 154.

However, the particular Romanian myth of historical victimhood holds even less ground than in Hungary in respect to slavery and the Roma Holocaust. Indeed, both are treated as episodes of history with no link to the societies which made them possible and to the present. Slavery, for example, is usually afforded very little space in school history manuals. According to a report made by the Centre for Legal Resources, a Romanian NGO, we see that most history manuals approved for middle- and high-school students are either very problematic with the subjects of Roma discrimination, slavery, or the *Porajmos* or do not approach them at all<sup>154</sup>. The manuals themselves are usually structured as a timeline and rarely feature broader discussions on specific topics. Within such a structure, Roma slavery in the Romanian Principalities would normally be mentioned either in the chapters discussing the Middle Ages, from where we find the earliest documents mentioning Roma slaves, or in the parts of the manual dedicated to the 1848 Revolutions and their aftermath. In the first case, Roma slavery has the misfortune of competing for the spotlight with subjects and events considered not only more important, but constitutive of the Principalities themselves, such as the foundation of Wallachia and Moldova and the struggle “for survival” with greater powers, such as the Hungarian Kingdom and the Ottoman Empire. In one manual, slavery is mentioned in just one sentence acknowledging its existence and the fact that “Gypsy slaves” (*robii țigani*) formed the lowest of categories<sup>155</sup>, while another manual acknowledges, albeit in an ambiguous tone, that: “(...) ever since they settled here, the Roma have been considered, due to their backward level of life and physical appearance, a population of lower category (...) therefore, since the beginning, it was marginalized and isolated”<sup>156</sup>. In the case of the chapters discussing the period between the 1840s and 1860s, precedence is taken by the 1848 Revolutions in Wallachia and Moldova, the 1859 union between the two Principalities under Cuza and end with the start of the reign of Carol I in 1866. Nowhere is the abolition of Roma slavery mentioned, instead the focus is, as expected, on the struggle to

<sup>154</sup> Irina Costache, “Analiza manualelor de Istorie”, Centrul de Resurse Juridice (2016), <http://www.crj.ro/wp-content/uploads/2016/11/CRJ-Analiza-Manuale-Istorie-educatie-fara-discriminare.pdf>.

<sup>155</sup> Alexandru Vulpe, ed., *Istoria românilor* [The history of Romanians] (Sigma, 2000), 46.

<sup>156</sup> Ioan Scurtu et al., *Istorie* [History] (Gimnasium, 2007).

gain international reputation as a preparation for independence from the Ottoman Empire (achieved later, in 1877) and internal modernization. Here it is worth mentioning that this fixation on external legitimacy and internal modernization as a way to achieving it should be remembered. It will become apparent in a later section<sup>157</sup> that this particularity of Romanian history left its mark on the present state of Romanian law, in particular on legislation affecting Roma.

The Roma Holocaust in Romania, on the other hand, is indeed expanded upon in some manuals and there is some collective awareness on the topic, or at least much more in comparison with Roma slavery. However, as mentioned earlier in this section, here the issue is that, unlike in other post-communist countries where remembering the Roma Holocaust poses difficulties, Romania carried out its plan of deporting Roma to Transnistria independently from similar German policies. In this case, the victimhood myth is harder to sustain since the Antonescu regime acted not only independently from the Germany, but even halted<sup>158</sup> most deportations of Roma to Transnistria in the autumn of 1942, just when the Nazi “Final Solution” gained momentum<sup>159</sup>.

While in both its dealings with the “Jewish question” and the “Gypsy problem”, the Antonescu regime acted mostly independently from Nazi Germany, it did try to synchronize and coordinate with German authorities. In cases where Romanian decisions differed, in either halting or refusing deportations, the reasons for this had nothing to do with humanitarianism, but with what Ion Antonescu and the government considered to be in the national interest. In the case of Jews from “Old Romania”, i.e. excluding territory annexed or reacquired after 1941, Antonescu’s refusal to allow their deportation to Poland is due mostly to resentment towards Germany ignoring Romanian war interests, the fear that the absence of Jews in Southern Transylvania

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<sup>157</sup> See Section 3.1.

<sup>158</sup> However, the reason for this appears to have been German complaints that “colonizing” Transnistria with Roma will pose dangers for the region as well as for ethnic Germans living in the area. See Viorel Achim, *The Roma in Romanian History*, 184-185.

<sup>159</sup> *Id.*, 184.

would strengthen the German minority instead and the possibility of using the Jewish community for bargaining with Western Allies in case of a British-American victory<sup>160</sup>. At no point was there a concern for the well-being of the Jewish community coming from the Antonescu regime, except as a tool to further state interests. Naturally, the same state interest-driven pragmatism should be read in how the Antonescu regime dealt with the Roma. In other words, in the “ideal” situation in early 1941, the Antonescu regime could act out its anti-Roma policies most viciously, but when pressure was felt from German authorities fearing a Roma colony in Transnistria formed from deportees, Romanian policy shifted to accommodate German demands and halted its deportations.

Notwithstanding the more limited<sup>161</sup> impact of the deportations of the Romanian Roma compared to what Nazi Germany was organizing, it remains a fully unilateral decision spurred by an already existing hatred of Roma in Romanian society and a notion of Roma as a “problem” that needed to be eradicated. However, hesitancy on the part of authorities and many scholars in approaching the subject critically is also due to the deeply rooted idea that Romania was fighting on the “right side” during the Second World War. Communist interpretation of Romania’s involvement in the war usually focused on the later part of the war, after the coup against the Antonescu regime on the 23<sup>rd</sup> of August 1944 took him out of power and Romania switched sides and joined the Allies. Romania’s invasion of the USSR in 1941 alongside Nazi Germany is awarded less space in the national narrative and as such, its involvement in the Holocaust pre-1944 is also sidelined. Moreover, during the later part of the highly nationalistic Ceaușescu regime, the narrative usually painted an image of Romania as an ally of the Soviet Union fighting against fascism. While this take benefits the Communist regime as it legitimized it, the same emphasis on the post-1944 part of the war still occurs today to a certain extent, although the

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<sup>160</sup> See Jean Ancel, “The German-Romanian Relationship and the Final Solution”, *Holocaust and Genocide Studies*, Vol. 19, No. 2 (2005), 263-264.

<sup>161</sup> Some sources cite as much as 90.000 Roma being deported to Transnistria, while others feature a lower figure of 25.000. In both cases, however, half of those deported died. For the first account, see Angus M. Fraser, *The Gypsies*, (Blackwell Publishing, 1995), 268; for the second account, see Viorel Achim, *The Roma in Romanian History*, 179.

main reason now is not Romania's supposed friendship with the Soviet Union, but more the hesitancy in accepting Romania's involvement in the Holocaust.

The present relationship between the Roma and the majority population is tense at best, filled with unresolved and conflicting accounts of history as well as the extent to which past discrimination and persecution influence how Roma are treated and perceived today. There are a few moments in post-1989 Romanian history where some sort of coming to terms with the past did occur though. Bucharest houses at least two monuments erected to commemorate the Roma Holocaust – one within the Museum of Roma Culture, unveiled in 2015<sup>162</sup>, and one smaller monument as a part of the bigger Holocaust Memorial, dedicated in 2009<sup>163</sup> to all the victims of the Holocaust, including the Roma, who are represented by the “Roma wheel” (*roata romilor*). Another important landmark, though this time under the form of a report, is the Final Report made by the International Commission on the Holocaust in Romania, hereinafter the Wiesel Report, chaired by Romanian American Jewish writer and Holocaust survivor Ellie Wiesel and delivered to the Romanian government in 2004<sup>164</sup>, which also documented the deportation of Roma to Transnistria<sup>165</sup>. The recent Law 124/2020 also establishes the 2<sup>nd</sup> of August as the national day for commemorating the Roma Holocaust in Romania, while some Romanian authorities, most noticeably the last two Presidents, have held speeches raising awareness of the Romanian participation in the mass deportation and killing of Roma. More importantly, both

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<sup>162</sup> For news coverage of the unveiling, see Hotnews, “A fost dezvelit Monumentul Holocaustului Romilor, dedicat dedicat memoriei victimelor deportate si exterminate in Transnistria si la Auschwitz – Birkenau” [The Roma Holocaust Monument dedicated to the memory of the victims deported and exterminated in Transnistria and at Auschwitz – Birkenau was unveiled], *Hotnews*, August 8, 2015, <https://www.hotnews.ro/stiri-esential-20345544-foto-fost-dezvelitmonumentul-holocaustului-romilor-dedicat-dedicat-memoriei-victimelor-deportate-exterminate-transnistria-auschwitz-birkenau.htm>.

<sup>163</sup> For news coverage of the unveiling, see Mediafax, “Memorialul Holocaustului din România, inaugurat joi, în Capitală” [The Holocaust Memorial in Romania, inaugurated on Thursday, in the Capital], *Mediafax*, November 8, 2009, <https://www.mediafax.ro/cultura-media/memorialul-holocaustului-din-romania-inaugurat-joi-in-capitala-4972070>.

<sup>164</sup> International Commission on the Holocaust in Romania, *Final Report* (Polirom, 2004), [http://www.inshre.ro/ro/files/Raport%20Final/Final\\_Report.pdf](http://www.inshre.ro/ro/files/Raport%20Final/Final_Report.pdf).

<sup>165</sup> International Commission on the Holocaust in Romania, *Final Report*, 223-255.



Traian Bănescu<sup>166</sup> and Klaus Iohannis<sup>167</sup> have linked past atrocities with present marginalization, a very rare occurrence in Romanian politics.

## 2.2 Racialization and deracialization in Romanian historiography

The history of Roma in Romania is a topic of debate and controversy. Though there are very few comprehensive attempts at analyzing it, those that do exist are all the more important and influential. In this thesis' attempt to flesh out how race performs in a context such as that of Romania, an important step would be to get a sense of how historiography tackles the history of Roma in Romania. The significance of this enterprise lies in the fact that it will provide us with valuable insight not only into the position of Roma in Romanian history, in particular when it comes to slavery and the Holocaust, but also into some of the perverse logics of the perception of Roma. Most importantly for the purposes of this thesis, this section will highlight the generally accepted myth of a non-racial Romanian past marked only by a few personalities or movements which are indeed singled out for their racial perception of Roma, but which are either seen as exceptions and thus decoupled from broader Romanian history or their racist

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<sup>166</sup> At a 2007 ceremony for decorating Roma Holocaust survivors, President Bănescu was quoted as saying: "We must tell our children that, six decades ago, children like them were sent by the Romanian state to starve to death. We must tell Romanian mothers that the Romanian state has killed Roma mothers through enslavement and misery. It is worth remembering that the Roma men fighting for their homeland were taken out of the army to be sent between the Dniester and the Bug. Education in Romania has a duty to make the Holocaust known to new generations, just as it has a duty to talk about the era of Roma slavery or the crimes of communism. The humiliations of the past, as well as the stigma of the present. The tragedy of the Holocaust is now part of our collective memory. We have a duty to manage this memory. But we also have a duty to build a future. Both are our political responsibility. Forgive us, brothers and sisters for the past and we will build Romania's future beautifully together." See Vasile Ionescu et al., "Samudaripen. The Roma Holocaust. Romania. The Deportation of the Roma to Transnistria: testimonies – documents" (2016), [https://ikultura.ro/wp-content/uploads/2019/08/Brosura\\_O\\_Samudaripen\\_Holocaustul\\_Romilor\\_20161.pdf](https://ikultura.ro/wp-content/uploads/2019/08/Brosura_O_Samudaripen_Holocaustul_Romilor_20161.pdf).

<sup>167</sup> The current President, Klaus Iohannis, acknowledged in a 2020 speech that: "In Romania, 25,000 Roma were deported to Transnistria, at the behest of the Romanian dictator and Nazi ally, Ion Antonescu. About 11,000 Roma lost their lives [...] We admit, with pain, that Romanians were among the perpetrators (of the European Holocaust) [...] As for Roma communities, my country is strongly committed to the fight against discrimination, hatred and marginalization, promoting social inclusion. Remembrance becomes stronger when it is complemented by strong actions to protect diversity, tolerance and human rights." For the full speech (in Romanian) see Digi24, "Klaus Iohannis, mesaj de Ziua de Comemorare a Holocaustului Romilor: „Admitem, cu durere, că printre făptuitori s-au aflat și români” [Klaus Iohannis, message on Roma Holocaust Remembrance Day: "We admit, with pain, that Romanians were among the perpetrators"]", *Digi24*, August 2, 2020, [https://www.digi24.ro/stiri/actualitate/klaus-iohannis-mesaj-de-ziua-de-comemorare-a-holocaustului-romilor-admitem-cu-durere-ca-printre-faptuitori-s-au-aflat-si-romani-1346943?\\_grsc=cookieIsUndef0&\\_grts=54186131&\\_grua=547158c67756c1fd48ab7ea9bd3a65be&\\_grn=1](https://www.digi24.ro/stiri/actualitate/klaus-iohannis-mesaj-de-ziua-de-comemorare-a-holocaustului-romilor-admitem-cu-durere-ca-printre-faptuitori-s-au-aflat-si-romani-1346943?_grsc=cookieIsUndef0&_grts=54186131&_grua=547158c67756c1fd48ab7ea9bd3a65be&_grn=1).

motivations are downplayed, sometimes even by otherwise salient works of historiography. This will later help in understanding why Romanian law operates rather awkwardly with race as a legal category, but also why racial discrimination is rarely associated with Roma people.

If we take as an example probably one of the most authoritative and influential works on the matter of Roma in Romania, Achim's "Roma in Romanian history", we see that according to him, racial theories concerning Roma were present only marginally in Romanian history and did not gain any ground until the 1930s. According to Achim, Roma were not framed as minorities in the Romanian legal landscape of the interwar years, instead being viewed as a social category<sup>168</sup> and, unlike Jews, were not targeted by the extreme right governments of Octavian Goga and A.C. Cuza during the royal dictatorship of Carol II. In the fields of science and anthropology, on the other hand, he notes a rise in interest in biopolitics and eugenics during this period, with some researchers and institutions, such as the Institute of Social Hygiene in Cluj, advocating for ethnic purity and ridding the nation of alien elements such as Jews and Roma<sup>169</sup>. This movement, however, is associated by Achim with the "scientification" of race and other similar developments in Germany in the same period, not to a home-grown wave of interest in eugenics. Achim further considers this movement as marginal and mostly limited to specialist circles in the early 1930s, even though they did represent an explicit step towards contouring a scientific justification for the racial superiority of Romanians over Roma. And much like in the case of Jews, assimilation into the majority nation did not save Roma from being considered a danger to the purity of the nation. On the contrary, the successful assimilation of a large proportion of Roma into Romanian society created even more anxiety among racial scholars who feared the immixture will result in damaging the ethnic traits of Romanians<sup>170</sup>.

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<sup>168</sup> Viorel Achim, *The Roma in Romanian History*, 163.

<sup>169</sup> *Id.*, 164.

<sup>170</sup> *Id.*, 165.

By the 1940s however, Achim contends that racial theories on Roma started to be more and more accepted by the scientific community and a “Gypsy problem” began to be crystalized in Romanian society, although the rise of the Iron Guard and its seizure of power is considered to have occurred in parallel to this development, since the Iron Guard only contributed right at the end of their time in government with unimplemented proposals for solving the “problem”<sup>171</sup>. The military regime lead by Ion Antonescu, on the other hand, was directly responsible for the deportation and killing of Roma in Transnistria. Interestingly enough, Achim claims that from the available information<sup>172</sup>, there is nothing to link the racial theories and scholars that promoted them starting with the 1920s and 30s with Antonescu’s policies, which, according to him, were aimed at eliminating criminality and were not justified through race. If anything, he points out that “racism [...] didn’t count for much in Romanian political thinking in the interwar years or even during the Second World War”<sup>173</sup> and that “its importance was marginal even among supporters of eugenics”<sup>174</sup>. It would seem initially that there was no explicit racial element mentioned in the Antonescu regime’s official documents relating to the treatment of the Roma, since they referred to the deportations in terms of a crusade against vagrancy. Achim shows how the majority of the Roma population was actually not affected by the deportations, since they were not “problem” Gypsies<sup>175</sup>, i.e. they were not associated in the government’s eyes with criminality, nomadism, begging and other unaccepted social behavior.

We see here a trend which seems to characterize the process of racializing Roma in Romania: there is a clear distinction between the “civilized” or assimilated Roma and those keeping to behaviors considered backward and who consequently deserve the contempt of the majority

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<sup>171</sup> *Id.*, 166.

<sup>172</sup> *Id.*, 168.

<sup>173</sup> Viorel Achim, “Gypsy Research and Gypsy Policy in Romania, 1920–1950”, in Michael Zimmermann ed., *Erziehung und Vernichtung. Zigeunerpolitik und Zigeunerforschung im Europa des 20. Jahrhunderts* (Franz Steiner Verlag, 2007), 167.

<sup>174</sup> Achim, *Roma in Romanian history*, p. 168.

<sup>175</sup> *Id.*, 169.

society. Achim documents however in another piece<sup>176</sup> the reaction towards the deportation of Roma to Transnistria and what follows is that in the case of assimilated and sedentary Roma, many of the voices rising in protest to the deportations, especially members of the local communities from which Roma were rounded up and taken away, pointed to the deportees' economic usefulness and high level of cultural and religious assimilation as arguments for halting or reversing the deportations. Deportations of nomadic Roma, on the other hand, were not resisted by local communities, who had fewer interactions with them and did not deem nomadic Roma as productive members of their society, but instead saw their removal as justified<sup>177</sup>. This ambivalent reaction towards the deportations is also mentioned in the Wiesel Report, which confirms that the deportations were apparently very unpopular among many parts of society in Romania, from high-ranking politicians to inhabitants of villages from where Roma were to be deported<sup>178</sup>. On the other hand, deportation of the “problem Gypsies”, i.e. those associated with criminality, homelessness and especially nomad Roma, was considered justified by the majority of the population<sup>179</sup>.

However, it becomes obvious that, much like in most European societies' treatment of Roma people in the past (and some in the present too), distinguishing the “undisciplined” or “undesirable” Roma from those who have adhered to the majority society's norms to a certain extent has a strong racial basis to it. The “disciplining” of Roma, as well as their history in European countries is a very widespread attitude, especially of Central and Eastern European governmentalities, which tend to promote “tamed” narratives<sup>180</sup>. Even if the Antonescu regime's policy towards Roma changed over time, had inconsistent levels of hostility, ranging from non-interference to deportations and back to halting deportations, and appeared to have happened

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<sup>176</sup> Viorel Achim, “Atitudinea contemporanilor față de deportarea țiganilor în Transnistria” [The attitude of contemporaries towards the deportation of Gypsies in Transnistria], *România și Transnistria: Problema Holocaustului*, Viorel Achim, Constantin Iordachi, eds. (Curtea Veche Publishing, 2004), 201-233.

<sup>177</sup> *Id.*, 230.

<sup>178</sup> International Commission on the Holocaust in Romania, *Final Report*, 239.

<sup>179</sup> *Ibid.*

<sup>180</sup> Gergely Romsics, “The Roma Holocaust and Memory Games”.

independently from Nazi Germany's deportations, it was still aimed at rooting out "social problems" which were directly and intimately associated with Roma people more than with other groups. In this sense, the reduced scale<sup>181</sup> of deportations and deaths of Roma at the hands of Romanian authorities compared to their German counterparts, as well as the selective manner in which they occurred, excluding most "disciplined" Roma does not in itself rule out racial thinking<sup>182</sup>.

When it comes to Achim's interpretation, he does acknowledge the presence of proponents of eugenics in Romania and a certain limited proliferation of racial theories. However, and more troubling, he disconnects them from the actual policies taken by the Romanian government under Ion Antonescu or previous fascist governments during the interwar years. Instead, Achim makes a point which further removes Antonescu, and for that matter racial ideologies from the Romanian context – since the regime, military in nature, was more preoccupied with (re)establishing public order at a time of war, it sought to remove what it saw as parts of society causing chaos. Achim's argument is mirrored by the Wiesel Report, which also mentions that racial theories on Roma proposed by a handful of scholars promoting eugenic policies in Romania remained on the fringes of academia and society in general<sup>183</sup>. Moreover, even far-right extremist movements were reluctant to adopt these ideas, the only one being the Iron Guard, which intended to address the "Gypsy problem", but was overthrown before it could do anything of significance<sup>184</sup>. Similar to Achim, the Wiesel Report links Romanian anti-Roma policies, and with that also the permeation of Romanian policies by racist theories on Roma, with the person of Antonescu directly, concluding that "unlike in the case of Jews, anti-Roma policies were not rooted in the Romanian past, but rather in new political realities resulting from Marshal

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<sup>181</sup> Achim, *Roma in Romanian history*, 182.

<sup>182</sup> *Id.*, 185.

<sup>183</sup> International Commission on the Holocaust in Romania, *Final Report* 224-225.

<sup>184</sup> *Id.*, 225.

Antonescu's entry into the political arena"<sup>185</sup>. Thus, the central report that documents the Holocaust in Romania, which was also accepted by the Romanian Government at the time of its publication carries on the idea that, bar a few insular proponents of eugenic measures directed at Roma and the unconnected genocidal policies of the Antonescu regime, racial ideologies were neither widespread in Romania before and during the Second World War, nor did they influence actual policies on Roma.

However, Achim is not the only Romanian historian who distances racial thought from Romanian history and society. In fact, the same approach is taken by most of Romanian historiography on Roma<sup>186</sup>. Some historians writing on Roma in Romania seem to have a particular understanding of "race" and of actions or policies that are taken using a racial justification. Since contributions on this topic are scarce in Romania, the few works that do exist can be not only influential and widely cited, like Achim's, but can also be indicative of the common perception of Roma. One particularly revealing example, which manages to summarize (and support) some of the most common misconceptions on racialization of Roma in Romania is Alex Mihai Stoenescu's "*Țigani din Europa și din România*"<sup>187</sup> (Gypsies in Europe and Romania). On the subject of race in particular, he goes on to dissect the concept as it is understood in English and French and concludes that discrimination on the basis of physical aspect (one of the elements of discrimination on the basis of race) is ultimately not due to a racist or racial attitude, but more having to do with xenophobia<sup>188</sup>. This is one of the most common arguments used to fend away either accusations of racism or the actuality and usefulness of the

<sup>185</sup> *Ibid.*

<sup>186</sup> Marius Turda, Adrian N. Furtună, "Roma and the Question of Ethnic Origin in Romania during the Holocaust", *Critical Romani Studies*, Vol. 4, No. 2 (2021): 15. According to Turda and Furtună, Romanian historiography traditionally negates the role that racializing discourse and eugenic movements played in the interwar period, as well as during the Second World War: "The official narrative is that there was 'no Gypsy problem' in Romania prior to 1942, when the deportations of Roma to Transnistria began (...) this historiographic tradition accepts that Romanians were antisemites during the early 1940s but considers that their anti-Roma attitudes were not motivated by racism and eugenics (...). This reticence to discuss anti-Romani racism reflects another illusion purported by historians of science and medicine in Romania, which sought to negate, or at least soften, the impact of eugenics."

<sup>187</sup> Alex M. Stoenescu, *Țigani din Europa și din România* [The Gypsies of Europe and Romania], (RAO, 2015). Note that the author purposefully uses the term "Gypsy" in the title and throughout the book to signify his rejection of the more "politically correct" term "Roma" (*romi*), which he deems artificially imposed and thus should not be used.

<sup>188</sup> Stoenescu, *Țigani*, 197-201.

term race itself – switching the paradigm of discussion from racism to xenophobia, a term that in all practice has less bite to it, reflects a less broad basis of discrimination and is generally perceived as less revolting than racism.

Racism towards Roma is, of course, tied to a power relationship between oppressed and oppressor. I have mentioned previously<sup>189</sup> the prevalence of a narrative of historical victimhood in Romania which dominates history manuals and official interpretations of Romanian history and which prevents a full and authentic reconciliation with past injustices towards the Roma and other minorities. Here, Stoenescu proves useful again, as he manages to summarize fairly eloquently how the self-victimizing majority narrative usually leads to dismissing any “special suffering” other oppressed groups might have had to endure:

“[...] In the economic conditions of Eastern Europe, to think that Romanians or Bulgarians or Slovaks racially discriminate Gypsies because they feel racially superior to them is an aberration. To think that these states distribute goods on the basis of racial criteria is another aberration; Romanians and Gypsies die of hunger in the same way, but it is possible that they survive using different methods, which have to do with their ability to resist squalor or their level of assimilating European civilization.”<sup>190</sup>

The reason why Romanians find it difficult to see themselves as oppressors is that the general image of such an oppressor enters into a seemingly clear contradiction with the image of Romanians as poverty-stricken and defenseless in the face of more powerful forces in the past which affected both Romanians and the Roma in equal terms. Such ideas seem almost begging for empathy for those suffering in solidarity in their equal misery. The idea does sound appealing. Its deterministic narrative and apparent solidarity between two historically victimized groups appeals, though to a different extent, to even more left-leaning authors and thinkers as well, yet the final conclusion would probably not deem mutually exclusive the oppression of Romanians by other powers and the oppression of Roma by Romanians. In any case, Stoenescu

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<sup>189</sup> See Chapter 3.

<sup>190</sup> Stoenescu, 220.

constantly laments what he terms as outdated concepts on race and racial discrimination and proposes that xenophobia would instead be a more appropriate term.

Moving on to the auto-imposed question “What race are the Gypsies?”, Stoenescu constructs<sup>191</sup> a very flimsy theory that due to racial theories originating in Western thought and in a Western context, they do not make much sense in the lands forming Romania where the population could not possibly be racist since they were not exposed to racial or racist theories, not even at an unconscious level. While he does admit that discrimination and prejudices against Roma in Romania do exist, he nevertheless does not ascribe to them a racist element, due to how unfertile Romania was to racist theories. This seems to fit with the widely popular idea among some Romanian scholars that the lack of widespread and officially endorsed eugenic and racial theories in Romania compared to other Western countries ultimately excludes the possibility that past persecution of Roma is due to racial ideologies. Weirdly enough, in the end he answers his own question, in a somewhat ironic fashion, that Gypsies would be part of the white race, despite previously dismissing race as a relevant concept in context like Romania.

Ultimately, what makes race so easy to dismiss by some Romanian scholars as not having local relevance is the assumption that racial theories or thinking never took hold in this country. However, more recent works suggest that many Romanian anthropologists and sociologists in the interwar years engaged directly and explicitly with racial theories of Romanian national identity. People such as Iordache Făcăoaru, Sabin Manuilă, Gheorghe Popovici, Petru Râmneanțu or Traian Herseni figure as just a few of the many Romanian eugenicists, proponents of serology as a means of establishing racial hierarchies, racial anthropologists and racial sociologists which have made interbellum Romania a fertile breeding ground for racial theories. Some of the more influential of this group led or were members of important institutions, like in the case of Iordache Făcăoaru, who was associated with the Institute of Hygiene and Social

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<sup>191</sup> *Id.*, 223-240.



Hygiene in Cluj and the Institute of Statistics in Bucharest, Sabin Manuilă, who was the latter's director or Gheorghe Popovici, who was a professor at the Faculty of Medicine in Cluj. Făcăoaru was even appointed director of the Department of Higher Education in the Ministry of National Education during the Legionary government's short mandate<sup>192</sup>.

Like in many of other cases during this period, racial serology (or sero-anthropology), craniometry or anthropology merely reflected the current societal trends and served to justify pre-existing racial hierarchies, establish new ones or legitimate claims to territories and ancestries. As territorial claims from neighbors such as Hungary or the Soviet Union created more and more political pressure, Romanian eugenicists and racial anthropologists started espousing theories which increasingly saw their rivals as inferior and thus delegitimizing their claims<sup>193</sup>. In particular, Marius Turda highlights the relevance of the names listed above to the national narrative being developed in the interwar years as well as how overtly racial their theories and political programs were:

“Racial eugenicists such as Făcăoaru and Râmneanțu stand not as exceptions but as representatives of a general intellectual and political process that I see as the biologization of national belonging (...) Sabin Manuilă outlined his version of the Romanian racial biopolitics thus: ‘The goal of our population policy should be to gather all Romanians in one place and to eliminate from our body all minorities manifesting centrifugal tendencies.’ Manuilă based this biopolitical program on ‘racial commandments’ including pro-natalism; ‘the programmatic solution to the Jewish question’; ‘efficient solutions to combat the danger of Gypsy racial influence’; and finally ‘practical eugenic measures’, such as sterilization of those considered dysgenic.”<sup>194</sup>

In fact, Turda's work paints a completely different picture from what Achim and Stoenescu claim. Not only were proponents of racial eugenics widespread within Romanian society starting with the 1920s, but their work was highly influential on state policies. Their advocating for a “purification” of the “Romanian race” lead directly to the creation of a National Centre for

<sup>192</sup> Marius Turda, “The Nation as Object: Race, Blood, and Biopolitics in Interwar Romania”, *Slavic Review*, Vol. 66, No. 3 (2007): 439.

<sup>193</sup> *Id.*, 431.

<sup>194</sup> *Id.*, 437.

Romanianization in 1941 which would lead the charge to eliminate Jews and other elements deemed undesirable<sup>195</sup>. Both Prime Minister Mihai Antonescu and the military dictator Ion Antonescu used overtly racial discourse when discussing the aims of the purification policies. In one cabinet meeting, Mihai Antonescu announced “the purification of the population; [...] not only in respect of the Jews, but of all nationalities; we will implement a policy of total and violent expulsion of foreign elements”<sup>196</sup>. Similar claims were also made by Ion Antonescu<sup>197</sup>. Many other debates and measures indicate that by the time Romania entered the Second World War on the Axis side, there operated a clearly established understanding<sup>198</sup> of Romanian identity as based on blood, racial characteristics and as belonging to a wider European race made out of the Latin, German, Slavic and Greek races<sup>199</sup>. Within this new understanding of the Romanian “race” or “nation”, Roma were perceived as a foreign element which needed to be identified and extirpated. Interestingly, proponents of racial thought consistently overlapped notions such as “nation” and “ethnic body” with “race”, the latter term being used often in debates on policies<sup>200</sup>.

Other Romanian authorities of the time were equally racial in their perception of the Roma. Gheorghe Banu, the Romanian Minister of Health during the fascist Goga Government of 1937 to 1938 claimed in a publication that Roma were physically and psychologically inferior to the autochthonous population, in part also due to slavery, which was used as a reason for the many Roma traits considered undesirable<sup>201</sup>. Interestingly, Roma were often compared unfavorably

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<sup>195</sup> Marius Turda, Adrian N. Furtună, “Roma and the Question of Ethnic Origin in Romania during the Holocaust”: 14.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> Turda and Furtună document very early proponents of a biologized understanding of the Romanian nation, such as in Iuliu Moldovan’s *Igiena națiunii: eugenia* (The hygiene of the nation: Eugenics), published in 1925. According to them, “Iuliu Moldovan, a professor at the University of Cluj and director of its Institute of Hygiene and Social Hygiene, made it clear that what defined the Romanians was not ‘language, religion and common interests’ but a ‘biological relation of blood’ (*legătura biologică de sânge*) connecting each one of them across time and space. Romanian “blood” was thus transformed into a symbol of ethnic hegemony and national normativity, biologizing individual and collective identity”. *Id.*, 16.

<sup>199</sup> *Id.*, 24.

<sup>200</sup> *Id.*, 13.

<sup>201</sup> *Id.*, 16.

with the “dignified” and racially superior Romanian peasant which became the primordial specimen of Romanian racial identity<sup>202</sup>, thus creating a racial hierarchy between former slaves and Romanian peasants, most of whom had been serfs for most of the time Roma slavery existed. In another example, a Romanian Gendarmerie commander compiled a report entitled the “Gypsy Problem” in 1942 where he listed the number of Roma present in his county, complained of their “laziness, filth and drunkenness”<sup>203</sup> and asked central authorities to adopt measures to stem the reproduction of Roma<sup>204</sup>. Following similar requests, the Antonescu government carried out a census of both nomadic and sedentary Roma who constituted “a burden to society and a threat to public order”<sup>205</sup>, then started deporting to Transnistria those Roma identified by the census in the summer of 1942. Even after the deportations were halted due to completion of the task, some local authorities were still requesting that the Government amend the current race laws in order to more clearly distinguish those Roma who have assimilated. While an amendment was drafted, including an explicit exclusion of Roma from being issued with “Romanian ethnic origin” certificates<sup>206</sup>, it was never passed. In May 1944, a compromise with local authorities would allow the latter to issue certificates of nationality to assimilated Roma with the inscription “Gypsy-Romanian” in the “ethnic origin” field<sup>207</sup>. However, even if these modifications were to pave the way for further measures of ethnic cleansing, the fall of the Antonescu regime in August 1944 and the end of the war would spell the end for any such future plans.

What is clear from more recent and critical historiography is that Romanian ideas on race, as well as on responding to “Gypsy problem” developed in an environment where racial “scientific” and

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<sup>202</sup> *Ibid.*

<sup>203</sup> In the next Section (2.3), we will see how communist authorities compiled similar reports with similar language, addressing Roma as a perennial problem. Despite not outright endorsing eugenic solutions, these reports would continue relying on similar stereotypes of Roma.

<sup>204</sup> Marius Turda, Adrian N. Furtună, “Roma and the Question of Ethnic Origin in Romania during the Holocaust”: 23.

<sup>205</sup> *Ibid.*

<sup>206</sup> *Id.*, 24.

<sup>207</sup> *Id.*, 26.

political theories and actual measures were abundantly present. Moreover, these “scientific” debates over race seemed to be prevalent enough that they would attract reactions from personalities with more artistic takes on race, such as poet Lucian Blaga, who deplored the increasing “scientifization” of race, but at the same time supported an idea of race as “style”, i.e. each “race” represents a “style” that carries with itself natural beauty, in a stereotypical manner.<sup>208</sup> Unsurprisingly, he also rejected the immixture between races.

However appealing it might seem to extricate Romania from what many have come to regard a rather tarnished interwar European *Zeitgeist*, it cannot be ignored how much Romanian society and many of its intellectuals fit into the latter. While the extent to which racial theories spread into the broader society and were incorporated into political discourse as well as state actions was not uniform throughout Europe, it is essential to retain that Romania was not an exception to the rule, but very much in line with similar discourses from other countries. Moreover, the figure of Ion Antonescu, who is commonly judged as a quasi-messianic personality and who imposed his own solution to the “Gypsy problem”, is misidentified as the only source of Romaphobia in Romania during the Second World War. Yet we have seen that far from representing a break with Romanian society at that time, if anything, Antonescu was formed by a context marked by eugenic and racist theories that ultimately concluded with the inferiority of Roma and begged for their removal. Historians such Achim and Stoenescu exemplify, albeit to different extents, a widespread belief in a non-racial Romanian past, from which current colorblindness takes roots. The argument that Roma have never been racialized, either because racial theories were not present in Romania or because race never functioned as a social signifier, goes beyond historiography, yet it is after all influenced by it. Its results are the banishment of race, the whitewashing of Roma history and a perception of “equal misery” which appears empathetic to Roma plight, but ultimately functions as a way to disconnect racial injustice from its context.

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<sup>208</sup> Lucian Blaga, “Despre rasa ca stil”, *Gândirea*, 14, no. 2 (1935): 69-73.

In reality, we are dealing with a context deeply intertwined with racialization of Roma. While it indeed appears that historically, Roma were mainly associated with their occupational crafts<sup>209</sup>, thus creating the image of a purely social class, some authors do signal the racial undertones of such a system, even during earlier times of slavery (and when, according to others, racist theories were not yet crystalized):

“[...] Unique to Romania is the ethnic quality of slavery, an aspect of the Romanian social formation that by the 17th and 18th centuries appeared as an accepted condition of Gypsies, paralleling the ideas of “natural” inferiority of certain races that dominated capitalist development in western Europe<sup>210</sup>. [...] Finally, as the *Țigani* increasingly took on an ethnic and racial character, Romanians could increasingly identify themselves in contradistinction to their low-class status, a process that helped shape the Romanian national states and Romanian ethnic identity.”<sup>211</sup>

Historian Shannon Woodcock makes a similar point, namely that the Romanian peasantry as well as the upper Boyar class had early on a feeling of superiority towards the Roma slaves treated essentially as a racial class, bearing in mind that when later, racial reconceptualizations of Romanian identity would take root, the image of the Romanian (ex-serf) peasant would be its central archetype:

“The *Țigan* as inferior other used to work the land was a vital identity against which the peasants could articulate themselves as of the land – a differentiation that served not only the esteem of the peasant classes, but also their supervising landowners, who benefited from the *Țigani* as the group that all Romanian classes could police to the periphery together.”<sup>212</sup>

In any case, what this example shows is that race as a legal category for discrimination in the case of Roma in Romania as well as the possibility that Roma might be racialized in the Romanian context are facing an environment which rejects them to various degrees. This is, of course, not a new phenomenon and is not unique *per se* to Romania, though it has some particularities due to

<sup>209</sup> Achim, *Roma in Romanian history*, 33-34 and Sam Beck, “The origins of Gypsy Slavery in Romania”, 59.

<sup>210</sup> Beck, “The origins of Gypsy Slavery in Romania”, 57.

<sup>211</sup> *Id.*, 61.

<sup>212</sup> Shannon Woodcock, “Romanian Romani Resistance to Genocide in the Matrix of the Țigan Other”, *Anthropology of East Europe Review*, 25 (2) (2007): 29.

the context explained in the previous section. This so-called “new racism” which abandons overt racial themes such as difference in skin color or other anthropometrical aspects makes use instead of subtler aspects such as cultural differences, behavior and, as was hinted earlier, reverse racism based on an inversion of the roles of victim and victimized between the majority and the Roma. Here, the majority is being oppressed and feels neglected or misunderstood, while the Roma are granted political, social and cultural benefits. The Roma, meanwhile, are either viewed as an ethnic<sup>213</sup> minority with issues of integrating into mainstream society or, on the contrary, as a fairly assimilated group, part of Romanian society, which merely needs socio-economic measures to alleviate their condition. These two almost opposing perceptions serve similar goals. On the one hand, recognizing Roma as an ethnic minority creates the false impression that they are a group not so different from other minorities, such as the Hungarians, Germans, Serbs or others and, as such, the category of race does not fit into this framework. On the other hand, framing Roma as a socio-economic group, as we shall see<sup>214</sup>, allows authorities to justify their hesitation in tackling racial discrimination, instead focusing on various forms of economic positive action measures<sup>215</sup>.

### 2.3 Roma as socio-economic category during Communism

The idea of Roma as a socio-economic group, although older, is a legacy nevertheless associated in particular with the communist regime, which turned a blind eye to marginalization and racialization of Roma. It is useful to take note of this part of Romanian history as well, not only because it has long-lasting effects on the situation of the Roma and how they are perceived to

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<sup>213</sup> In the Romanian context, much like in most CEE countries, the difference between ethnic and national minorities does not operate to the same level as in, say, Kymlicka’s categorization. Instead, “ethnic” and “national” are more or less lost in synonymity in contexts where the ethnically homogenous nation-state is the ideal societies take as a given.

<sup>214</sup> See Sections 2.3, 2.4 and 3.7.

<sup>215</sup> Throughout this thesis, when referring to a Romanian/European context, I will be using ‘positive action’ to refer to measures aimed at achieving full and effective equality for members of groups facing disadvantages or discrimination. When discussing similar measures taken in non-European countries (such as the United States of America), I will instead use ‘affirmative action’ as an equivalent, yet context-appropriate notion.

this day, but also because it shows a continuity in racial thinking that survived ideological changes. If anything, Roma continued to experience systematic marginalization despite the regime's attempts to integrate them economically (which it managed to a certain extent). The subject is also important for the purposes of this thesis as it highlights how post-communist authorities have carried on the legacy of ascribing the Roma to a socio-economic category into their legislation as well.

Much like its Eastern European Communist Bloc peers, the Romanian communist regime did not find a clear place for Roma in its ideological landscape, preferring a process of forced assimilation, with mixed results. Moreover, racism was not considered by the Communist Bloc countries to occur in their socialist societies, which were liberated from racial struggle through the triumph of the working class. Racism was instead a quintessentially capitalistic problem, the inheritance of imperial and colonial pasts and, as a consequence, used constantly as an argument against capitalist countries such as the US, which were embroiled in racial struggles<sup>216</sup>. In this new system, Roma language and culture, deemed backward if not reactionary, would be absorbed into the broader socialist society.

The legacy of the previous Antonescu regime in the case of Roma deportations was also treated awkwardly by the new communist government, which not only avoided compensating the returning deportees for their hardships, but also increased travel restrictions for nomads, the group most affected by the deportations to Transnistria<sup>217</sup>. In taking the opportunity to dismantle Roma nomadism as contrary to civilization and the ideal Marxist society they envisaged to create, Romanian authorities perpetuated previous regimes' policies and failed to provide a break in this legacy.

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<sup>216</sup> Ian Law, Nikolay Zakharov, "Race and Racism in Eastern Europe: Becoming White, Becoming Western", Philomena Essed, Karen Farquharson, Kathryn Pillay, Elisa J. White, *Relating Worlds of Racism*, 118.

<sup>217</sup> Viorel Achim, "Încercarea romilor din România de a obține statutul de naționalitate conlocuitoare (1948-1949)" [The attempt of the Romanian Roma to obtain the status of cohabiting nationality (1948-1949)], *Revista istorică*, vol. XXI, no. 5–6 (2010): 451.

Unlike other minorities, which were recognized to a certain extent as “co-inhabiting nationalities”<sup>218</sup> (*naționalități conlocuitoare*) Roma were never deemed “mature” enough as a group to be recognized as such and instead fell into the second-class category of “other nationalities”<sup>219</sup>, which did not benefit from the minority rights nominally granted to other groups under the 1965 Constitution<sup>220</sup> or earlier legislation, such as the 1945 Law on the Statute of Minority Nationalities. The reason for this was that unlike the other old minorities of Romania, the Roma were seen as not having a uniform culture and language and were territorially dispersed<sup>221</sup>.

Roma organizations did try to organize as associations in the early years of the Communist regime (1946-1950s), much like other national minorities in Romania, and were on the verge of being recognized as a partner for the government. While negotiating with the authorities for the recognition of the Roma People’s Union, the secret police (Securitate) vetted the Union’s past and possible collaboration with fascist elements and gave it a green light, albeit relying on racist prejudice for its argumentation: “The Roma People's Union can be useful for raising the cultural level of the Gypsies and for eradicating the begging and thieving done by some Gypsies and for guiding the Gypsies on the democratic line. The members of the initiative committee are attached to the regime.”<sup>222</sup> Unsurprisingly, Romanian Communist authorities viewed Roma more as a social “problem” which was connected to stereotypes such as thieving and begging that needed eradicating. The term “Gypsy problem” that we have seen being used in past authoritarian and fascist regimes is given a slight revamp to fit the new state’s ideology, but continued to be used in official documents and policies aimed at bringing the Roma on the “right path”.

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<sup>218</sup> *Ibid.*

<sup>219</sup> Zoltan Barany, “Politics and the Roma in state-socialist Eastern Europe”, *Communist and Post-Communist Studies*, no. 33 (2000): 423.

<sup>220</sup> *Ibid.*

<sup>221</sup> *Ibid.*

<sup>222</sup> Achim, “Încercarea romilor din România”: 459.



However, by the time the proposal was being discussed, the Romanian Workers' Party decided to follow a different line of policy and changed its approach to minorities to an even more centralized model, one which abandoned the old system of popular unions who would represent minorities in building the Socialist State. From 1949 onwards, these unions would be replaced by so-called "democratic committees" for minorities, which would ironically not be formed of elected representatives from the minority groups, but of officials imposed centrally with the task of applying state policies to minority groups<sup>223</sup>. Thus, the proposal was viewed as no longer reflecting the new state policies and rejected. Moreover, another Roma organization would not replace it. Despite this early struggle for recognition as a co-inhabiting nationality, the Romanian authorities would eventually shut down all such attempts at recognition and banned all other Roma organizations<sup>224</sup>.

Ultimately, while the intrusion of the communist authorities into the lifestyle of the Roma has been labeled as "erratic"<sup>225</sup>, mostly due to the lack of consistency and interest as well as the existence of a bigger perceived threat in the form of the more organized Hungarian minority, its results still influence not only the life of the Roma community in present-day Romania, but also the majority's perception of the Roma. Dispersing and breaking up close-knit Roma communities undermined communal consciousness and helped in relegating Roma to a de-racialized socio-economic category.

We can already see that labelling Roma a socio-economic category can be used as a method to avoid tackling more systemic and thorny issues, such as the power relationship between the Romanian majority and the Roma community, as well as past injustices such as slavery and the Holocaust as well as the effects thereof which lingered throughout the communist period and even until today. Seeing a group in purely socio-economic terms begged questions of social and

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<sup>223</sup> *Id.*, 460.

<sup>224</sup> Barany, "Politics and the Roma", 433.

<sup>225</sup> *Id.*, 429.

economic integration, but left out cultural identity and the fact that Roma marginalization is intrinsically linked to cultural subjugation by the dominating Romanian majority group. Elevation from this inferior position could be achieved only by abandoning traditional ways of life and occupations and assimilating into the majority group. Lacking the status of co-inhabiting nationality and being excluded from politics meant stripping Roma of their agency and role in state- and identity-building to an even greater extent than other minorities. The latter were at least considered as temporary partners for the early communist authorities, up until the point when they were also sidelined, especially later during Ceaușescu's nationalistic dictatorship. The Roma were never seriously considered for such a position in the Romanian state.

Despite being disregarded as a community, Roma were quite early on directly targeted by the regime's policies. Starting with 1948, Roma *șatre* (nomadic Roma communities) were starting to be identified and localized by authorities as a first measure to breaking them up under a process of forced sedentarization<sup>226</sup>. Laws such as Decree 153/1970 also contributed in criminalizing many aspects Roma community life (whether nomadic or sedentary) by punishing “social parasitism”, “anarchy” or other forms of “deviant behavior” with prison, fines or labor. The vagueness of the decree, coupled with Romanian authorities' general bias against Roma meant that many Romanian Roma would continue to live on the limits of legality throughout the communist period<sup>227</sup>.

After Ceaușescu's coming to power in 1965, authorities would relax their measures towards the Roma, though some consideration was still given to the “Gypsy problem” starting with the 1970s shift towards a more nationalistic regime. A 1978 document<sup>228</sup> emitted by the Romanian

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<sup>226</sup> Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România [Presidential Commission for the Analysis of the Communist Dictatorship in Romania], “Raport final” [Final report] (2006), 573.

<sup>227</sup> *Ibid.*

<sup>228</sup> Partidul Comunist Român [Romanian Communist Party], “Informare privind unele probleme pe care le ridică populația de țigani din țara noastră” [Communication concerning some problems raised by the Gypsy population for our country] (1978) *apud.* Salomea Popoviciu, Cristian Tileagă, “Subtle forms of racism in strategy documents concerning Roma inclusion”, *Journal of Community & Applied Social Psychology*, 30 (2020): 89. The official report is

Communist Party shows that the authorities had a very patronizing and racist discourse on Roma. In this report, the Roma community in Romania is specifically analyzed to see how much state policies managed to integrate them into broader society. Among others, the report highlights that despite state policies, many Roma still maintained a “parasitic lifestyle, disregard schooling norms, break the law, including laws regulating health”<sup>229</sup>. Criminality is also linked with Roma, with the report concluding that 13% of crime in Romania in the past two years was committed by Roma, with a total of 6800 infractions<sup>230</sup>. The report also criticizes the Union of Communist Youth (*Uniunea Tineretului Comunist*) and the police (*miliție*) for not intervening firmly enough in areas where Roma were known to engage in “antisocial behavior”<sup>231</sup>. Considering this situation, one of the solutions found by the authorities was to break down concentrations of Gypsies and disperse their population among populated centers. To this end, a list was compiled identifying 26 localities which at that time had concentrations of Roma<sup>232</sup>. By the early 1980s, the official discourse of the authorities was that Roma have “given up their parasitic way of life and have joined up gradually into productive activities for society” and that they have completely disappeared by integrating into the Romanian nation<sup>233</sup>.

As an even less visible ‘Other’, Roma would nonetheless benefit from the communist regime’s policies economically and education-wise<sup>234</sup>, while forced urbanization also lead to many Roma finding better paid jobs in settings which were previously much more difficult to access. However, most of these changes occurred due to general policies by the regime, not because of targeted positive measures. Even so, Roma would find themselves in a particularly vulnerable position once the regime fell, as many occupied low-skill labor positions, which suffered the most during the early years of “wild capitalism” that characterized Romanian privatization in the

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available online (in Romanian) at:  
[https://www.militiaspirituala.ro/fileadmin/documente/doc.pdf.poze.documente\\_inedite/tiganiada-1978.pdf](https://www.militiaspirituala.ro/fileadmin/documente/doc.pdf.poze.documente_inedite/tiganiada-1978.pdf).

<sup>229</sup> *Id.*, 3.

<sup>230</sup> *Id.*, 4.

<sup>231</sup> *Id.*, 8.

<sup>232</sup> *Id.*, Anexa 1 [Annex 1].

<sup>233</sup> Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România, 575.

<sup>234</sup> Chang, Rucker-Chang, *Roma Rights and Civil Rights*, 45.

1990s. At the same time, half a century of silencing and mistreating Roma resulted in a situation where, unlike in many other Eastern Bloc countries, the Roma community in the early post-communist years found itself with almost no intellectual elite, bar a few exceptions<sup>235</sup>.

## 2.4 Racialization of Roma after 1989

Following the violent overthrow of the Ceaușescu regime in December 1989, like many other post-communist countries reassessing their histories and identities, Romania also saw a relapse into what Vladimir Tismăneanu called “post-communist nationalism”<sup>236</sup>, a reaction to the previous era of internationalist communist propaganda which revived older notions of identity and exclusivist nationhood. Notably, in the particular example of Romania, nationalism was already partly revived and repurposed by the Ceaușescu regime and continued to develop after its fall, yet this time unburdened by the dogma and language of Marxism-Leninism and its apparent rejection of racist discourse. If anything, Romanian society was now released from previous ideological constraints and free to rediscover itself, including its pre-communist past. On the other hand, while some Romanian elites (not all) wished to reunite with the rest of Europe and join the European integration project after what was perceived to be a long *Sonderweg* episode in Romanian history, the process itself was quite contradictory. Desire for a functional society “like in the West” went hand in hand with the rediscovery of past insecurities which never died down. Preserving the nation was again an overarching anxiety, while minorities, racial, ethnic, sexual or otherwise, were seen with suspicion.

Confronted with the image of a postmodern and multicultural West, post-communist societies such as that of Romania asserted its whiteness and homogeneity<sup>237</sup> in a complicated process of

<sup>235</sup> Such as Nicolae Gheorghe, a Roma sociologist who lead Roma civil society after the fall of Communism and managed to form Romani CRISS, one of the most important Roma NGOs in post-Communist Romania.

<sup>236</sup> Vladimir Tismăneanu “Fantasies of salvation: Varieties of nationalism in postcommunist Eastern Europe”, in Kennedy, M. D (ed.), *Postcommunist cultural studies* (University of Michigan Press 1994), 106.

<sup>237</sup> Imre, “Whiteness in Post-Socialist Eastern Europe”, 81-82.

rediscovery which was not only undisturbed by the new neoliberal realities, but also evolved to include racializing discourse towards the Roma. Seen as an embarrassment in the face of Western European countries, Roma thus became natural scapegoats during this process of reassessing national identity, as Central and Eastern European countries vying for accession to the EU sought to distance themselves and their citizens from the “Gypsy” problem<sup>238</sup>. Often, these acts would be violent, as we will soon see.

In the years following the 1989 Romanian Revolution, Roma, much like the rest of Romanian society, found themselves in a confusing the new world that transitional democracy presented. In the immediate aftermath of the Revolution, social order broke down in many parts of the country and old interethnic animosities which were frozen during Communism but never truly resolved quickly took over. Violent clashes started to pop up around the country, with the most mediatized being those in Târgu Mureş in March 1990 between groups of Romanians and Hungarians which left 5 dead and around 300 wounded<sup>239</sup>. Ironically, the event that is considered to have sparked the Revolution was the shooting of protesters in Timișoara, where Romanians, Hungarians and other ethnic groups rallied around a Hungarian pastor which was being threatened by the secret police, the Securitate. Indeed, while this particular episode of interethnic cooperation has been mythologized to a certain extent, it does not capture the entire complexity of the events during and shortly following the 1989 Revolution.

Already occurring a mere 3 months after the Revolution, the Târgu Mureş clashes, sometimes even dubbed “black March” were not even the first of their kind. Yet they were the most hotly debated in foreign and local press<sup>240</sup>. What mostly escaped at least the Romanian media’s

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<sup>238</sup> *Id.*, 86.

<sup>239</sup> Mary Battiata, “A clash of cultures in Romanian province”, *The Washington Post*, March 28, 1990, <https://www.washingtonpost.com/archive/politics/1990/03/28/a-clash-of-cultures-in-romanian-province/5cabf7ed-dbf1-42bc-9d19-3525e6cccdcb/>.

<sup>240</sup> See Paul Roe, “Misperception and Ethnic Conflict: Transylvania’s Societal Security Dilemma”, *Review of International Studies*, 28(1) (2002), 57–74. See also Bianca Pădurean, “Pagina de istorie: Conflictul interetnic de la Târgu-Mureş, o bătaie ‘cu autor necunoscut’” [History page: The Târgu-Mureş interethnic conflict, a brawl “with an

attention were the slew of anti-Roma violence that occurred throughout the early 1990s and which started as early as the 24<sup>th</sup> of December 1989, a day before the execution of the Romanian dictator and his wife. In Vârghiș, a village in Covasna County, one Roma was murdered and 3 others wounded by a 200-strong mob of local Hungarians that encircled the Roma in their houses<sup>241</sup>. Their house also suffered damages. According to the 2011 census, no one declared themselves Roma in Vârghiș<sup>242</sup>. A similar pattern would be repeated in January 1990 in Turulung (Satu Mare County), where, following a disagreement in the local Agriculture Production Cooperative (CAP) between Roma on the one side and local Romanians and Hungarians on the other, a 700-strong mob formed by the latter two burned down 36 houses where Roma lived, while one child died in the ensuing fires<sup>243</sup>. Also in January 1990, Roma houses were burned in Reghin (Mureș County)<sup>244</sup>, while a month later, in Lunga (Covasna County), 4 houses belonging to local Roma villagers were burned down and 5 Roma were killed<sup>245</sup>. Later that year, 26 or 29 (sources vary) houses belonging to Roma were burned down in Cașinul Nou (Harghita County)<sup>246</sup> as well as 36 in Cuza Vodă (Constanța County)<sup>247</sup>. In both cases, all Roma locals were forced to flee their respective villages.

What also occurred in Constanța County was one of the first cases of anti-Roma violence which drew the attention of Romanian media, namely in the commune of Mihail Kogălniceanu, where a

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unknown author”], RFI, march 20, 2019, <https://www.rfi.ro/politica-110095-pagina-de-istorie-conflict-interetnic-targu-mures-bataie-autor>.

<sup>241</sup> A list and description of this and other cases of anti-Roma violence in early 90s Romania can be found in the Statement of reasons to Law 2/2021 on certain measures for preventing and combating anti-gypsyism. See Romanian Chamber of Deputies, Expunere de motive [Statement of reasons], Law 2/2021, 24, <http://www.cdep.ro/proiecte/2019/600/40/8/em868.pdf>.

<sup>242</sup> Gabriel Sala, “Conflicte interetnice în istoria recentă a României” [Interethnic conflicts in Romania’s recent history], *Descopera*, February 15, 2017, <https://www.descopera.ro/istorie/16173594-conflicte-interetnice-in-istoria-recenta-a-romaniei>.

<sup>243</sup> Romanian Chamber of Deputies, Expunere de motive [Statement of reasons], Law 2/2021, 24.

<sup>244</sup> *Id.*, 25.

<sup>245</sup> *Id.*, 26-27. See also Helsinki Watch, “Destroying Ethnic Identity: The Persecution of the Gypsies of Romania, Helsinki Watch Report” (1991), Human Rights Watch, 71-73. <https://www.hrw.org/sites/default/files/reports/ROMANIA919.PDF>.

<sup>246</sup> Romanian Chamber of Deputies, Expunere de motive [Statement of reasons], Law 2/2021, 28. See also Center for Documentation and Information on Minorities in Europe - Southeast Europe, “Roma of Romania” (2001), 33 [http://www.edrc.ro/resurse/rapoarte/Roma\\_of\\_Romania.pdf](http://www.edrc.ro/resurse/rapoarte/Roma_of_Romania.pdf).

<sup>247</sup> *Ibid.*

fight between a Roma and an Aromanian turned into a full-blown riot against all local Roma villagers. The pattern here is quite similar to other cases: according to Helsinki Watch<sup>248</sup>, Roma were settled in the commune in 1951 by the Communist regime in its attempt to curtail Roma nomadism; tensions soon arose between the other communities of the area and the Roma; in October 1990, relations finally broke down when a mob of Aromanians totaling more than 1000 participants gathered in front of the church with torches, with church bells signaling the start of the attack. Luckily, there were no casualties, but 33 houses were destroyed, which caused 200 Roma to become homeless<sup>249</sup>. Villagers involved in the action claimed they were taking matters into their own hands after what they claimed was rampant thieving committed by local Roma, a sentiment which was echoed by a newspaper that printed the story under the title “Mihail Kogălniceanu - We didn't send away the Gypsies, we sent away the thieves”<sup>250</sup>.

The next years continued with more than 30 similar pattern incidents, up until at least 1996<sup>251</sup>, with around 6 Roma being killed in various circumstances, many more wounded or shot and tens of houses belonging to Roma being burned, destroyed in other ways or damaged in mob riots. While in some cases Roma individuals have committed crimes themselves, they nonetheless resulted in locals taking justice into their own hands and turning an individual crime into a collective judgment of entire Roma communities. Over the course of the 1990's, anti-Roma riots would spread to areas outside of Transylvania and reach even the capital. In some cases, police were either directly involved in the riots or failed to take reasonable measures to prevent violence against Roma.

An example of the latter scenario is the highly mediatized Hădăreni case of 1993<sup>252</sup>, where 3 Roma died and while the police did later intervene, they not only failed to disarm an angry mob

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<sup>248</sup> Helsinki Watch, “Destroying Ethnic Identity”, 83-87.

<sup>249</sup> *Ibid.*

<sup>250</sup> *Id.*, p. 86.

<sup>251</sup> Romanian Chamber of Deputies, Expunere de motive [Statement of reasons], Law 2/2021, 30-43.

<sup>252</sup> Amnesty International, “Romania: fear for safety/fear of forcible expulsion: the Roma community of Hadareni”, *Amnesty*, November 11, 1993, <https://www.amnesty.org/en/documents/eur39/014/1993/en/>.

made of local Romanians and Hungarians, but took part in the riot<sup>253</sup>. The case later went to the European Court of Human Rights under the name of *Moldovan and Others v. Romania*<sup>254</sup>. This case will be discussed in a later chapter<sup>255</sup>, but for now it is important to remember that it uncovered systemic racism and the inability (or lack of interest) of Romanian authorities to engage decisively when it comes to violence against Roma. *Moldovan* saw not only, as mentioned before, that members of the police did not disarm rioters and even joined them, but that even later proceedings in front of the Romanian courts showed that judges were equally biased towards Roma and openly utilized a racializing discourse towards them. The criminal law section of the Târgu Mureş County Court went on to declare that Roma had “often generated serious conflicts with the majority of the population”<sup>256</sup> and that “due to their lifestyle and their rejection of the moral values accepted by the rest of the population has marginalized itself, shown aggressive behavior and deliberately denied and violated the legal norms acknowledged by society”<sup>257</sup>.

Many similarities or patterns can be seen in the mentioned cases. Most of the early clashes occurred in counties populated by significant, if not dominant Hungarian communities (such as in Mureş, Harghita, Covasna and Satu Mare counties). Besides the perpetrators’ racist motivations, it could be that tensions were generally higher in these areas due to the Communist regime’s particularly harsh oppression of Hungarian communities and also possibly to the perception, held also by many ethnic Romanians, that Roma were agents of the secret police<sup>258</sup>. Other minorities, such as the Aromanians in Kogălniceanu also reacted due to the previous regime’s policies of settling Roma in their village. According to Nicolae Gheorghe, one of the leaders of Roma civil society in post-Communist Romania, the 20 to 30 cases of violence against

<sup>253</sup> European Roma Rights Centre, “Case of *Moldovan and Others v. Romania*; Village of Hadareni”, European Roma Rights Centre, June 1, 2015, <http://www.errc.org/cikk.php?cikk=3581>.

<sup>254</sup> *Moldovan and Others v. Romania* (no. 2), App. nos. 41138/98 and 64320/01 (ECtHR, 12 July 2005).

<sup>255</sup> See Section 3.5.

<sup>256</sup> *Moldovan and Others v. Romania* (no. 2), para. 44.

<sup>257</sup> *Ibid.*

<sup>258</sup> Hotnews, “Despre persecutia impotriva romilor si cum s-a construit perceptia ca romii sunt ‘anti-Revolutie’” [About the persecution of Roma and how the perception that Roma were “anti-Revolution” was built], *Hotnews*, March 28, 2011, [https://life.hotnews.ro/stiri-prin\\_oras-8452841-despre-persecutia-impotriva-romilor-cum-construit-perceptia-romii-sunt-anti-revolutie.htm](https://life.hotnews.ro/stiri-prin_oras-8452841-despre-persecutia-impotriva-romilor-cum-construit-perceptia-romii-sunt-anti-revolutie.htm).



Roma that occurred right after the fall of the Ceaușescu regime could be labelled as pogroms<sup>259</sup>, albeit different from the original antisemitic actions from Czarist Russia. He offers the following possible explanation to these early acts of violence directed at Roma:

“In Kogălniceanu and in some localities, Roma were targeted in these small village riots because they were associated with the Communist regime. In Kogălniceanu, for example, there are populations of Romanians, Aromanians, Germans and so on. After the war, the Aromanians (who had been present in the right-wing movement in the 30s and 40s) were deported. So were the Germans, who were said to have made a pact with the enemy. And in their houses, which were good houses, poor people were installed, among them Roma: as poor, not as Roma. The Gypsy family stayed in the main body of the house, and if there was one old man left who was not deported, he stayed in the kitchen. This went on for several years, until people returned from deportation. You can imagine that during those years an emotion built up in the souls of the people and their neighbors.

The same thing happened in the villages of Transylvania, in the area populated by Hungarians that I mentioned, where the peasants were repressed and in their place came, through colonization, Oltenians, Gypsies, Oltenian Gypsies. This was the great move made by Communism. This association that some Roma families were privileged by the Communist regime has remained in our collective memory. Go to some areas of Bucharest and you'll see that there are families of poor people, among them Roma, living in bourgeois houses, because they received nationalized houses.

Some Romanian intellectuals tried to save themselves by saying they were anti-communist. It's as if the whole intelligentsia was anti-communist. There was an interest of a certain category of intellectuals to confiscate, to interpret everything as if intellectuals had become the emblem of an entire social category. As, at the other end of the spectrum, the few Gypsies became the symbol of an entire category, or the Communist Gypsies became the symbol of all Gypsies.”<sup>260</sup>

From a fringe social category which received very little attention from Communist authorities, bar the few exceptions mentioned in the previous section, Roma became a symbol of past injustices committed by the now-overthrown regime. The little economic integration that Roma benefitted from during Communism was now a source for scapegoating them in many areas of Romania. Here we also start to see how reverse racism would become and more accepted by Romanian mainstream society in its relation to the Roma. Roma, as the argument would go, have been awarded too much protection during Communism and continue to receive undeserved benefits, unlike the “oppressed” majority. This argument is further strengthened by the

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<sup>259</sup> *Ibid.*

<sup>260</sup> *Ibid.*

perception of Roma as crime families that enriched themselves immensely after the fall of Communism and have since used their wealth to acquire, among others, historical buildings. This later perceived phenomenon of organized crime with a racial label is seemingly centered particularly around Timișoara, where the media is frequently<sup>261</sup> reporting on “Roma clans” that took over buildings in the city center by bribing local politicians.

Conversely, as in other post-Communist countries in Europe, Roma from Romania have generally been pushed towards low-skilled labor, a sector which was particularly affected by the fall of planned economies<sup>262</sup>. As a consequence, Roma were left particularly vulnerable to the “shock therapies” that occurred in many of these countries, including Romania. If anything, Romania’s transition was probably one of the most difficult in the region. Romania’s sudden and often erratic process of switching to a market economy, at times dominated by liberal governments that slashed public spending, has meant that Roma were one of the most affected groups in society and that many are still struggling with poverty<sup>263</sup>, very low employment rates compared the rest of society<sup>264</sup>, education<sup>265</sup>, housing<sup>266</sup>, health<sup>267</sup> and experience widespread

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<sup>261</sup> See for example Digi24, “Un clan de romi deține 144 de clădiri istorice în centrul Timișoarei” [A clan of Roma owns 144 historical buildings in the center of Timișoara], *Digi24*, November 16, 2013, <https://www.digi24.ro/stiri/actualitate/evenimente/un-clan-de-romi-deține-144-de-clădiri-istorice-in-centrul-timisoarei-152993>; Valentin Chisoceanu, “Mafia imobiliară din Timișoara: Sute de clădiri istorice, inclusiv spitale, sunt deținute acum de clanuri de romi” [The Timișoara real estate mafia: hundreds of historical buildings, including hospitals are now owned by Roma clans], *EuropaFM*, March 17, 2017, <https://www.europafm.ro/mafia-imobiliara-din-timisoara-sute-de-clădiri-istorice-inclusiv-spitale-sunt-detinute-acum-de-clanuri-de-romi/>. HotNews, “Casa Muhle, clădire monument istoric din Timișoara, daramata de un clan de tigani. Autoritățile au sistat lucrările” [The Mühle house, historical monument building, demolished by a clan of Gypsies. Authorities have stopped the works], *Hotnews*, May 29, 2012, <https://www.hotnews.ro/stiri-administratie-locala-12384166-casa-muhle-clădire-monument-istoric-din-timisoara-daramata-clan-tigani-autoritățile-sistat-lucrările.htm>.

<sup>262</sup> Chang, Rucker-Chang, *Roma Rights and Civil Rights*, 45.

<sup>263</sup> According to the Fundamental Rights Agency, 78% of Roma in Romania are at risk of poverty in 2021 compared to just 23% for the general population. This figure has risen from 2016’s 70%. See European Union (Fundamental Rights Agency) “Roma in 10 European countries. Main results” (2020), 25, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2022-roma-survey-2021-main-results2\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-roma-survey-2021-main-results2_en.pdf).

<sup>264</sup> Only 41% of Roma declared their main activity as ‘paid work’ in 2021, down from 45% in 2016 and compared to 71% of the general population. See Fundamental Rights Agency, 43.

<sup>265</sup> Only 22% of Roma in Romania aged 20-24 have finished upper secondary education, compared to 83% of the general population. See *Id.*, 38.

<sup>266</sup> In 2021, 70% of Romanian Roma were experiencing housing deprivation, compared to just 28% of the general population. See *Id.*, 52.

<sup>267</sup> Roma in Romania have lower life expectancies than the general population (8% less in the case of women and 5% less in the case of men), while 16% have reported being discriminated against because of being Roma. See *Id.*, 48-49.

discrimination and hate speech<sup>268</sup>. Segregation in schools is also a phenomenon that is still widespread and has never been combatted effectively; as such, according to the Fundamental Rights Agency, more than half of Roma children aged 6-15 declared that they attend schools where all of the pupils are Roma<sup>269</sup>. Furthermore, Roma women are particularly affected, even when compared with Romani men, especially when it comes to the pay gap, as the latter earn almost three times as much compared to Romani women<sup>270</sup>. Much more Romani women are NEET (neither in employment nor in education or training) compared to Romani men<sup>271</sup>.

When it comes to the perception of Roma in broader society, public discourse in Romania abounds with examples of racist and racializing discourse. Romanian mainstream media usually portrays Roma in a consistently unflattering light, usually associating them with criminality, including organized crime, poverty and as draining the welfare system. The so-called ‘perversity thesis’ is quite widely accepted in Romania when it comes to the Roma minority. According to it, welfare creates dependency and has the perverse effect of disincentivizing welfare beneficiaries from looking for work<sup>272</sup>. Moreover, those dependent on welfare are usually associated with or presumed to be Roma, as a part of creating a racist and classist othering image. This is very much a legacy of the neoliberal wave that overtook Romanian society in general after 1989 and which sought to distance itself from communist practices as much as possible. A discourse which racializes poverty has since permeated the Romanian society’s perception of Romani people, an image which equally influences authorities and law-makers<sup>273</sup>.

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<sup>268</sup> In 2021, 20% of Roma felt discriminated against, while 11% have experienced hate-motivated harassment, 14% felt discriminated because of being Roma when dealing with school authorities, 23% felt discriminated because of being Roma when looking for jobs and 6% felt discriminated when looking for housing. See *Id.*, 21, 22, 41, 46, 49.

<sup>269</sup> *Id.*, 40.

<sup>270</sup> *Id.*, 44.

<sup>271</sup> European Union (Fundamental Rights Agency), “Second European Union Minorities and Discrimination Survey Roma women in nine EU Member States” (2019), 41.

<sup>272</sup> See Margaret R. Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights* (Cambridge University Press, 2008).

<sup>273</sup> Enikő Vincze, “The war against poor (Roma) in populist discourses and practices in Romania”, *Studia Universitatis Babes-Bolyai - Studia Europaea*, vol. 1 (2014): 231-242.

When it comes to criminality abroad, the Romanian media's consistency in highlighting the Roma ethnicity of various offenders in many such cases usually has the effect of alienating the mainstream society from the Roma, as the former do not wish to be associated with them. This supposed "shame"<sup>274</sup> of considering Roma conducting criminal activity in Western European countries as fellow Romanian citizens plays a big part in the mainstream perception of Roma as not part of the Romanian nation and putting their citizenship into doubt as well. Moreover, this catalyzes the process by which ethnic Romanians distance themselves from Roma, which are then ascribed a lesser position in society as a whole.

Romanian public authorities are equally racist towards the Roma population with instances where even the Prime Minister<sup>275</sup> and President<sup>276</sup> engaged in particularly problematic public outbursts against the Roma minority, while members of Parliament have publicly supported sterilizing Roma women<sup>277</sup> among others. In one case in 2007, the National Council for Combatting Discrimination found it discriminatory when Romanian President Traian Băsescu was recorded calling a woman journalist "filthy Gypsy", yet it only sanctioned the president with a warning. The case was later challenged by the President all the way up to the supreme court (ICCJ), which kept the initial decision of the NCCD that the remarks were discriminatory, but

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<sup>274</sup> In a recent episode, in 2020 a Romanian referee was accused of racism for using the word "*negru*" (black) to refer to one of the other people on the playing field. This sparked public outrage at a supposed politically correct environment, but most relevant for this discussion, many Romanians started circulating lists of instances when Romanians were associated with Roma by foreign officials or newspapers in other European countries and used these as examples of 'racism' towards Romanians. In other words, being seen as Roma is considered so insulting that it amounts to 'racism'. See Irina Marica, "Romanian referee accused of using racist language during Champions League match", *Romania Insider*, December 9, 2020, <https://www.romania-insider.com/romanian-referee-racism-champions-league-match>.

<sup>275</sup> In 2014, the then Prime Minister, Victor Ponta, associated the then President Băsescu with Romania's two main problems: corruption and the Roma. See Ana Ilie, "Ponta: Basescu intruchipeaza problemele Romaniei - coruptia si rromii" [Băsescu personifies Romania's problems: corruption and the Roma], *Ziare*, June 25, 2014, <https://ziare.com/victor-ponta/traian-basescu/ponta-basescu-intruchipeaza-problemele-romaniei-coruptia-si-rromii-1307616>.

<sup>276</sup> Also in 2014, Traian Băsescu, the Romanian President at that time, said that the Roma mostly live off of stealing and very few of them actually work. This also shows how duplicitous Romanian authorities can be, since the same President held a speech a few years earlier acknowledging the persecution to which he himself contributes with this statement. See BBC, "Romania's President Basescu fined for Roma comments", February 10, 2014, <https://www.bbc.com/news/world-europe-26125135>.

<sup>277</sup> Andreea Tobias, "Rareș Buglea, care a propus sterilizarea femeilor rome, va contesta în instanță amenda primită" [Rareș Buglea, who has proposed sterilizing Roma women, will attack in court the fine he received], November 23, 2013, <https://www.mediafax.ro/social/rares-buglea-care-a-propus-sterilizarea-femeilor-rome-va-contesta-in-instanta-amenda-primita-11552244>.

decided it is not an administrative offense<sup>278</sup>. In other words, the court annulled even the very ineffective sanction that the NCCD established. We will see in a later section<sup>279</sup> that the NCCD's treatment of cases involving Roma is not only avoiding race, but also involves a consistent usage of ineffective sanctions, such as in this case involving the then President of Romania.

The same President also remarked in 2010 while on a visit in Slovenia that nomadic Roma refuse to integrate into the labor market and that they live out of stealing. The NCCD initially refused to assume competence, saying that the affirmations were made outside of Romania and therefore not within their jurisdiction. The case was appealed up until the High Court of Cassation and Justice, which quashed the NCCD's decision and sent the case back to be reassessed. In the NCCD's final decision, it found that the President's assertions were discriminatory and gave out a very small administrative fine of RON 600<sup>280</sup>. In a similar case that also was sanctioned with a warning by the NCCD, a Romanian Minister of Foreign Affairs issued a public press release after meeting his French counterpart in which he is quoted as saying that: "We have some physiological, natural problems of criminality amongst some Romanian communities, especially among the communities of Roma ethnic Romanian citizens"<sup>281</sup>. The NCCD argued, amongst others, that the affirmation cannot be attributed to the entire Ministry of Foreign Affairs since it was removed from their website later on<sup>282</sup>.

In other cases, even music associated with the Roma has been banned in public places by local authorities, such as in the case of the mayor of Timișoara, who briefly banned the playing of

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<sup>278</sup> *Hotnews*, "Verdictul ICCJ in cazul "Tiganca imputita": gestul lui Traian Basescu este discriminatoriu, dar nu reprezinta o contraventie" [The ICCJ's verdict in the "Filthy Gypsy" case: Traian Basescu's gesture is discriminatory, but does not amount to an administrative offense], May 19, 2008, <https://www.hotnews.ro/stiri-esential-3017895-video-verdictul-iccj-cazul-tiganca-imputita-gestul-lui-traian-basescu-este-discriminatoriu-dar-nu-reprezinta-contraventie.htm>.

<sup>279</sup> See Section 3.5.

<sup>280</sup> That would have amounted to around EUR 132 in 2014.

<sup>281</sup> Adrian Marin, Ágnes Csontá, "Discrimination of Roma Communities. Romania National Report" (2013): 19-20, [https://www.crj.ro/userfiles/editor/files/National%20Report%20Romania\\_NET-KARD.pdf](https://www.crj.ro/userfiles/editor/files/National%20Report%20Romania_NET-KARD.pdf).

<sup>282</sup> NCCD, Decision no. 366/2010, <https://www.crj.ro/userfiles/editor/files/Decizie%20CNCD-Baconschi.pdf>.

*manele* in public places in 2021<sup>283</sup>. Moreover, the same local authorities in Timișoara (as well as other cities) have remained indifferent to Roma having to relocate due to pressure from far-right groups<sup>284</sup>. Furthermore, besides segregation in education, in some areas authorities even walled in Roma-populated settlements or parts of cities into full blown modern ghettos, such as in the case of Baia Mare in 2011, one of the most infamous cases of racial segregation in Romania<sup>285</sup>. In another case near Cluj-Napoca, authorities have evacuated Roma people to a settlement called Pata-Rât, where the mostly Roma (70%) community lives close to one of the largest landfills in the country<sup>286</sup>.

We have therefore seen that after the collapse of Communism, as social order was breaking down and authorities were either unable or unwilling to maintain peace, Roma became the target of what can safely be termed as pogrom-like actions. Even though these particularly grim episodes became rarer as Romania progressed in its accession to the EU, the ECHR and other international organizations, racially-motivated violence against Roma never truly died down. Instead, violence motivated by racial hatred gave way to less overt forms of racialization. This does not mean that overt forms of racism dies down completely, as anti-Gypsyism is still quite socially acceptable and normalized in present-day Romania and, as we have seen, authorities often engage in overtly racist discourse against Roma or openly segregate entire Roma communities. However, as these manifestations are more and more condemned by public opinion or external actors and become themselves causes for collective shame, more covert forms or racialization are left untouched. We shall see in the following chapters that the historical and cultural baggage which was previously analyzed has left a mark on the way

<sup>283</sup> See Marcel G. Barbera, “Romanians Divided as City Silences Sound of ‘Manele’”, *Balkan Insight*, November 27, 2019, <https://balkaninsight.com/2019/11/27/romanians-divided-as-city-silences-sound-of-manele/>.

<sup>284</sup> Remus Crețan, Thomas O’Brien, “‘Get out of Traian Square!’: Roma Stigmatisation as a Mobilising Tool for the Far Right in Timisoara, Romania”, *International Journal of Urban and Regional Research* (2019).

<sup>285</sup> Reuters, “Romanian town erects wall by Roma neighborhood”, July 1, 2011, <https://www.reuters.com/article/us-romania-ghetto/romanian-town-erects-wall-by-roma-neighborhood-idUSTRE76028D20110701/>.

<sup>286</sup> Dora Călian, Grațiana Rostaș, “Comunitatea de pe rampă - Pata-Rât” [The community on the ramp - Pata-Rât] (2019), <https://www.crj.ro/wp-content/uploads/2019/11/Locuire-romi-Pata-R%C3%A2t-final.pdf>.

Romanian law treats Roma. Traces of past legal legacies that categorized Roma as a deracialized socio-economic category can be found alongside instances of racialization.

### 3 ROMANIAN LAW, RACE AND THE ROMA

We have established in the previous two chapters both the theoretical and contextual landscapes within whose boundaries this thesis operates. We have seen in **Chapter 1** how race-conscious approaches to law in Europe are rather few in numbers, despite a growing interest in the subject, and how similar literature exploring Romanian law and its connection to race and the racialization of Roma is more than insufficient. This can be explained also from a socio-historical perspective, which is what **Chapter 2** aimed for. Not only is a contextual approach useful for such an analysis of Romanian law, but also quite necessary.

Thus, from the previous contextualization we can already get a glimpse of patterns we will later see mirrored in Romanian law and policies targeting or affecting Roma. One pattern that will become more obvious is the fairly generalized avoidance of legitimizing race as a legal tool, less due to its association with past genocidal regimes (which also functions as a reason to some extent) and more because of the rejection or lack of awareness of such a past. Thus, within this generally accepted narrative, Roma have no special place in Romanian history and are but one of the many minorities (begrudgingly) recognized by the Romanian state through its minority rights policies. At the same time, Roma are also a socio-economic category in need of integration. We shall see how none of these narratives cover race, but instead function in a colorblind way. As such, it is to be expected that on the whole, the mechanisms and agents (judges, local and national authorities, specialized bodies) implementing Romanian law in regard to Roma tend to read race out of it. Conversely, it is the principal aim of this thesis to read race into Romanian law's impact on Roma.

Another pattern whose ramifications will become more apparent in the following chapter is the low level of interest in improving Roma access to effective rights. As we have already established in the previous chapters, Roma have a rather vulnerable position in Romanian society, faced with forms of structural racism that are both profound and long-lasting. On the other hand, following the transition to a democracy and accession to important human rights-defending organizations such as the Council of Europe and the European Union, Romania today appears as a flawed, albeit functional democracy complete with a framework for minority rights and even positive action measures and policies aimed at its Romani citizens. As was the case with race-conscious US legal scholars after *Brown*, we ask then why, despite these important and wide-reaching advances in human rights protection, are Roma still facing difficulties in accessing rights effectively?

To answer this question, **Chapter 3** will analyze selected areas of Romanian law and policy which impact on Roma effective access to rights. Firstly, **Section 3.1** will start with a brief introduction into Romanian constitutional culture or, more accurately, the lack of one. The reason for starting with this topic is that, as will become apparent later, patterns and flaws present within Romania's culture of constitutional and broader legal transplantation can explain why some areas of law or policy do not function as well as they ought to. This is not to say that all areas of law targeting or affecting Roma are willingly flawed. Indeed, it would be hard to prove that, given the general lack of debate surrounding them and the resulting difficulty in ascertaining the motivations behind decisions of lawmakers or policymakers. However, we can deduce certain patterns present within Romanian law of various levels, such as lack of parliamentary debates, transplanting legal concepts, mechanisms or even entire constitutions with very few adaptations, the belief that legal reform would yield social modernization etc. One particular theory which I believe has the power to elucidate why these patterns exist and why they impact on the effectiveness of Roma rights as well is that of urgency. In other words, we



shall see in this section that urgency to modernize and to “Europeanize” left many areas of Romanian law, including the ones central to this thesis, incomplete or ineffective to a certain extent. Interest convergence, as a theory central to CRT scholarship, will also help in mapping out patterns in Romanian law. To further showcase how the confluence of the feeling of urgency, interest convergence and their consequences play out, I will give the example of a recent piece of legislation which is directly aimed at Roma and which was criticized for its superfluity – the 2021 Anti-Gypsyism Law<sup>287</sup>.

**Section 3.2** will then continue to discuss the process of elaborating the present Romanian Constitution with the aim of highlighting how minority rights were conceived in the drafting process of the country’s fundamental law. As we shall see, most provisions cater to traditional old minorities without any mention of the specificity of the position that Roma occupy in Romanian society, especially given their history of racialization. Besides urgency, interest convergence will again prove a useful lens which can shed light on the choices made for minority rights in the Constitution, as will the general time and context of the drafting process.

With **Section 3.3**, we move to more specific areas of Romanian law, in this case we will analyze arguably the central positive action measure aimed at minority representation – the reserved seats system within the Romanian Parliament, or more exactly, its lower house, the Chamber of Deputies. This will be discussed in the broader context of Romania’s road to accession to the European Union and the Council of Europe, the situation of Roma migration westwards and the adoption of minority rights treaties. As will become apparent, urgency and interest convergence can offer plausible clarifications as to why Romania decided to expand its minority rights framework at the same time as Western European countries and international organizations were trying to stem Roma emigration from Romania and all while minority rights became priorities in Europe. Moreover, we will go beyond form and try to ascertain the practical functioning of the

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<sup>287</sup> Law 2/2021 on certain measures for preventing and combating anti-Gypsyism, published in the Official Gazette no. 8/05.01.2021.

reserved seats system and see whether it might be a case of minority tokenism and mimetic compliance to external pressures.

**Section 3.4** continues by exploring the Romanian National Roma Inclusion Strategies (NRISs).

While not laws in the strict sense of the word, but comprehensive policies aimed at “Roma inclusion”, the NRISs nevertheless are the source of many measures and legislation taken by Romanian lawmakers and governments targeting or affecting Roma. This section will analyze the context surrounding the development and evolution of the 5 NRISs drafted by successive Romanian governments between 2001 and the time of writing this thesis. Certain patterns will be observed, such as the criminalization of Roma communities and an overall lack of appropriate funding and of institutional co-operation, as well as a lackluster implementation of the measures listed in each NRIS. On the other hand, like many other areas concerning Roma rights, external pressure, especially from the European Commission, will push Romanian authorities to make improvements they otherwise would have been unlikely to enact.

Identifying patterns of racialization and colorblindness within Romanian law can be quite difficult given the lack of studies on the matter. Analyzing Romanian courts’ case law in order to identify these patterns is particularly challenging without a systematized public access to much of the case law which could be relevant. Despite these difficulties, **Section 3.5** will attempt to determine the approaches taken by Romanian courts, as well as the attitudes of prosecutors and other agents involved with the justice system. While the analysis will mostly focus on case law from the European Court of Human Rights, these cases nevertheless started in Romania and at their core, they offer an important glimpse into Roma experiences in front of Romanian courts. Our insight will, however, not stop at the decisions of Romanian court or of the ECtHR, but will continue into the implementation of the latter’s judgments. Like in other areas, we will be confronted again with the by-now familiar hesitancy of Romanian authorities to go beyond mimetic compliance and their slow and sometimes ineffective implementation of the ECtHR’s

case law. Moreover, the ECHR rights violated in most of the ECtHR's case law concerning Roma in Romania will point to an alarming pattern of police brutality and widespread mob violence to which at times police officers or local authorities were complicit.

If case law from regular Romanian courts might be difficult to quantify, the case law of the national equality body, the National Council for Combatting Discrimination, is less opaque and more readily available. Thus, **Section 3.6** will cover the rather erratic process of adopting the Romanian antidiscrimination law, then move to offer a breakdown of the NCCD's case law involving Roma and discrimination based on race. The process of adopting the EU's standards for antidiscrimination, as well as the evolution of the NCCD itself will present us with symptoms which will have become already recognizable: Romanian authorities which aim at European integration, yet are unwilling to give effectiveness to its European *acquis*, in particular when it comes to addressing discrimination against Roma, and are only pressured by external forces, in particular the European Commission. Unsurprisingly, the NCCD's case law will also show a hesitancy to accept and effectively tackle race-based violence and rights violations against Roma, as well as an avoidance of race, both symptoms of a larger selective dismissal of racial violence against Roma as a real phenomenon.

The final part, **Section 3.7** will focus on Roma access to social rights, in particular healthcare, housing rights and education. These latter three are consistently reported on by NGOs, international organizations and scholars dealing with Roma rights and represent the areas where arguably some of the most visible forms of structural racism against Roma occur. However, given the vastness of these subjects, I have chosen three phenomena in particular in order to illustrate the play between racialization and colorblindness within Romanian law. In the first example, I will attempt to highlight how a program which otherwise greatly benefits Roma access to healthcare, especially in the case of Roma women, namely the Roma Health Mediator Program, was ultimately institutionalized by Romanian authorities, then starved of funds and left

to stagnate, while some Roma mediators themselves have internalized racism. As for access to housing rights, I decided to single out in particular the issue of forced mass evictions of Roma, as it will prove an appropriate exemplification of the legacies of communism and of the survival of racial biases that affect the ability of many Roma to enjoy property rights. Finally, the issue of school segregation of Roma students will also be discussed, as another example of overt racialization which has suffered from ineffective laws and a welcomed, yet insufficient and at times inadequate body of case law from the NCCD.

Before we engage with the rest of the thesis, it should be borne in mind that while its aim is to highlight patterns of racialization towards Roma present within Romanian law, it does not purport to be exhaustive. As such, some areas of law or aspects of marginalization or oppression through law might be omitted in part due to the vastness of the subject, which will certainly need future literature dissecting it further. However, I believe that the final aim of this thesis is to be a first attempt at a comprehensive analysis of Romanian law's potential to racialize or, conversely, to deracialize or have a colorblind approach to Roma experiences. The areas of Romanian law selected to exemplify these mechanisms I believe offer an incomplete, albeit comprehensive picture which allows us to understand salient forms of racial oppression of Roma and cover central aspects of Roma rights.

### **3.1 A note on constitutionalism and constitutional culture in Romania**

Before engaging with the present Constitution itself, it is worth taking note of some aspects of Romanian constitutional history and culture which will greatly help in understanding not only the rationale behind the Romanian legal framework in general, but also the origins of its inherited flaws. Moreover, I believe there are certain historical dynamics within Romanian society that have survived to a certain extent to the present day and still leave a mark on the overall legal landscape. These could help explain more the shape and functioning of secondary legislation

which either target directly or affect the Roma and why we can detect certain legal gaps or hesitations. It is important take note of these particularities especially in the face of an otherwise racially blind legal framework from which it is not directly apparent or easily detectable which social forces push against racial justice. Notwithstanding these inherent difficulties presented by a context that appears to not lend itself to a racially aware analysis, I believe that explaining present issues in laws targeting or affecting Roma could benefit from a contextualist analysis of some of Romania's constitutional dynamics, in particular the apparent urgency for legal modernization as a tool for social progress and the preference for some aspects of constitution-making over others.

Historically, the Romanian-speaking populations have been divided for much of their existence, mostly between three main geopolitical entities and historical regions: Wallachia (more often referred to in Romanian as “*Țara Românească*”, i.e. The Romanian Country or Land), Moldova and Transylvania. Thus, especially since the mid-nineteenth century, mostly in line with their European counterparts, the greater part of the elite of these regions who identified as Romanian desired unity of the Romanian populations in a common nation-state in one form or another.

The two mostly Romanian principalities of Wallachia and Moldova were also separate for most of their history. However, geopolitical circumstances, such as a weakened Russian Empire after the Crimean War (1853-1856), as well as intervention from the European powers to create a buffer between it and the frail Ottoman Empire created the opportunity for full political union. The Paris Convention of 1858 established a partial institutional union between the two entities, yet, only a year later, in 1859, both principalities elected Alexandru Ioan Cuza as their “*domnitor*” (ruler or monarch). Full political union was a project which merely started with this personal union under Cuza, yet the European Great Powers ended up accepting it, albeit begrudgingly and after much convincing. In any case this was probably the first of many historical moments when Romanian elites were confronted with justifying the existence of their union via diplomacy

abroad and frantic political, institutional and, of course, constitutional reform at home. The internal reform needed to consolidate this external achievement and guard it against potential threats from outside.

What is most relevant for this thesis is that this desire for unity more often than not dominated debates about constitutional projects to such an extent that other, arguably more important constitutional issues were left aside undebated and merely transplanted without hesitation from foreign constitutions. Take a wonderfully all-encompassing quote from a member of the 1866 Constitutional Assembly (Alexandru G. Golescu, founder of the Romanian National Liberal Party):

“[...] while our experience and national history tell us we need no more than a unicameral [parliament], the foreigners come over with their experience, with the history of their feudal states and say: redemption resides in a bicameral [parliament] ... [W]e need the Occident and the Occident tells us: I do not understand stability and order in the presence of an unicameral [parliament], because a unicameral [parliament] means revolution and disorder, and because Europe exerts today a moral pressure on us I shall vote the Senate. [...] Let us be less persistent on our perfect ideas, let the Constitution be less perfect but let's save a country who gets out of our hands if we fail to be united [...] Accordingly, we'll vote the Senate because we desire to have a Romania.”<sup>288</sup>

While the quote refers to the distinct dilemma between a unicameral and a bicameral parliament, it nevertheless exemplifies perfectly a red thread that runs throughout the entirety of Romanian constitutional history and that is the obsession with achieving (and after that, maintaining) territorial unity and the appearance of legal and political stability in the face of the European powers of the time<sup>289</sup>. Sometimes this would work to the detriment of constitutional particularities which would have been more appropriate for the Romanian context, such as in the above-mentioned dilemma between a unicameral and a bicameral parliament. Most important for this discussion, however, is to note that (constitutional) modernization was carried out with one

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<sup>288</sup> Manuel Guțan, “The Challenges of the Romanian Constitutional Tradition II: between Constitutional Transplant and (Failed) Cultural Engineering”, 26 *Giornale di Storia Costituzionale* 217 (2013): 219.

<sup>289</sup> *Ibid.*

of the main aims being the creating of a “tidy” appearance on the geopolitical scene so as to gain legitimacy for a unified Romania<sup>290</sup>, the effect of which was, amongst others, a sometimes disjointed, formalistic and ineffective legal system.

Urgency is singled out by Guțan<sup>291</sup> as being probably the most appropriate way to describe the state of mind that triggered the legal (and constitutional) modernization of Romania around the time of the 1859 unification and especially after. In this context, fast legal transplantation of foreign “modern” institutions (“irrational legal transplant”<sup>292</sup>), constitutional structures and solutions was seen as a necessity that trumped more organic and arguably lengthier approaches. Sacrifices had to be made, as Guțan argues:

“In this context, the liberal constitutionalism, the constitutional monarchy, the foreign dynasty or the representative government represented something more akin to prefabricated bricks in the hands of the hurried Romanian national builders than carefully carved stones in the hands of a visionary architect.”<sup>293</sup>

However, fast modernization in Romania’s case meant legal transplantation done without a corresponding legal tradition and culture which would sustain the former. Western legal institutions and frameworks (mostly French and Belgian<sup>294</sup>) would be decoupled from the contexts that spawned them and instead placed atop a social foundation which was alien to it, albeit receptive. The new imported norms, legal language and institutions would be used by the Romanian elite for a more ambitious project of social engineering, one that would see a growing thirst for Western European (and in particular of Francophone extraction) legal developments in many areas.

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<sup>290</sup> *Ibid.*

<sup>291</sup> Guțan, “Legal Transplant as Socio-Cultural Engineering in Modern Romania”.

<sup>292</sup> As a few examples, the Romanian Civil and Criminal Codes of 1864 (the first remaining in force up until 2009 although with many modifications throughout time) were inspired by their French and Belgian counterparts, much like commercial and administrative law, which are heavily indebted to French legal doctrine. Equally important, however, the first modern Romanian Constitution, which came into force in 1866, was heavily inspired by the 1831 Belgian Constitution. Coincidentally, the Romanian throne was initially offered to Prince Philippe of Flanders, brother of Leopold II, King of the Belgians. *Id.*, 489.

<sup>293</sup> *Id.*, 487.

<sup>294</sup> *Id.*, 491.

Urgency also meant that most of the transplants and modernization occurred without any debates. As Guțan explains:

“Generally, the period of enthusiastic legal transplant (1839–1866) was dominated by an almost complete lack of parliamentary debate. One of the most important legislative works – the Civil Code of 1864 –, for example, was adopted in parliament without dialogue. Extensive debates occurred in the Constitutional Committee of 1866 but, beyond the expectations, these concerned only a few specific aspects, while neglecting other important ones such as the division of powers and the mechanisms of checks and balances. The prestige and authoritativeness of the transplanted law were considerably high, an aspect which made pointless the choice based on comparative analysis. Urgency played its particular role by overcoming the need for deep enquiry.”<sup>295</sup>

While it may be understood that lack of democratic practice in a nascent modern nation would be to blame here, this particular aspect of Romanian (constitutional) culture should not be relegated to the history books, as we shall see that lack of debate due to a feeling of urgency and external pressure is a particularity of Romanian lawmaking which lingers to the present day.

As a contemporary reaction to all this importation of foreign legal institutions, Titu Maiorescu, Romanian literary critic, conservative politician and later Prime Minister, would postulate his “forms without substance” theory (*teoria formelor fără fond*) in his 1868<sup>296</sup> critique of Romanian society’s process of adopting Western solutions while dislodging its own culture and traditions. What Maiorescu lamented was the illusion of the Romanian educated youth and elite that copying Western European trends and solutions (the “forms”) would magically reproduce also the cultural bedrock that allowed them to spring forward in the first place (the “substance”). His timely remarks reflected a period when Romanian society was undergoing what was probably one of its most intensive and transformative experiences – that of systematic modernization through legal transplants. Of course, Maiorescu initially refuted this process of legal transplantation and highlighted the constant and insurmountable tension which would exist

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<sup>295</sup> *Id.*, 498.

<sup>296</sup> Titu Maiorescu, “În contra direcției de astăzi în cultura română” [Against the present trends in Romanian culture], *Convorbiri literare*, No. 19 (1868).



between the foreign imports and the real national context, into which the former could not fit organically. While even conservatives like Titu Maiorescu would come to accept the inevitability of legal transplantation<sup>297</sup>, this critique of Romanian law as an empty projection of external (mostly Western European) solutions would remain valid up until the present day.

Certainly, while in the mid-nineteenth century, the unitary project referred to the *fait accompli* union between Wallachia and Moldova, this obsession was maintained also after Transylvania and other regions were incorporated into the Romanian Kingdom. This time, unity being achieved, the main geopolitical and social anxiety was that of losing the recently gained territories. Finally, in the present day one of the main concerns internally is not territorial unity per se, but the process of “becoming European again”. Thus, while strictly territorial unity does not carry the same level of anxiety as before, the possibility of losing international credibility and legitimacy still dictates both Romanian foreign policy, especially towards more developed Western European states and the European Union, and its constitutional and legal culture broadly speaking. As to the “forms without substance” debates of the 19<sup>th</sup> century, it can be reasonably concluded that while the anxiety of Romanian identity being wiped out through foreign legal imports is not (and never was) a real danger, the inopportunity, inefficiency and maladjustment of external legal transplants or of legal reform which resulted from external pressure are true causes for concern.

In the end, endowed with a constitution, but bereft of constitutionalism, the 19<sup>th</sup> century legal transplants played out throughout the following centuries as one would expect: despite trying to establish a parliamentary democracy, the Romanian Constitution of 1866 (and its 1923 successor) failed to safeguard against the King’s authoritative control (in the case of Carol I) and full-out royal (under Carol II) or military dictatorship (during Ion Antonescu’s regime)<sup>298</sup>. These failures

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<sup>297</sup> Guțan, “Legal Transplant as Socio-Cultural Engineering in Modern Romania”, 507.

<sup>298</sup> Manuel Guțan, “The Challenges of the Romanian Constitutional Tradition I: Between Ideological Transplant and Institutional Metamorphoses”, 25 *Giornale di Storia Costituzionale* 223 (2013).

are, unfortunately, not limited to the constitutional framework, but to most tiers of the legislation adapted from foreign texts<sup>299</sup>.

On the other hand, post-transplant, there is the appearance of functionality which should be carefully studied. What the experience of the 19<sup>th</sup> century and subsequent legal transplants showed is that one should be wary of fast legal modernization marked by urgency and perceived or real external pressures. To bring the topic closer to the present day, we ought to expect similar tendencies post-1989, although now the incentive driving Romanian elites is not justifying territorial unity or maintaining sovereignty as much as it has to do with European integration. We should expect that the Romanian constitutional text and lower tier legislation might appear all-encompassing and even progressive and achieving the aims of European harmonization, and yet, a more in-depth analysis would reveal that on many occasions, Romanian authorities are more interested in form and appearance than substance, whether they be a constitutional assembly, the legislator, the executive, courts, local authorities or other subordinate and decentralized structures<sup>300</sup>.

What probably characterizes Romanian constitutionalism (if one could even consider it as such) the best in the key constitutional moments of 1866, 1923 and most recently in 1991 is its prioritization and disproportionate preoccupation with the unitary and national state, or, in other words, it is marked by constitutional nationalism<sup>301</sup>. While the geopolitical situation of the early 1990s meant that there weren't any serious threats to national unity (unlike in 1866 or 1923), the idea of expressing the unitary and national character of the Romanian state in the Constitution did not subside. On the contrary, it apparently constituted one of the central aspects discussed

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<sup>299</sup> Guțan, "Legal Transplant as Socio-Cultural Engineering in Modern Romania", 524-527.

<sup>300</sup> As Guțan argues: "The legal adaptation is not an end in itself but rather a possible way to reach the original finalities of the legal transplant. Romanianization of the transplanted institutions could not only mean the successful change in society but also the compromise of the transplanted institutions. Romanianization could mean stagnation". *Id.*, 529.

<sup>301</sup> Probably most famously used by Robert Hayden in his publication *Constitutional Nationalism in the Formerly Yugoslav Republics*. See Robert M. Hayden, "Constitutional Nationalism in the Formerly Yugoslav Republics", *Slavic Review*, Vol. 51, No. 4 (1992).

during the drafting process of the 1991 Constitution<sup>302</sup>, the end result of which was an instrument torn between constitutional nationalism and establishing the predominance of the majority on the one hand and provisions on pluralism, non-discrimination and minorities rights on the other (due to the interventions of the national minorities and especially the Hungarian community, represented by the Democratic Union of Hungarians in Romania or RMDSZ)<sup>303</sup>.

Moreover, the drafting process involved many foreign experts who collaborated and advised the drafting committee so that it would achieve a “modern and European” constitution<sup>304</sup>. Much like in previous scenarios, the adoption of the 1991 Constitution was sped up by a sense of urgency and need to join the European Communities and the Council of Europe to a degree probably different than in other post-communist countries, like Poland or Hungary, who opted to postpone the adoption of their new constitutions and lengthen their debates much more than in the case of Romania, where a new constitution was ready in less than two years since the 1989 Revolution. Some institutions were even linked with an expectation of (Western) European sympathy, as the Vice-president of the drafting committee, Marian Enache, recalls:

“In this context, I recall our delegation’s conversation with Antonio La Pergola, a well-known constitutional scholar, president of the Venice Commission at the time, who told us that ‘in order to have a modern and European Constitution’, we need to integrate into the Constitution the content of Article 20 of the current Constitution on the priority of application of international treaties and agreements in the field of human rights in relation to contrary national provisions. At the same time, this well-known professor of constitutional law from Rome also recommended the introduction of a constitutional jurisdictional authority in the Constitution, namely the Constitutional Court, as an inherent element of the rule of law, as well as the Superior Council of the Magistracy (CSM), to ensure the independence of justice. These institutions, which have been regulated in the Constitution, are likely to be considered, according to La Pergola, as ‘the key to Europe’s sympathy for the Romanian Constitution’.”<sup>305</sup>

<sup>302</sup> Paul Blokker, “Romanian Constitutionalism: Form without Content?” (2012), 3, <https://ssrn.com/abstract=2146568>.

<sup>303</sup> Silvia Suteu, “The Multinational State That Wasn’t: The Constitutional Definition of Romania as a National State”, *ICL Journal*, Vol. 1, Issue 3 (2017), 417-420.

<sup>304</sup> Marian Enache, “The Process of Adopting the 1991 Constitution - A Real School of Romanian Constitutionalism”, *Revista de Drept Public*, vol. 2021, no. 13 (2021), 19.

<sup>305</sup> *Ibid.*

Nevertheless, the Constitution still tilts towards the majority and the Romanian Constitutional Court itself heartily reaffirmed the unitary and national character of the state, amongst others by declaring a legislative proposal aimed at creating ‘traditional zones’ as incompatible with the “unity of the nation”<sup>306</sup> and thus, unconstitutional. As a matter of fact, decentralization or regionalization are some of the topics being debated on and off in Romania since the 1990s, albeit mostly on a scholarly level, where such projects are never taken seriously and are the result of external pressure<sup>307</sup> at best or are met with hostility and accused of separatism at worst. In any case, these projects for more local autonomy are usually championed by the RMDSZ and thus met with suspicion to the point in which almost any initiative which hints at regionalization is seen as separatist in its goals<sup>308</sup>.

In this context, minority rights not only take a back seat to other issues, but suffer from the mimetic compliance of Romanian authorities at various levels with standards pushed by external actors, such as the EU or the Council of Europe. Since many of the laws and policies targeting Roma inclusion are framed as improving the minority rights system championed by the representatives of the aforementioned RMDSZ, not to mention that they are sometimes identical in substance to measures adopted in view of the pressures exerted by the Hungarian minority<sup>309</sup>, they are also affected, albeit sometimes in manners different from the case of other minorities.

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<sup>306</sup> Romanian Constitutional Court, Decision no. 80 of 16 February 2014, published in the Official Gazette no. 246/07.04.2014.

<sup>307</sup> Suteu, “The Multinational State That Wasn’t”, 432.

<sup>308</sup> In 2018, the mayors of four Western Romanian cities (Timișoara, Arad, Oradea and Cluj) declared the formation of the so-called “Alliance of the West” (Alianța Vestului), aimed at coordinating investments and accessing EU funds. Surely enough, the initiative was soon labeled as separatist or aiming at autonomy. In a context where territorial unity is still used to rouse up suspicion against possible internal destabilizers, especially the Hungarian minority and other ‘others’, such hostility was not a surprise. Indeed, while part of these accusations came from political opponents (all of the four mayors were part of the National Liberal party), the discourse struck a nerve in the broader population. For one of the mayors defending the initiative as not separatist, see *News.ro*, “Ilie Bolojan, despre Alianța Vestului: Respingem orice fel de acuzație de separatism, de punere a Vestului contra Capitalei, nu există nici o bază reală în aceste lucruri, însă principiul autonomiei locale și principiul asocierii nu pot fi contestate” [Ilie Bolojan, about the Western Alliance: We reject any kind of accusation of separatism, of pitting the West against the Capital, there is no real basis in these things, but the principle of local autonomy and the principle of association cannot be disputed], <https://www.news.ro/politic-intern/ilie-bolojan-alianta-vestului-respingem-fel-acuzație-separatism-punere-vestului-contra-capitalei-exista-nici-baza-reala-aceste-lucruri-insa-principiul-autonomiei-locale-principiul-asocierii-pot-1922400310242018121118694191>.

<sup>309</sup> Iulius Rostas, *A Task for Sisyphus: Why Europe’s Roma Policies Fail* (Central European University Press, 2019), 124.

Thus, while the rights of the Hungarian minority in Romania are sometimes violated or curtailed due to the perception of a threat of secession, amongst others (despite most political claims of the Hungarian minority relate to some form of autonomy at best), the effectiveness of Roma rights measures suffers from a historic dismissal of Roma as a “mature” group that can act as a political partner, combined with an equally long past of marginalization and racialization which have resulted in present structural discrimination and disadvantages.

Before engaging with other, more comprehensive laws and policies, I will give one example which I believe illustrates quite well how positive action measures can be pushed through the Romanian legislator due to external pressures, but due to their design, they fail to tackle the complex issues they are meant to address. The example is that of Law 2/2021 on certain measures for preventing and combating anti-Gypsyism, hereinafter the Anti-Gypsyism Law, which was passed as a response to pressures from the European Commission and Parliament. The latter in particular has called on EU Member States with Roma minorities to engage more effectively with anti-Gypsyism in a resolution adopted in October 2017<sup>310</sup>. On the national level, however, the law itself has attracted very little public attention. As a matter of fact, it has created equally sparse debates in the Parliament and had passed undebated through the Senate, where it was first proposed, thus arriving at the doorsteps of the Chamber of Deputies, the house which ultimately decided on adopting it, again without any debate. Without almost any votes against it, the law was passed and came into force in January 2021. The only resistance that was put up against its adoption were a few negative, albeit nonbinding opinions, including a rather dubious rejection by the Economic and Social Council for the reason that it “creates a situation of positive discrimination”<sup>311</sup>, despite positive actions being legal under Romanian law.

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<sup>310</sup> European Parliament, Resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism (2017/2038(INI)), [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0413\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0413_EN.html).

<sup>311</sup> Economic and Social Council (Romanian Chamber of Deputies), *Aviz referitor la propunerea legislativă privind unele măsuri pentru prevenirea și combaterea antițigănistului* [Opinion on the legislative proposal regarding some

Substantively, the law is an almost exact copy of Law 157/2018 on certain measures for preventing and combating antisemitism<sup>312</sup>. It follows its footsteps to the letter: it incriminates various acts which are deemed anti-Gypsyist, such as publicly promoting anti-Gypsyist ideas, conceptions or doctrines<sup>313</sup>, distributing or spreading anti-Gypsyist materials<sup>314</sup>, the making, selling, spreading or public usage of anti-Gypsyist symbols<sup>315</sup> or constituting, aiding or joining an anti-Gypsyist organization<sup>316</sup>. Thus, it creates a series of special crimes, in addition to those already incriminated by the Criminal Code, which were probably aiming at offering an additional layer of protection to Roma people. Among the justifications for the law, found in its statement of reasons<sup>317</sup>, a list of crimes against Roma people compiled by various NGOs from 1990 to 1996 attest to the widespread anti-Roma sentiment in Romania. Most of the cases invoked were the anti-Roma pogroms which were discussed already in this thesis<sup>318</sup>, despite the fact that there are much more recent examples thereof, in addition to studies which also point to Romaphobia in Romania. None of these were used in the justifications. However, the Government's opinion<sup>319</sup>, as well as that of the Legislative Council<sup>320</sup>, take notice that many of the law's provisions are in fact doubling similar provisions in previous legislation.

Interestingly enough, its sister-law, the 2018 Antisemitism Law, was criticized by ActiveWatch, a Romanian human rights and antidiscrimination NGO, as a form of legislative inflation that

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measures to prevent and combat anti-Gypsyism], September 24, 2019, <https://www.senat.ro/legis/PDF/2019/19L540ES.PDF>.

<sup>312</sup> Law 157/2018 on certain measures for preventing and combating antisemitism, published in the Official Gazette No. 561/04.07.2018.

<sup>313</sup> The Anti-Gypsyism Law, art. 3.

<sup>314</sup> *Id.*, art. 4.

<sup>315</sup> *Id.*, art. 5.

<sup>316</sup> *Id.*, art. 6.

<sup>317</sup> Romanian Chamber of Deputies, Expunere de motive [Statement of reasons], Law 2/2021, <http://www.cdep.ro/proiecte/2019/600/40/8/em868.pdf>.

<sup>318</sup> See Sections 2.4. and 3.5.

<sup>319</sup> The Romanian Government, Punct de vedere [Opinion], Law 2/2021, [https://www.cdep.ro/proiecte/2019/600/40/8/pvg648\\_2019.pdf](https://www.cdep.ro/proiecte/2019/600/40/8/pvg648_2019.pdf).

<sup>320</sup> The Legislative Council (Romanian Chamber of Deputies), *Aviz referitor la propunerea legislativă privind unele măsuri pentru prevenirea și combaterea antițigănistului* [Opinion on the legislative proposal regarding some measures to prevent and combat anti-Gypsyism], November 14, 2019, <https://www.senat.ro/legis/PDF/2019/19L540LG.PDF>.

doubles already existing legislation and has no real chance of being implemented<sup>321</sup>. Furthermore, ActiveWatch mentions that it results from their reports that, besides the NCCD, no other authority is consistently fighting against antisemitism and that the Antisemitism Law will not improve in any way the current situation, since it will not create new instruments for prosecutors and, probably most important of all, the law mentions nothing about actually preventing antisemitism, as its name would suggest. Consequently, ActiveWatch requested that the President not promulgate the law, albeit ultimately in vain.

The same criticisms apply to the present Anti-Gypsyism Law. Moreover, and most controversially of all, its title and the use of the word “anti-Gypsyism” is a dividing factor among Roma themselves. While the law was indeed proposed by Daniel Vasile, the Roma Party member who represents the Roma minority in the Chamber of Deputies and the Council of National Minorities, its choice of terminology is both inconsistent and highly debatable. Its inconsistency stems from the fact that anti-Gypsyism is explained as, among others, actions *against Roma people*. So while the law and its statement of reasons are acquainted with the latter terminology, it chooses to give prevalence to a term which is considered as pejorative by most – Gypsy – especially in Romanian (*țigăni*). Even the above-mentioned Economic and Social Council, which ended up rejecting the law, made the point that “it is not desirable to use terms with pejorative character within the text of a normative act”<sup>322</sup>. Then again, if we look at the 2018 Antisemitism law, the term “antisemitism” was used because it and its definition were clear and already agreed

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<sup>321</sup> ActiveWatch Romania, “România are nevoie de aplicarea legislației care combate antisemitismul, nu de supraleghere” [Romania needs the applications of the legislation that combats antisemitism, not overlegislating], *ActiveWatch*, June 25, 2018, <https://activewatch.ro/ro/antidiscriminare/reactie-rapida/romania-are-nevoie-de-aplicarea-legislatiei-care-combate-antisemitismul-nu-de-supraleghere>.

<sup>322</sup> Economic and Social Council (Romanian Chamber of Deputies), *Aviz referitor la propunerea legislativă privind unele măsuri pentru prevenirea și combaterea antițigănistului*.

upon during a 2016 plenary reunion of the International Holocaust Remembrance Alliance in Bucharest<sup>323</sup>.

However, it is essential to remember that while in English, the term “anti-Gypsyism” has been used frequently even at the level of the Council of Europe<sup>324</sup>, in Romanian, the word “*antițigănistism*” has as its root the term “*țigan*”, which is widely considered to be pejorative. As a matter of fact, a previous legislative proposal from 2010 which aimed at replacing the word “*rom*” (Roma) with that of “*țigan*” in all official documents used by Romanian authorities was dismissed after encountering resistance from civil society, including Roma and other NGOs<sup>325</sup>. The word “*țigan*” has been historically<sup>326</sup> regarded by the Roma community as a pejorative and offensive term and this has been recognized internationally<sup>327</sup>. In the end, even if we were to disregard its dubious choice of wording, the law itself does not codify preexisting antidiscrimination legislation and merely reproduces it, though under a new title, thus contributing to the legislative inflation that characterizes the Romanian legal framework on minorities.

While not the only example, the Anti-Gypsyism Law does present a pattern which we will see repeated in other areas affecting Roma access to effective rights: following mounting pressure

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<sup>323</sup> Legislative Council (Romanian Chamber of Deputies) and also the Statement of reasons for the 2018 Antisemitism law: Romanian Chamber of Deputies, Expunere de motive [Statement of reasons], Law 157/2018, <https://www.cdep.ro/proiecte/2018/300/80/4/em497.pdf>.

<sup>324</sup> Council of Europe (Committee of Ministers), Declaration of the Committee of Ministers on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe, Adopted by the Committee of Ministers on 1 February 2012.

<sup>325</sup> See “We are not ‘țigani!’”, an open letter signed by various Romanian NGOs, including Roma NGOs such as Romani CRISS and the “Amare Romentza” Roma Centre. Romani CRISS, “We are not ‘țigani!’”, [http://www.romanicriss.org/ScrisoareTiganVs%20Rrom\\_24%20oct%20fin\\_off.pdf](http://www.romanicriss.org/ScrisoareTiganVs%20Rrom_24%20oct%20fin_off.pdf).

<sup>326</sup> One of the first declarations to this effect made by Roma people in what is now Romanian territory was in 1919, when the National Roma Assembly of Transylvania released a memoir explicitly beseeching Romanian authorities (then only recently having occupied Transylvania from the Hungarian Kingdom) not to use the demeaning term “*țigan*”. For the text of the declaration, see Romanian Chamber of Deputies, “Comunicat de presă” [Press release], April 24, 2019, [https://www.cdep.ro/relatii\\_publice/site2015.text\\_presa?pid=18080](https://www.cdep.ro/relatii_publice/site2015.text_presa?pid=18080).

<sup>327</sup> The Council of Europe, for example, prefers the usage of the term “Roma” to refer to Roma, Sinti, Gypsies, Gitanos, Manush and others. See Council of Europe (Congress of Local and Regional Authorities), Resolution 44 “Towards a tolerant Europe: the contribution of Roma”, adopted by the Council of Europe’s Parliamentary Assembly (1997), points 14 and 15. See also Council of Europe (Advisory Committee of the Framework Convention) Opinion on Romania (2001), at paragraph 21: “the Advisory Committee notes that many members of the Roma community refuse to be called “Gypsies” (“*țigani*”), because of the name’s pejorative associations with the period of bondage”.



from external actors, usually represented by international organizations that protect human rights, Romanian lawmakers or governments propose and enact laws (and policies) which aim at reestablishing credibility to the country, as well as at modernizing it. However, in many cases, there is no proper consultation with other stakeholders, including representatives from civil society or Roma communities. As such, they fall short of their intended aims and do little to address the structural issues they purport to mitigate. A tripartite interest convergence can be detected between Romanian governments and lawmakers, European organizations such as the EU and the Council of Europe and finally, Roma communities<sup>328</sup>. This can explain why there is some interest in Roma rights, at least enough to enact measures, yet, as we shall see, formalism seems to trump effective rights, as the convergence of interests either does not last long enough to see their effective implementation or was too weak in the first place. Of course, this perspective does not omit the role played by more altruistic or humanistic reasons, but it is unlikely that their influence alone would bring about human rights progress<sup>329</sup>.

Due to the urgency of and lack of debates in adopting many legal transplants, such as core provisions of antidiscrimination law, laws and policies on Roma inclusion or access to social rights, as well as rules for Roma political representation, as we shall see in later parts of this chapter, racial hierarchies are not only preserved, but sometimes codified. Unlike in other countries, where the fight over racial justice attracts groups of stakeholders which take sides rather unequivocally, such as in the US, in Romania, as in many other European and neighboring countries, racial injustice or preexisting racial hierarchies are mostly preserved through a subtle mix of public disinterest in the topic, a top-down and paternalistic approach to legal reform, a lack of political debate on issues affecting Roma or other racialized minorities, an apparently unassuming colorblind approach by lawmakers, authorities and institutions and mimetic compliance with European standards as a way to fend off criticism and avoid comprehensive

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<sup>328</sup> This has been noted previously for countries in Central and Eastern Europe, as in Chang, Rucker-Chang, *Roma Rights and Civil Rights*.

<sup>329</sup> Bell, “Brown v. Board of Education and the Interest Convergence Dilemma”, 23;

legal reform. Thus, if one were to try to highlight the ways in which race is read out of Romanian law, more attention should be paid to the effects of laws and policies aimed at Roma inclusion and protecting Roma rights, some of which might appear as quite progressive, in particular if we look at the abundance of positive action measures, but in practice, we will see that most of them suffer from “studied” indifference.

### 3.2 The Romanian Constitution and the protection of minorities

The present Constitution of Romania dates back to 1991, adopted only a few years after the Romanian Revolution of 1989 which ousted dictator Nicolae Ceaușescu. With a pressure being felt to adopt the new democratic constitution in order to legitimately hope for accession to the Council of Europe and the (then) European Communities<sup>330</sup>, a constitutional commission was created with this scope in mind. While the initial draft was received with less than stellar reactions<sup>331</sup>, the final text of the Constitution itself benefited from international experience and expertise (especially from France, Italy and Spain), as well as support from the Council of Europe and the Venice Commission<sup>332</sup>. The final product was, thus, heavily inspired, in its structure, institutions and philosophy from French, Italian and Spanish examples in particular. The only successful amendment of the Constitution happened in 2003 and it was prompted mostly by the prospect of Romania joining the European Union.

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<sup>330</sup> Cristina Parau notes that: “The president of the commission appointed to draft a new constitution has noted that they felt ‘under pressure from internal political forces and from European structures, that if we did not adopt a new constitution, we would not become credible with regard to our intentions of building a democratic polity’” and that there was a pressure that “those foreigners who are helping us from abroad want to see something drafted”. Cristina Parau, “Romania’s Transnational Constitution”, in Denis J. Gilligan, and Mila Versteeg, eds., *Social and Political Foundations of Constitutions* (Cambridge University Press, 2013), 514-515.

<sup>331</sup> As Jon Elster remarked at the time of adoption: “[The draft of the 1991 Romanian Constitution] is in many respects an unprofessional document: eclectic, verbose, rhetorical, and excessively detailed. It is also one of the most illiberal constitutional drafts presented so far in any Eastern European country, confirming the general impression that Romania forms the rear guard in the transition to democracy and that a ‘second transition’ may be needed”. Jon Elster, “Constitutionalism in Eastern Europe: An Introduction”, *University of Chicago Law Review* 58, no. 2 (1991), 463.

<sup>332</sup> Parau, “Romania’s Transnational Constitution”, 518-519.

In what follows, I will go through the provisions of the Constitution which refer to or impact minorities, as such including the Roma, and try to flesh out what approaches it takes. As it will become apparent, many of the provisions have corresponding guarantees in the Framework Convention for the Protection of National Minorities, which Romania was very quick to sign and ratify. On the other hand, as mentioned above<sup>333</sup>, the Constitution does adopt a language which could signal majoritarianism and constitutional nationalism, despite it also containing provisions protecting minorities. What these contradicting narratives show is the division that existed during the process of constitutional drafting, when one of the sides (represented mostly by the minority groups, especially the Hungarians) was pushing for broad constitutional protection of minorities, while the larger groups (represented by the majority-holding FSN (*Frontul Salvării Naționale*/The National Salvation Front<sup>334</sup>) and the historical parties such as the Liberal and Peasants' parties) were more interested in setting in stone the predominance of a nation-state based on the majority ethnic Romanian group.

What is equally apparent is that the “urgency” that was mentioned in an earlier section<sup>335</sup> pressured the drafting commission to quickly come up with an instrument which was both attractive to the majority of the population by expressing a Romanian national identity as well as satisfying external observers, such as the European Communities and the Council of Europe. It should also not be forgotten that the Constitution itself was being drafted at a time when the Council of Europe started work on the Framework Convention<sup>336</sup> while the Copenhagen Document had already been adopted by the then CSCE in 1990 and had broad provisions on

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<sup>333</sup> See Section 3.1.

<sup>334</sup> The FSN was the dominant political formation in Romania during the early 1990's, following the Revolution. Constituted mostly from former Communist Party elites, it would also dominate the drafting and adoption of the 1991 Constitution and would go on to receive 66% of the vote during the 1990 parliamentary elections and its president, Ion Iliescu, would become Romania's first post-Communist President, with 85% of the vote during the presidential elections in the same year. The FSN was heavily criticized since it initially announced it would not propose candidates.

<sup>335</sup> See Section 3.1.

<sup>336</sup> Frank Steketee, “The Framework Convention: A Piece of Art or a Tool for Action?”, *International Journal on Minority and Group Rights*, Vol. 8, No. 1 (2001), 2.

protecting national minorities<sup>337</sup>. That the language and scope of some of the provisions of the Romanian Constitution are similar to the Framework Convention's should thus not come as a surprise. However, what is more important for this thesis is that some of the guarantees of the Constitution can be interpreted to the detriment of minorities and that the language of the Constitution indicates that the "studied" or accidental (confused) disinterest in granting effective minorities rights, as well as in combatting discrimination and racialization starts at the constitutional level and trickles down to ordinary legislation too.

As it was modified in 2003, the Constitution contains several provisions that expressly mention national minorities or guarantee their rights. However, many of those provisions can be stifled by other general provisions who purport to establish some form of majoritarianism. Thus, Article 4(2) says that "Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.". On the other hand, in Article 1(1), Romania is described as a unitary national state and, according to Article 13, Romanian is the only official language.<sup>338</sup> These two provisions are probably the core of what the constitutional text tries to establish as the country's identity. Although Romania is quite diverse and the home to many different ethnic groups, Articles 1(1) and 13 establish a nation-state based upon the Romanian ethnic group. This characterization of Romania as a 'national' state has been highlighted fairly early on as a strong indication of the constitutional nationalism that permeates the Romanian Constitution<sup>339</sup> and was one of the topics which elicited a long-lasting opposition coming from

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<sup>337</sup> Particularly in part IV of the Copenhagen Document of 1990. Conference on Security and Cooperation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990).

<sup>338</sup> "The fact that the Romanian State is defined as a unitary and indivisible Nation State does not represent a threat to the existence and recognition of persons belonging to national minorities", Council of Europe (Advisory Committee of the Framework Convention for the Protection of National Minorities), Report submitted by Romania pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (1999), ACFC/SR(1999)011., para. 9, p. 5.

<sup>339</sup> Ioana Lungu, "Romanian Constitutional Nationalism", *Polish Sociological Review*, No. 140 (2000), p. 400.

the representatives of the Hungarian minority<sup>340</sup>, arguably the strongest voice for minorities rights in the country.

This constitutional combination between the choice for a unitary state and non-recognition of other languages as official languages could draw parallels with the French Constitution, which also lays the foundation of a unitary state and recognizes French as the sole official language of the Republic. However, while Romania signed and ratified both the Framework Convention<sup>341</sup> and the European Charter of Regional or Minority Languages, France did not, mainly because of France's highly centralized form of governance which it inherited from the time of the French Revolution<sup>342</sup>. In Romania, the signing and ratification of the two said instruments did not elicit neither any particularly noticeable opposition, nor any debates. On the contrary, adhering to them was seen as working in Romania's favor (again) internationally, since it confirmed a strong desire to participate in European affairs and a commitment to diversity and European values, at least *prima facie*.

However, the debates during the drafting process (or lack thereof) paint a different story of what the attitudes of the drafters were regarding in particular the 'national' epithet from Article 1(1) and minorities rights in general. When the Hungarian party's representatives proposed an amendment to scrap the word 'national' from the draft Constitution's first article, given the country's multiculturalism, reactions from across the political aisle as well as in the press were

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<sup>340</sup> See Suteu, "The Multinational State That Wasn't".

<sup>341</sup> Romania ratified the Framework Convention for the Protection of National Minorities on the 11<sup>th</sup> of May 1995, being also the first state to sign it. See Council of Europe (Advisory Committee of the Framework Convention for the Protection of National Minorities), Report submitted by Romania pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (1999), ACFC/SR(1999)011, para. 9, pp.11-12.

<sup>342</sup> The Conseil Constitutionnel and the Conseil d'État have consistently opposed the ratification of the European Charter of Regional or Minority Languages. The main argument used by both institutions is that the ratification would have undermined two basic principles of the French Constitution: the indivisibility of the Republic and the uniqueness of the French people and of the French language. The more recent opinion of the Conseil d'État, from the 30<sup>th</sup> of July 2015, did not change this position, as France's highest administrative court gave another negative opinion, just as in 1996 and 2013. Conseil d'État, Avis sur le projet de loi constitutionnelle autorisant la ratification de la Charte européenne des langues régionales ou minoritaires [Opinion on the draft constitutional law authorizing the ratification of the European Charter for Regional or Minority Languages], July 30, 2015, <https://www.conseil-etat.fr/avis-consultatifs/derniers-avis-rendus/au-gouvernement/ratification-de-la-charte-europeenne-des-langues-regionales-ou-minoritaires>.

near-unanimously and viscerally opposed to it. The proposal, together with all other debates on provisions concerning minorities were postponed by the FSN, who constituted more than 60% of the Constituent Assembly that would adopt the Constitution and would never be discussed<sup>343</sup>. Instead, the majority the FSN held allowed them to override any other participant to the drafting and adopting processes. Even the president of the drafting commission, Antonie Iorgovan, had this to say in an interview:

“It is incorrect to say that during the Communist dictatorship only the minorities were oppressed. We all have been mocked; the rights of all of us were ignored. On the other hand, now we are fighting to create a state of law and when we are strongly promoting the principle of equal rights, to argue that the minorities are still a problem is a shameless exaggeration.”<sup>344</sup>

We can see already that the characteristics of Romanian constitutional culture mentioned in the previous section<sup>345</sup> can be traced also in the drafting and adopting procedures for the 1991 Constitution, this time in respect to minorities rights: lack of debates on important constitutional issues; the sense of urgency; the external pressure; the overriding obsession with national unity and identity to the detriment of other topics. Moreover, we see that even the president of the constitutional drafting commission falls into the same “equal misery” fallacy as many other Romanians have before him<sup>346</sup>, albeit now this attitude informed the adoption of the Romanian *Grundnorm*.

Moving away to other provisions, the main identity-related norm on minorities in the Romanian Constitution is represented by Article 6 (The right to identity), which states that “the State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.” This provision would roughly correspond to the Framework Convention’s Article 5, which also obliges contracting states to promote the conditions necessary for the development

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<sup>343</sup> Lungu, “Romanian Constitutional Nationalism”, 404-405.

<sup>344</sup> *Id.*, 404.

<sup>345</sup> See Section 3.1.

<sup>346</sup> See Section 2.1.

and maintaining of national minorities' culture and identity. Furthermore, paragraph 2 from the same article in the Romanian Constitution establishes the principles of equality and non-discrimination in regard to the measures taken by the State<sup>347</sup>, which would correspond to Article 4(1) of the Framework Convention.

Another general principle that is guarded by the Constitution and which applied to national minorities as well is the principle of non-discrimination, found in Article 16(1), which states that "Citizens are equal before the law and public authorities, without any privilege or discrimination." Non-discrimination is, of course, one of the backbones of minority rights protection and guarantees a basic and central level of protection on which other rights can be elaborated. In this sense, the constitutional provision resembles and protects the same values as Article 4(1) of the Framework Convention<sup>348</sup>.

The same can be said of Article 30 of the Constitution, which enshrines the freedom of expression, but expressly forbids "(...) any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism (...)"<sup>349</sup> This provision would roughly fulfill the role Article 6 of the Framework Convention does, especially paragraph 2, which obliges the Parties to "take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."

Other provisions of the Romanian Constitution contain language-related rights, rights related to fair trial, rights that minorities have in the context of their interaction with local administrative authorities, as well as representational rights. For example, Article 128 (Use of mother tongue

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<sup>347</sup> The Constitution of Romania, Art. 6(2): "The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens."

<sup>348</sup> Art. 4(1) of the Framework Convention: "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited". Council of Europe, Framework Convention for the Protection of National Minorities.

<sup>349</sup> *Id.*, Art. 30(7).

and interpreter in court), paragraph 2 and 3, guarantees the right of citizens belonging to national minorities to use their language before the courts of law, as well as the right to an interpreter. This provision would roughly correspond to Article 10(3) of the Framework Convention, which indeed contains a trial language-related right, albeit less broad than the one found in the Romanian Constitution, as it only focuses on the right of persons belonging to national minorities to be informed promptly of the reasons for arrest and of the nature and cause of any accusation against him or her in a language he or she understands, as well as the right to defend oneself in this language and the right to an interpreter. These particular constitutional provisions have been implemented by Law 304/2004 on judicial organization, which establishes the right of Romanian citizens belonging to national minorities to express themselves in their mother tongue in front of courts<sup>350</sup>, as well as the right to an interpreter or translator, free of charge<sup>351</sup>. Moreover, when all the parties request to express themselves in their mother tongue, the courts are obliged to respect this right<sup>352</sup>. However, judicial claims or other procedural acts are drawn up only in Romanian<sup>353</sup>. As a matter of fact, this is a common aspect of Romanian ordinary legislation on minorities' rights, most of which contain provisions that start out by upholding the Romanian language as the official language, as paragraph 1 of Article 14 from Law 304/2004 does, while the actual minority rights are ascribed to the following paragraphs.

Furthermore, Article 120(2), which establishes the basic principles of public administration, contains the right of citizens belonging to national minorities to use their language orally and in writing, but only in those territorial-administrative units where they "have a significant weight". The equivalent Framework Convention provision in this case would be paragraph 2 of Article 10, which contains the right of individuals pertaining to minorities to use their language in front of the administrative authorities. While the numerical requirement of article 120 cannot be

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<sup>350</sup> Law 304/2004 on judicial organization, published in the Official Gazette no. 827/13.09.2004, art. 14 (2).

<sup>351</sup> *Id.*, art. 14 (3).

<sup>352</sup> *Id.*, art. 14 (4).

<sup>353</sup> *Id.*, art. 14 (5).



criticized in light of the Framework Convention's own language, which uses a similar condition<sup>354</sup> ("substantial numbers"), the citizenship condition (which, as we have seen, is also present in article 128) has been consistently<sup>355</sup> described by the Advisory Committee of the Framework Convention as limiting the access of individuals pertaining to national minorities to the rights found therein.

Representational rights of national minorities are also protected under Article 62 of the Constitution (Election of the Chambers). This right is not aimed directly at individuals, as it grants to national minorities' organizations the right to have one Deputy seat each in the Parliament in the case in which they do not gain the necessary number of votes so as to satisfy the minimum percentage required for having seats in the Parliament. However, the main point of contention related to representational rights and the reserved seats system established by the Romanian Constitution is that, according to paragraph 2 of the same article, there is a limitation on the number of minorities organizations, since one minority group can be represented solely by one organization<sup>356</sup>. I will expand more on this issue in the next section<sup>357</sup> dedicated to parliamentary representation of minorities, yet, for now, it would suffice to mention that this system, while presented as a positive action aimed at first glance at giving voice to the different minority groups that exist in Romania, is in practice not only limiting electoral choice, but also essentializing and homogenizing the political life of minority groups in Romania, with the most affected group being the Roma.

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<sup>354</sup> Art. 10 (2) of the Framework Convention: "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavor to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities". Council of Europe, Framework Convention for the Protection of National Minorities.

<sup>355</sup> See the Council of Europe (Advisory Committee on the Framework Convention for the Protection of National Minorities), Thematic Commentary No. 4 on the scope of application of the Framework Convention (2016), Commentary ACFC/56DOC(2016)001, para. 29.

<sup>356</sup> The Constitution of Romania, Art. 62(2): "Citizens of an ethnic minority may be represented by only one organization".

<sup>357</sup> See Section 3.3.

Somewhat related to elections is also Article 54, which simply states that “Faithfulness towards the country is sacred”. However common such a constitutional provision may be, it had very early on been invoked by more extremist Romanian political forces to discredit ethnic Hungarian members of Romanian governments such as in 1996, when the RMDSZ was part of the coalition that formed the government and was subsequently accused of sharing state information with Hungary<sup>358</sup>. Unfortunately, such accusations have been commonplace since the Revolution and most likely are the post-communist legacy of Ceaușescu’s policies of instilling in the population the fear of a revanchist Hungary and of a potential internal fifth column – the Hungarian minority.

Finally, the right to education is also covered by the Romanian Constitution, and its Article 32(3) protects national minorities’ right to education in their own language: “The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed”. While the Framework Convention guarantees several aspects of the right to education in articles 6<sup>359</sup>, 12<sup>360</sup>, 13<sup>361</sup> and 14, the latter one would correspond best with article 32(3) although it too has a provision conditioning the right of national minorities to be taught in their language on the existence of “substantial numbers” and of “sufficient demand” in areas traditionally inhabited by national minorities, in a way similar to the one found in Article 10(2). The right to education is further detailed and implemented by Law 1/2011 on National Education, which will be discussed in one of the following sub-sections<sup>362</sup>. For now, however, it is important to mention that the right to education in a minority language served as a constant

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<sup>358</sup> Lungu, “Romanian Constitutional Nationalism”, 402

<sup>359</sup> Article 6 obliges States Parties to encourage a spirit of tolerance and intercultural dialogue in the field of education, among others. Council of Europe, Framework Convention for the Protection of National Minorities.

<sup>360</sup> Article 12 enshrines the obligation of States Parties to organize education so that they will “foster knowledge of the culture, history, language and religion of their national minorities and of the majority”, as well as the obligation to ensure adequate opportunities for teacher training, access to textbooks and to facilitate contact between students and teachers of different communities. In paragraph 3, there is also an obligation to promote equal access to education for national minorities. Council of Europe, Framework Convention for the Protection of National Minorities.

<sup>361</sup> Article 13 provides for the right of national minorities to set up their own private educational and training establishments, although without requiring financial obligations from States Parties. Council of Europe, Framework Convention for the Protection of National Minorities.

<sup>362</sup> See Sub-section 3.7.3.

battleground, mostly between the Hungarian minority and Romanian authorities, with the former seeking to establish a separate Hungarian-language public institution since the 1990's and being constantly blocked from doing so<sup>363</sup>, sometimes by other Romanian political actors<sup>364</sup> invoking Article 32(2) of the Constitution, which, in a similar vein to other articles previously discussed, establishes the “norm” of Romanian education at all levels being carried out in Romanian.

### **3.3 Parliamentary representation of minorities – giving (a) voice to minority groups**

Minority rights frameworks in Europe have been developing throughout several stages, probably the first one usually mentioned occurring at the end of the First World War when many minority treaties were signed following the fall of multi-ethnic empires, particularly in Central and Eastern Europe. However, the most recent wave of minority rights treaty-building, which poses most interest for the purposes of this thesis, happened in the 1990s. In the aftermath of the fall of communist regimes in Central and Eastern Europe, a slew of countries expressed their interest in joining regional and international organizations, such as the European Communities, the Council of Europe or the CSCE/OSCE. The latter two in particular had developed a fairly comprehensive body of treaties and other legal documents setting out standards for minority rights protection. By the mid-1990s, the Council of Europe had adopted the Charter for Regional or Minority Languages (CRML)<sup>365</sup> and the Framework Convention on National Minorities (FCNM), while the CSCE had adopted the Charter of Paris<sup>366</sup>, the Copenhagen Document<sup>367</sup>, the Moscow Document<sup>368</sup>, the Geneva Report<sup>369</sup> and the Helsinki Document<sup>370</sup>.

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<sup>363</sup> See Suteu, “The Multinational State That Wasn’t”, and Dragoş Dragoman, “Language planning and the issue of the Hungarian minority language in post-communist Romania: from exclusion to reasonable compromises”, *Studia Politica: Romanian Political Science Review*, 18(1) (2018), 138.

<sup>364</sup> Lungu, “Romanian Constitutional Nationalism”, 401.

<sup>365</sup> Council of Europe, Charter for Regional or Minority Languages.

<sup>366</sup> Conference on Security and Cooperation in Europe, Charter of Paris for a New Europe (1990).

<sup>367</sup> Conference on Security and Cooperation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

The European Communities, on the other hand, while not adopting any specific provisions on minority rights, did nevertheless include “respect for and protection of minorities” in its 1993 Copenhagen criteria for accession<sup>371</sup>. To better understand how the Romanian minority rights framework (if one could even call it as such) came to be, especially the parliamentary representation of minorities, it is crucial to place it within the context of Romania’s process of accession to the EC and other European organizations.

Following the fall of communist regimes, many Western European countries found themselves the destination of migration from many Roma coming from Central and Eastern European countries. As we have seen in Romania in a previous section<sup>372</sup> and as was the case in other neighboring countries<sup>373</sup>, Roma became the target of widespread violence, so much so that it triggered an increasing flow of migration of Roma mostly to Western European countries, some even asking for asylum. Western European anxieties, expressed in a rather racializing tone, about a “Roma invasion from the East”<sup>374</sup> prompted organizations such as those already mentioned above to request reports on the developing “migration problem”. The OSCE’s High Commissioner on National Minorities (HCNM), for example, was tasked in 1993 to “study the social, economic and humanitarian problems relating to the Roma population in some participating states”<sup>375</sup> and it was remarked that “these problems, which fall into the larger category of migration problems, could also have an international dimension”<sup>376</sup>. The HCNM’s report further highlighted that the short-term aim would be to improve the quality of life of

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<sup>368</sup> Conference on Security and Cooperation in Europe, Document of the Moscow Meeting of the Conference on the Human Dimension (1991).

<sup>369</sup> Conference on Security and Cooperation in Europe, Report of the Geneva Meeting of Experts on National Minorities (1991).

<sup>370</sup> Conference on Security and Cooperation in Europe, Helsinki Document: The Challenges of Change (1990).

<sup>371</sup> European Union (European Council), Conclusions of the Presidency, Copenhagen, 21–2 June (1993).

<sup>372</sup> See Section 2.4.

<sup>373</sup> Jean-Pierre Liegeois, Nicolae Gheorghe, “Roma /Gypsies: A European Minority”, (Minority Rights Group International 1995), 5.

<sup>374</sup> *Id.*, 17.

<sup>375</sup> The Conference on Security and Cooperation in Europe (High Commissioner on National Minorities), “Roma (Gypsies) in the CSCE Region, Report of the High Commissioner on National Minorities”, Meeting of the Committee of Senior Officials, 21-23 September 1993, 1.

<sup>376</sup> The Conference on Security and Cooperation in Europe (High Commissioner on National Minorities), 1.

Roma in their home countries by addressing issues of discrimination, amongst others, as a way to “encourage people to continue their lives where they already are”<sup>377</sup>. A contemporary report prepared for the UN High Commissioner for Refugees also stressed out the possible escalation of violence at borders should the current trend of Roma migration continue:

“It may, therefore, be useful to have in mind what a ‘worst case’ scenario could look like. Should the Roma situation, as a result of failing human rights, further poverty, and/or racist attacks, lead them to attempt to flee from any one country, we can anticipate that they will encounter increasing numbers of fully armed border patrols along the frontiers of Central and Eastern European, and adjacent Western European, states, who will do their best to stop them. Should the Roma find themselves blocked in their flight, they may well believe that in order to survive they will have no alternative but to try to force their way across the borders or, despite the fact that they have no history of civil violence, to turn and fight those who have been attacking them”<sup>378</sup>.

We can already see that Roma migration was perceived to be a security issue not just by Western European governments, but also by the organizations they were members of. In fact, these concerns were already voiced in the European Parliament in 1981, when a group of MEPs proposed a coordinated effort to solve the “Gypsy problem”, i.e. intra-community irregular migration of Roma<sup>379</sup>. Later, EU institutions would shift their discourse from one focusing on migration to a rights-based discourse, yet Roma migration would still feature on the agenda as a security issue, for example in projects focusing on researching asylum and migration trends, such as the Odysseus program. The latter also included between 1999 and 2002 an analysis of Roma irregular migration<sup>380</sup>. In any case, at the same time as EC and later EU institutions were voicing concerns about Roma access to minority rights in candidate countries like Romania and monitored respect for them as part of the accession process, they continued to regard Roma migration westwards as a “problem”<sup>381</sup>. Similar trends can be seen within the Council of Europe,

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<sup>377</sup> *Id.*, 11.

<sup>378</sup> Mark Braham, “The Untouchables, A Survey of the Roma People of Central and Eastern Europe, A report to the Office of the United Nations High Commissioner for Refugees” (1993), 114.

<sup>379</sup> Liegeois, Gheorghe, “Roma /Gypsies: A European Minority”, 18.

<sup>380</sup> Timothy W. Waters, Rachel Guglielmo, “Migrating Towards Minority Status: Shifting European Policy Towards Roma”, *JCMS*, Vol. 43, No. 4 (2005), 772.

<sup>381</sup> *Id.*, 773.

which by no accident served in the 1990s as the umbrella under which comprehensive minority rights treaties, such as the Charter for Regional or Minority Languages or the Framework Convention were drafted. A securitized and at times racializing<sup>382</sup> discourse surrounding Roma migration from the CEE region thus served as a major catalyst for minority rights being implemented in many ex-communist countries.

Given the frequency and scale of anti-Roma violence in the first decade following the end of the communist regime, Romania was unsurprisingly one of the main sources for Roma emigration towards Western Europe. Swift accession to the ECHR and the FCNM was remarked in July 1997 by the European Commission as signs that Romania was strengthening its minority rights protection system<sup>383</sup>, yet it also drew attention to the routine violence and discrimination Roma people are faced with, including assaults by police officers and called on the Romanian Government to “step up the integration measures”<sup>384</sup>. A year later, in March 1998, the Accession Partnership was adopted on the condition that, amongst others, the Romanian Government continue to engage in “further efforts to integrate the Roma”<sup>385</sup>.

Similar to its hasty adoption of a new Constitution, minority rights were for the first time seen as a priority for the country’s elites. In this context, one of the most important measures taken by Romanian policymakers was to establish some form of political representation for minorities. Already in March of 1990, even before the new Constitution was even drafted, a decree-law<sup>386</sup> was enacted by the Provisory Council of National Unity<sup>387</sup> aimed at organizing the first

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<sup>382</sup> Angela Kóczé, “Race, migration and neoliberalism: distorted notions of Romani migration in European public discourses”, *Social Identities*, Vol. 24, No. 4 (2018).

<sup>383</sup> European Union (Commission of the European Communities), Commission Opinion on Romania’s application for membership of the European Union, Brussels, COM(97) 2003 final (1997), 14.

<sup>384</sup> *Id.*, 15.

<sup>385</sup> European Union (Council of the European Union), Council Decision 98/261/EC on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with Romania (1998), annex, point 3.2.

<sup>386</sup> Decree-law no. 92/1990 for the election of the Parliament and the President of Romania, published in the Official Gazette no. 35/18.03.1990.

<sup>387</sup> The Provisory Council of National Unity was a post-revolution governing body that replaced the National Salvation Front (NSF) Council in February 1990 and functioned until the first democratically elected Parliament

democratic elections since the fall of Ceaușescu. At a time when Romania was facing mounting criticism for the ethnic conflicts and anti-Roma pogroms, Decree-law no. 92/1990 became the first piece of legislation to include minorities in the Parliament. In 1993, again responding to mounting external pressures to formalize the system for minority representation, Romania established a Council for National Minorities within its Parliament, where each minority would be represented by one deputy in the lower house, the Chamber of Deputies<sup>388</sup>.

As with minority rights in the Constitution, political representation for minorities was only achieved in this form due to international pressure, especially from European actors, be it Western European countries fearing increasing Roma migration or the similar concerns of regional or international organizations and institutions wherein the former had influence. Faced again with the prospect of prolonging the country's Euro-Atlantic integration, the Romanian governments or governing bodies at the time responded to criticism of human rights abuses towards Roma by establishing a formal system of political representation for the Roma minority, as well as other minorities. Of course, as with the drafting process of the Constitution, there were other motives and actors at play, especially the Hungarian Party who was very influential in advocating for this system in the first place. However, the role of external pressure and the establishment of a complex interest convergence with a view to giving a stable political voice to the Roma minority should not be underestimated. With arguably one of its most important positive action measures established quite early on, what remains is to analyze how effective it is in achieving its aim – political representation of Roma at a parliamentary level.

Formally, the electoral system in Romania as it stands today offers a special system of reserved seats for national minorities. For electoral purposes, Law 208/2015 on elections understands the

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took office in May of 1990. However, the NSF itself remained the dominant political power up until 1993 and contributed massively to early law-making.

<sup>388</sup> Iulius Rostas, *A Task for Sisyphus*, 126.

term “national minority” as referring to those ethnicities<sup>389</sup> represented in the Council of National Minorities<sup>390</sup>. Other national minorities’ organizations can also participate if they are of “public utility” and if they can produce a list of persons representing 15% of the total number of citizens that have declared themselves as belonging to that national minority<sup>391</sup>. According to the current above mentioned elections’ law, the threshold applied to these organizations is 5% of the average number of votes given to a Deputy<sup>392</sup>. The same 5% threshold is required of regular parties<sup>393</sup>, although the percentage relates to the total number of votes. This last threshold is also to be applied to national minorities’ organizations which participate in electoral alliances<sup>394</sup>.

Thus, in theory, the legislation seems very permissive with its understanding of the term “national minority”, with no single, general definition existing at any legislative level, except for the one mentioned above, which links the recognition of a national minority with its representation within the Council of National Minorities<sup>395</sup>. As a direct consequence of this policy, since any organization representing national minorities can achieve official recognition, provided they attain the required number of votes, the number of organizations grew from the initial 12 in 1990<sup>396</sup>, when the first free elections were held, to the present 18 (including both those represented by one deputy in the Council of National Minorities and the Hungarian

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<sup>389</sup> Here, I am merely reproducing the term used by Law 208/2015, which does not make the distinction between national and ethnic minorities, but instead refers to “ethnicities” as synonymous with “national minority”. Law 208/2015 regarding the election of the Senate and the Chamber of Deputies, as well as for the organization and operation of the Permanent Electoral Authority, published in the Official Gazette No. 533/24.07.2015.

<sup>390</sup> Law 208/2015, art. 56 (3).

<sup>391</sup> *Id.*, art. 56 (4).

<sup>392</sup> *Id.*, art. 56 (1).

<sup>393</sup> *Id.*, art. 94 (2).

<sup>394</sup> *Id.*, art. 56 (8).

<sup>395</sup> Monica Călușer, “Reprezentarea minorităților naționale pe locurile rezervate în parlament” [The representation of national minorities on the reserved seats in parliament], in Levente Salat, ed., *Politici de integrare a minorităților naționale în România* [National minorities integration policies in Romania] (Centrul de Resurse pentru Diversitate Etnoculturală), 2008, 170.

<sup>396</sup> By the rules established by article 4 of Decree-law no. 92/1990 for the organization of elections, 13 minorities (besides the Hungarians, which entered directly into Parliament, with 41 Senators and Deputies) were initially represented in the Romanian Parliament’s Council for National Minorities by 11 organizations: Germans, Roma, Lipovan Russians, Armenians, Bulgarians, Czechs, Slovaks, Serbians, Greeks, Polish, Tatars, Turks and Ukrainians. The Czechs and Slovaks formed just one organization – The Democratic Union of Slovaks and Czechs in Romania. Shortly after, the Turks and Tatars factions split and former distinct organizations, bringing the total number of seats in the Council to 12 and the number of organizations in Parliament, as a whole, to 13 (including the Hungarians). For more details, see Călușer, “Reprezentarea minorităților naționale”, 169-170.



minority represented in the Parliament as a regular party). Given that the number of votes required of national minorities to be represented in the Council and, thus, also recognized is small<sup>397</sup>, the chances that a minority would be recognized in Romania and represented in the Parliament seem high.

In these circumstances, however, the only national minority organization that has consistently managed to reach the regular threshold applied to mainstream parties is the RMDSZ, mainly due to its largely loyal electorate and high number of individuals belonging to this minority<sup>398</sup>. And even in the case of the Hungarian minority, the previously mentioned limitation present in article 62 (2) of the Constitution limits the number of organizations which can represent the minority group to one. As such, the ethnically Hungarian electorate in Romania face the dilemma of either splitting the vote between two or more organizations representing them or continue voting for the more established RMDSZ. In the first scenario, they risk losing their place in the Parliament achieved through the regular electoral procedure, which has, until now, always garnered them between 20 and 27 seats in the Chamber of Deputies (the lower house) and between 7 and 12 seats in the Senate (the upper house). Splitting the votes would instead reduce them to the one seat in the Council of National Minorities achieved through the special reserved seats system. In the second scenario, which has been the case ever since the first post-1989 elections, the Hungarian minority's electoral choice is limited to one party which can represent them as a national group (if they do not choose to vote for Romanian mainstream parties), but then the political or ideological heterogeneity of this group will not be reflected in their choice.

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<sup>397</sup> The required number of votes was 1336 in 1992, 1494 in 1996, 1273 in 2000, 2841 in 2004 (when the threshold was lifted to 10% instead of 5%, but this has since been reverted to 5%), etc.

<sup>398</sup> According to the 2011 census, there were 1.227.623 Hungarians living in Romania, representing 6.5% of the total population, while the 2020 census lists 1.002.151. The 2011 census data is available in English at: <http://www.insse.ro/cms/files/statistici/comunicate/alte/2012/Comunicat%20DATE%20PROVIZORII%20RP.L%202011e.pdf>. For the 2021 census data, see Recensământ România "Table 2.2.2 Populația rezidentă după etnie" [Resident population by ethnicity], *Recensământ România*, <https://www.recensamantromania.ro/rezultate-rpl-2021/rezultate-definitive-caracteristici-etno-culturale-demografice/>.

The situation is even more serious in the case of the Roma minority, which numbers somewhere between 1 and 2.5 million individuals according to the Advisory Committee on the Framework Convention<sup>399</sup>, the UN Refugee Agency<sup>400</sup> and Minority Rights Group International<sup>401</sup>, among others. Internally, the group is listed in the 2011 Romanian census<sup>402</sup> as consisting of only 621.600 Romanians of Roma ethnicity, with the most recent census from 2021 recording an unlikely drop to only 569.477<sup>403</sup>. In these conditions, Roma are nevertheless represented solely by one seat achieved through the reserved seats system. Even if the 2011 and 2021 censuses were accurate, it would still make the Roma the most underrepresented group (when compared with either the Romanian majority or other minorities) in Romania, with one study estimating the seat percentage/population percentage representation ratio for the Roma minority at a staggeringly low 0.121 in the 2008 elections (when compared to the 2002 census), in the situation where the Romanian majority had a representation ratio of 0.984 and the Hungarian minority had a ratio of 0.996<sup>404</sup>. If we look at the other extreme, small minorities such as the Ruthenians, Albanians and Armenians have a representation ratio of 247.957, 124.932 and 36.497, respectively, for the same period and taking into consideration the same census<sup>405</sup>, meaning they were approximately 247, 124 and 36 times overrepresented, respectively. If we were to refer to the last Parliamentary elections, from 2020, and taking into consideration the 2011 census, we would see an even lower representation ratio of 0.1 for the Roma minority. Taking into consideration that both the 2011 and 2021 censuses seriously understate the true probable size of Roma communities in Romania,

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<sup>399</sup> Council of Europe (Advisory Committee on the Framework Convention for the Protection of National Minorities), Fourth Opinion on Romania, ACFC/OP/IV(2017)005, 2018, 10.

<sup>400</sup> United Nations (UNHCR), “Country Operations Plan, Country: Romania” (2016), 1, <https://www.unhcr.org/uk/433913112.pdf>.

<sup>401</sup> See “Roma in Romania”, *Minority Rights Group*, <https://minorityrights.org/minorities/roma-14/>.

<sup>402</sup> See INSSE, “Press release no. 159 from 2013 on the final results of Population and Housing Census – 2011 (demographic characteristics of population)”, *INSSE*, 2, [https://insse.ro/cms/files/statistici/comunicate/RPI/RPI.%20rezultate%20definitive\\_e.pdf](https://insse.ro/cms/files/statistici/comunicate/RPI/RPI.%20rezultate%20definitive_e.pdf).

<sup>403</sup> See Recensământ România “Table 2.2.2 Populația rezidentă după etnie”.

<sup>404</sup> Ronald F. King, Cosmin G. Marian, “Minority Representation and Reserved Legislative Seats in Romania”, *East European Politics and Societies*, Vol. 26, No. 3 (2012), 571.

<sup>405</sup> *Id.*, 571.

it is not an exaggeration to say that Roma people are seriously and systematically underrepresented in the Romanian Parliament.

We can see from the above estimates that the Romanian reserved seats system does indeed justice to most minority groups, since most of them have a coefficient of either approximately 1 or more. In other words, the percentage of seats in the Council of National Minorities within the Chamber of Deputies and the share of population largely correspond or, as in most cases, the share of seats is larger than the share of the population. Most minority groups are thus overrepresented. Moreover, if we look into the votes/population ratio, we will see a similar story<sup>406</sup>. If we take the 2020 elections and the 2011 census again as points of reference, the vote/population ratio for the Roma population would be 0.02, while for the Hungarians it would amount to 0.28, other smaller minorities being similarly overrepresented. Of course, these estimates take into consideration only the number of votes given for the minority organization who has representatives in the lower house of the Parliament, either be it through the regular procedure, as the RMDSZ, or through the reserved seats system, as all other minority groups. Of all groups, however, the Roma suffer the most, with a very large and heterogenous population being represented by only one organization.

Presently, the Roma are represented in the Parliament's Chamber of Deputies and in the Council for National Minorities by the Roma Pro-Europe Party (*Partida le Romenge/Partida Romilor Pro Europa*), hereinafter the Roma Party, the only organization which has been representing Roma as a national minority since 1990<sup>407</sup>. This is not to say there have not been other organizations wishing to represent the Roma communities of Romania. On the contrary, up until 2004, in one form or another, there have been at least 11 other organizations<sup>408</sup> that have participated in elections for the Chamber of Deputies but have failed to garner sufficient support from the

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<sup>406</sup> *Id.*, also for the 2004 and 2008 elections.

<sup>407</sup> *Id.*, 570.

<sup>408</sup> Istvan Székely, "The political representation of national minorities in Romania", *Working Papers in Romanian Minority Studies*, no. 20 (2009): 37-38.

Roma community to displace the Roma Party. After 2004, the political survivability of rival minority parties was reduced even further after a change in the electoral registration rules now meant that any new organization must collect a list of 15% of the total number of citizens who, in the last census, declared themselves members of the respective minority group<sup>409</sup>. Incumbent organizations, on the other hand, are not required to produce such a list, giving them an advantage over any rival organization. The effect of this particular system of reserved seats is that minorities in Romania are treated as homogenous communities and it could be easily seen as a sort of minority tokenism, where the presence of at least one representative from each of the minorities in Romania is seen as legitimizing the legislative process and combating criticism that the system is not representative of minorities.

Conversely, votes for the Roma Party have experienced a sharp decline since the 1990s. Thus, while in the 1992 elections, they received 52.704 votes<sup>410</sup> for the Chamber of Deputies and reached a peak number of votes in 1996, with 82.195 votes<sup>411</sup>, in the last two elections of 2016 and 2020, the Roma Party only managed to gain 13.126 votes<sup>412</sup> and 14.523 votes<sup>413</sup>, respectively. What this shows is that there is a growing lack of interest in voting for the Roma Party as a minority organization, since unless the regular electoral threshold of 5%<sup>414</sup> is passed in order to enter the Parliament using the regular procedure for mainstream parties (which requires a very solid and well-organized voting base), then it would not matter whether the Roma Party got 5.000 or 80.000 votes, since they would gain only one seat. Lack of interest in voting for a Roma

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<sup>409</sup> See Law 208/2015, art. 56 (4) and Oleh Protsyk, “Representation of minorities in the Romanian parliament” (2010), United Nations Development Programme, 10.

<sup>410</sup> Cristian Preda, “Partide, voturi și mandate la alegerile din România (1990-2012)” [Parties, votes and mandates in Romanian elections (1990-2012)], *Studia Politica: Romanian Political Science Review*, 13(1), 65.

<sup>411</sup> *Ibid.*

<sup>412</sup> Biroul Electoral Central [Central Electoral Office], “Anexa 22, Proces-verbal privind rezultatele finale ale alegerilor pentru Camera Deputatilor” [Annex 22, Minutes regarding the results of the elections for the Chamber of Deputies], [http://parlamentare2016.bec.ro/wp-content/uploads/2016/12/4\\_RF.pdf](http://parlamentare2016.bec.ro/wp-content/uploads/2016/12/4_RF.pdf).

<sup>413</sup> Biroul Electoral Central [Central Electoral Office], “Anexa 5, Alegerile parlamentare din data de 06.12.2020, Situatia centralizarii datelor din sectiile de votare” [Annex 5, Parliamentary elections of 06.12.2020, Situation of data centralization from polling stations], [https://parlamentare2020.bec.ro/wp-content/uploads/2020/12/com\\_1423.pdf](https://parlamentare2020.bec.ro/wp-content/uploads/2020/12/com_1423.pdf).

<sup>414</sup> Law 208/2015, art. 94 (2) a).

organization is also doubled by distrust in the present Roma Party<sup>415</sup>, seen as relying too much on the party or coalition that happens to be in power at a specific point in time and as consistently supporting governmental proposals<sup>416</sup>. The fact that the Roma Party itself has had a history of blocking alternative candidates from taking its place also adds to its effective monopoly on Roma public affairs<sup>417</sup>, while at the same time Roma public opinion on the Roma Party's effectiveness is generally quite low<sup>418</sup>. This is valid for other minority organizations as well<sup>419</sup> and it would seem logical, since the reserved seats system gives voice to minorities, albeit a weak one, yet it also tends to create a client system where the minorities are reliant on whoever controls the parliamentary majority for access to funds<sup>420</sup>. It is equally interesting to note that there are suggestions that the reserved seats system might have been conceived also in order to counterbalance the larger RMDZS<sup>421</sup> with smaller minorities and their deputies. In any case, the Roma population is especially affected and particularly underrepresented and even though Roma voters appear to be siding with Romanian mainstream parties<sup>422</sup>, they are equally underrepresented in the latter's cohort of deputies and senators as well<sup>423</sup>.

In its present form, as it was established in the 1990s during Romania's tumultuous road towards Euro-Atlantic integration, the reserved seats system serves as an example of mimetic compliance with external standards framed by, at the time, Western-dominated organizations such as the EC,

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<sup>415</sup> National Democratic Institute, "Assessment of barriers to Roma political participation in Romania" (2009), 8, [https://www.ndi.org/sites/default/files/Assessment%20Report%20Final%20\(complete\).pdf](https://www.ndi.org/sites/default/files/Assessment%20Report%20Final%20(complete).pdf).

<sup>416</sup> Monica Caluser, "Minority participation at local and national level in Romania", *Political Parties and Minority Participation* (Friedrich Ebert Stiftung, 2008), 44, <https://library.fes.de/pdf-files/bueros/skopje/06359.pdf>.

<sup>417</sup> Chuck Sudetic, "Roma in Political Life: Romania - 'Household Roma', Mayors, and .3 Percent", *Open Society Foundations*, September 10, 2013, <https://www.opensocietyfoundations.org/voices/roma-political-life-romania-household-roma-mayors-and-3-percent>.

<sup>418</sup> National Democratic Institute, 8.

<sup>419</sup> Mihai Voinea, Iulia Marin, "Cum controlează puterea votul minorităților: fonduri de milioane de euro care depind de o hotărâre de Guvern" [How power controls the minority vote: funds of millions of euros that depend on a government decision], *Recorder*, December 10, 2018, <https://recorder.ro/cum-controleaza-puterea-votul-minoritatilor-fonduri-de-milioane-de-euro-care-depind-de-o-hotarare-de-guvern/?source=biziday&fbclid=IwAR2aGFubx2mdNFgrcb9Kl4YtTHdYQR8554YudigAIK7CahybJbi3If0YxoU>.

<sup>420</sup> King, Marian, "Minority Representation and Reserved Legislative Seats in Romania", 574.

<sup>421</sup> *Id.*, 566-567.

<sup>422</sup> Aidan McGarry, "Political Participation and Interest Articulation of Roma in Romania", *Journal on Ethnopolitics and Minority Issues in Europe*, 1 (2008), 14-15.

<sup>423</sup> *Id.*, 1-2.

the Council of Europe, the CSCE/OSCE or the UN. Conceived right after the fall of the communist regime and formally entrenched with the establishment of the Council of National Minorities soon after, the system indeed offers a chance for minorities to be represented to a certain extent and transforms the lower house of Parliament, otherwise completely dominated by ethnic Romanians, into a potential venue for expanding the notion of belonging to the Romanian nation. Small minorities are without a doubt the biggest beneficiaries of the reserved seats system, as it gives them a voice they would otherwise struggle to make visible to the larger population. Indeed, historically, the Council of National Minorities usually presented a unified front of between 12 and 18 MPs and as such might force bigger parties or coalitions to cater to some of their demands. On the other hand, the system discourages minority MPs from breaking ranks or standing for independent policies catered to the groups they represent. In other words, most of the time, minority MPs have to look for the lowest common denominator. In practice, however, the minority parliamentary group has been inactive in advancing Roma-related (or even minority-related) proposals<sup>424</sup>. Of course, the Hungarian Party, the RMDZS, never had to resort to the reserved seats system for which they advocated, since they have been able to receive sufficient votes to enter the Parliament as a regular party.

Conversely, the group which this system should have benefitted the most, given their past and present marginalization and dismissal from policymaking, the Roma, are barely given a voice. It is indeed *a* voice, one sole voice represented by the token Roma MP in the Council of National Minorities who stands for one single party. We can see that despite the fact that most of the external pressures Romanian governments were facing reflected on the situation of the Roma minority and its access to human rights and representation, the system that was set up ended up offering Roma the fewest benefits when compared with other groups. As it stands, the reserved seats system does not take into account the history of othering and exclusion, including political, that Roma have faced and which distinguishes them from other traditional minorities in

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<sup>424</sup> National Democratic Institute, “Assessment of barriers to Roma political participation in Romania”, 13.

Romania. Owing to this history of racialization, identifying as Roma is in itself a point of controversy, not least shown by the inexplicable decrease in those who identified as Roma between the 2011 and 2021 censuses. The social stigma that comes with identification as Roma discourages many from openly participating in Romanian politics as such. Instead, Roma try to “fit in” and “become more Romanian”<sup>425</sup>, arguably also by seeing their hopes better represented by Romanian mainstream parties and not by exclusively Roma parties. Low political participation is also compounded by a lack of political awareness within Roma communities, the ongoing issue concerning lack of identity documents for many Romani individuals (which is also linked to the housing issue discussed in a later sub-section<sup>426</sup>), as well as by more general issues affecting the entirety of Romanian society, such as growing distrust in politics<sup>427</sup>.

### 3.4 The National Roma Inclusion Strategies

When looking at Romanian law and policy that target Roma directly, analyzing the series of National Roma Inclusion Strategies (hereinafter NRIS) which successive Romanian governments have adopted is essential not only in ascertaining the extent to which Romanian law impacts Roma people, but also in identifying faults or even forms of racialization within Romanian legislation that target Roma. The NRISs are comprehensive policy frameworks which specifically aim at Roma inclusion on a variety of levels, usually focusing on key areas where Roma communities are more vulnerable or face discrimination or other disadvantages. As such, they are constructed as a more comprehensive form of positive action by which governments outline which areas of Roma integration they intend to address and usually list measures they would undertake over a given period of time, including, though not limited to the adoption of specific legislation. It is not surprising thus that much of the Romanian legal framework which target

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<sup>425</sup> Vincze, “The war against poor”, 237.

<sup>426</sup> See Sub-section 3.7.3. Due to unclear housing status, many Roma have difficulties in obtaining national ID cards.

<sup>427</sup> Cristi Mihalache, “Obstacles to the participation of Roma in elections in Romania”, *European Roma Rights Centre*, February 7, 2004, <https://www.errc.org/roma-rights-journal/obstacles-to-the-participation-of-roma-in-elections-in-romania>.

Roma directly or indirectly can be traced back to some of these measures or goals found in one of the NRISs adopted since 2001. Therefore, in the following section, I will try to identify to what extent Romanian NRISs contain hidden forms of racialization, preserve racial stereotypes of Roma or fail to address racial discrimination of Roma. On this last point, it will also be telling to see how much of a priority this framework is for successive Romanian governments, as well as the extent to which external pressures potentially indicative of an interest convergence played a role in their adoption or evolution.

Right from the start, it is crucial to mention that NRISs are not unique to Romania<sup>428</sup>, but a series of policies adopted by various EU or EU candidate countries<sup>429</sup> as a means to address some of the most pressing issues related to Roma communities living in their respective territories. The EU Framework for NRIS started with the European Commission's Europe 2020 growth strategy, published in 2010 and which also aimed at improving the livelihoods of Roma communities across European countries<sup>430</sup>. Subsequently, the Commission adopted an EU Framework for National Roma Inclusion Strategies up to 2020<sup>431</sup> in 2011 and through it called on Member States to coordinate in offering comprehensive policies aimed at socio-economic inclusion of Roma, in particular access to education, healthcare, housing and employment. However, the EU's Framework for NRIS has been criticized for its weakness<sup>432</sup>, since it is non-

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<sup>428</sup> Margareta Matache, "Biased Elites, Unfit Policies: Reflections on the Lacunae of Roma Integration Strategies", *European Review*, 25(4) (2017).

<sup>429</sup> Candidate countries such as North Macedonia, Serbia or Albania have also adopted their own NRISs.

<sup>430</sup> European Union (European Commission), "Europe 2020: A strategy for smart, sustainable and inclusive growth", COM(2010) 2020 Brussels, (2010), <https://ec.europa.eu/eu2020/pdf/COMPLETE%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>.

<sup>431</sup> European Union (European Commission), "An EU Framework for National Roma Integration Strategies up to 2020", COM(2011) 173 final (2011), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173>.

<sup>432</sup> Ron Korver, "Framework for National Roma Integration Strategies up to 2020 European Implementation Assessment" (2020): 4. [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642827/EPRS\\_STU\(2020\)642827\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642827/EPRS_STU(2020)642827_EN.pdf).



binding and although there are monitoring mechanisms in place, the NRIS are mostly in the hands of their respective national governments<sup>433</sup>.

Up until the time of writing of this thesis, Romanian governments have adopted a total of 5 NRIS, as follows: the first NRIS was adopted in 2001 and covered the time between 2001 and 2004<sup>434</sup>; the second one was adopted as a modification<sup>435</sup> of the first and introduced also a set of measures for the period between 2006 and 2008; the third NRIS<sup>436</sup> initially had an action plan between 2012 and 2020, but was replaced with a fourth strategy<sup>437</sup> in 2015 covering the remaining 5 years between 2015 and 2020; and finally the last NRIS<sup>438</sup> which was adopted in 2022 which is expected to run until 2027.

To a large extent, the NRISs inform most Romanian law that is either specifically focused on Roma or affects Roma as well, from healthcare and education to antidiscrimination, political representation and the minorities rights framework. Like many other cases discussed in this thesis, the NRISs are an example of “urgent” social engineering done through law, or, in this case, policy. The “urgency”, in this sense, can be traced in the inadequacies and rushed nature of the first few strategies, which were adopted during Romania’s road to EU accession by successive Romanian governments. Ever since the EU has included the protection of minorities in its accession process through the 1993 Copenhagen Criteria<sup>439</sup>, acceding countries such as Romania were prompted to improve the condition of their minorities, and in particular the Roma.

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<sup>433</sup> Korver, 4.

<sup>434</sup> Approved through Government Decision 430/2001 (HG 430/2001), published in the Official Gazette No. 252/16/05/2001.

<sup>435</sup> Approved through Government Decision 522/2006 (HG 522/2006), published in the Official Gazette No. 371/28.04.2006.

<sup>436</sup> Approved through Government Decision 1221/2011 (HG 1221/2011), published in the Official Gazette No. 6/04.01.2012.

<sup>437</sup> Approved through Government Decision 18/2015 (HG 18/2015), published in the Official Gazette No. 49/21.01.2015.

<sup>438</sup> Approved through Government Decision 560/2022 (HG 560/2022), published in the Official Gazette No. 450/05.05.2022.

<sup>439</sup> Conference on Security and Cooperation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

Thus, considering their main interest of joining the Council of Europe, the European Union and the OSCE among others, Romanian elites felt the pressure to act and came up with the first comprehensive 4-year Roma inclusion plan in 2001. At a time when the EU Commission was far from calling for a framework of NRISs, it seemed a positive early step. The link between Romania's desires in playing an active role in European and international organizations is made quite clear from the first sentence of the 2001 Strategy, which mentions that the Government is adopting this instrument pursuant to its European and international commitments to the Council of Europe's Framework Convention or the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>440</sup>. What it does not mention expressly is that it came about as a consequence of the 1999 Accession Partnership<sup>441</sup> of the Council of the European Union which called for a "strategy to improve economic and social conditions of the Roma". Interestingly enough, the 2001 Strategy also expressly mentions in its General Considerations that Roma suffered due to slavery (*robie*) but misses on the opportunity to localize it in the territories that make up Romania and instead dilutes the message by adding that this phenomenon "left profound marks on collective memory everywhere in the world"<sup>442</sup>. This admission is, however, not followed through with any measure to commemorate Roma slavery.

While initially welcomed by the European Commission in its 2001 Regular report on Romania's Accession<sup>443</sup> as a "high quality document that was elaborated together with Roma organizations and has been welcomed by them"<sup>444</sup>, its results were later deemed to be "uneven"<sup>445</sup> and the Commission even raised concerns (rather ironically) about the Government's reliance on the Roma Party for monitoring the Strategy's implementation, while excluding other Roma

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<sup>440</sup> HG 430/2001, para. 1 in General Considerations.

<sup>441</sup> European Union (Council of the European Union), Council Decision 1999/852/EC on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania, <https://eur-lex.europa.eu/eli/dec/1999/852>.

<sup>442</sup> *Id.*, para. 4.

<sup>443</sup> European Union (European Commission), Regular report on Romania's Progress Towards Accession. SEC(2001) 1753 (2001), [http://aci.pitt.edu/44603/1/romania\\_2001.pdf](http://aci.pitt.edu/44603/1/romania_2001.pdf).

<sup>444</sup> *Id.*, p. 29.

<sup>445</sup> European Union (European Commission), Regular report on Romania's Progress Towards Accession. COM(2003) 676 final (2003), <https://op.europa.eu/s/y51R>.

organizations. Considering how the system of parliamentary reserved seats was designed, it should not come as a surprise that consequences of this design can be seen when implementing actual policies that affect Roma. As discussed in the previous section<sup>446</sup>, the current setup discourages other Roma minority parties from participating in elections and favors clientelism between the Roma Party and successive governments. The practice of Romanian governments of dealing mostly with the Roma Party for implementing NRISs to the detriment of other Roma organizations can only count as a rather logical consequence of the design of the reserved seats system.

However, going back to the text of the text of the 2001 Strategy, what is most concerning about this first attempt at a NRIS is the policing language it uses when outlining some of its measures. One of the measures proposed, for example, is that of organizing monthly meetings between Roma community leaders and local police representatives with the aim of preventing crime among citizens of Roma ethnicity<sup>447</sup>. This particular measure was included in the responsibilities of the Minister for the Interior as a “permanent” action to what can be deduced from the document to be a permanent problem of Roma people in Romania. The proposed action not only perpetuates a racializing discourse that presumes that the entire Roma community in the country has a crime issue that needs to be solved, but also confirms a very patronizing power dynamic between the Roma community, which allegedly needs guidance and policing, and representatives of the police. Framing the issue as a public one by making it about “citizens” further paints the problem as one of public security<sup>448</sup>. On the other hand, the Commission did not find it problematic that the police was tasked with developing county-level strategies for relations with Roma communities<sup>449</sup>.

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<sup>446</sup> See Section 3.3..

<sup>447</sup> HG 430/2001, measure 72.

<sup>448</sup> Popoviciu, Tileagă, “Subtle forms of racism in strategy documents concerning Roma inclusion”.

<sup>449</sup> European Union (European Commission), Regular report on Romania’s Progress Towards Accession. COM(2003) 676 final (2003).

Other measures targeted crime prevention through education, such as measure number 68, according to which a national crime prevention and legal education program will be established for the Roma population. This, coupled with the absence of any measures aimed at curbing Romaphobia and discrimination against Roma, not addressing Roma in a comprehensive intersectional manner<sup>450</sup> as well as mostly targeting Roma through the poverty lens<sup>451</sup> renders this first attempt at a comprehensive strategy on inclusion of Roma rather half-hearted. Even the Government acceded in 2005 by signing the Joint Inclusion Memorandum<sup>452</sup> that the 2001 Strategy was not allocated enough resources for it to effectively implement its measures.

The 2001 Strategy was modified later in 2006 through Government Decision 522/2006, which updated part of the language used, some of the measures envisaged and also set out specific action plans for the years between 2006 and 2008. One of the few structural innovations it brought was the establishment of County Offices for Roma (hereinafter COR)<sup>453</sup>, meant as a form of decentralized (or rather deconcentrated) authority subordinate to each county's prefect and coordinated at a national level by the National Agency for Roma (hereinafter NAR). The CORs are essentially established as a way to flesh out the actual implementation of this and future NRISs and mandated that one of the 3 or 4 experts nominated as its members should be Roma. However, despite these improvements, the 2006 NRIS maintains the previous problematic measures from the 2001 Strategy.

Many of the issues that faced the first two strategies can also be found in the 2011 and 2015 NRISs, which were meant to cover the period between 2012 and 2020. When it comes to their development, these later strategies were once more compiled without much input from Roma

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<sup>450</sup> Roma Civil Monitor, "Civil society monitoring report on implementation of the national Roma integration strategies in Romania", March 2018, 14-15, hereinafter "March 2018 Roma Civil Monitor report".

<sup>451</sup> Roma Civil Monitor, "Roma Civil society monitoring report on implementation of the national Roma integration strategies in Romania", December 2019, 16, hereinafter "2019 Roma Civil Monitor report".

<sup>452</sup> The Joint Inclusion Memorandum (JIM) was developed together with the EU Commission as part of Romania's Accession Partnership to include key areas and social issues where improvements were expected in Romania's accession process.

<sup>453</sup> HG 522/2006, under Section VIII: Structures, point 3.

civil society being taken into consideration<sup>454</sup> and the process of development has been described as superficial and the final results as products of external deadlines<sup>455</sup>. This is unsurprising since most Governments during this time frame were generally uninterested in pursuing an effective program, with one Prime Minister, Victor Ponta, even blaming Roma NGOs for the failure of Roma-related policies in the previous 20 years and insisting that the Government will instead take the lead in their implementation<sup>456</sup>.

Similar to the previous attempts, the 2011 and 2015 NRISs sometimes reproduce a language of otherness by targeting only Roma and not involving the majority society<sup>457</sup>. Moreover, their adoption was termed “a rather superficial process”<sup>458</sup> with “few suggestions and comments formulated by a large group of NGOs were considered and can be found in the final version of the NRIS adopted by the Government”<sup>459</sup>. In a move that, if anything, continues a legacy of maintaining a hierarchical power structure based on a patronizing attitude towards a population allegedly in need of betterment and guidance – the Roma – these two strategies perpetuate the same top-down approach that can be seen throughout Romanian history. The 2011 NRIS in particular maintains “civic education” and “crime prevention” as two of its main directions of action<sup>460</sup>, again indicating that the Roma are presumed to have a crime problem that needs to be solved, all while the non-Roma population is not involved in trying to prevent, for example, anti-Roma hate speech or violence against Roma. While the text merely refers to “crime prevention” and does not expressly mention crime caused by Roma, unlike the previous NRISs, it becomes

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<sup>454</sup> Florin Moisă, Iulius A. Rostas et al., “Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Romania” (2013), 7, <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/2924/decade-monitoring-romania-2012.pdf>.

<sup>455</sup> Moisă, Rostas, 7.

<sup>456</sup> Ovidiu Bărbulescu, “Ponta: ONG-urile, responsabile de 20 ani pentru integrarea romilor. Guvernul va folosi mai bine banii” [Ponta: NGOs, responsible for 20 years for Roma integration. The government will use the money better], *Mediafax*, June 11, 2013, <https://www.mediafax.ro/politic/ponta-ong-urile-responsabile-de-20-ani-pentru-integrarea-romilor-guvernul-va-folosi-mai-bine-banii-11117807>.

<sup>457</sup> Matache, “Biased Elites, Unfit Policies”.

<sup>458</sup> Moisă, Rostas, 7.

<sup>459</sup> *Ibid.*

<sup>460</sup> HG 1221/2011, under Section III: Priorities, policies, existing legal framework. The fourth bullet points mentions one of the main directions of action: “streamlining measures aimed at sectoral aspects (access to the labor market, promotion of income-generating activities, access to medical services, reduction of school dropout, promotion of artistic values, *creation of civic education programs, crime prevention*)”.

nonetheless clear from reading the text of the 4<sup>th</sup> measure under “Justice and public order” that the measure only targets the Roma community: “The initiation of legal and civic education and discrimination prevention programs for members of the Roma minority, at the national level”<sup>461</sup>. This is not to say that empowering Roma with legal knowledge, especially in regard to navigating antidiscrimination law, is not useful, but that it should be coupled with similar programs for the wider society. Fortunately, not all of the measures were framed in this sense, with some aiming at workplace discrimination awareness programs which targeted employers<sup>462</sup> or introducing school training programs for non-Roma teachers, parents and pupils in the spirit of respect for diversity, multiculturalism, prevention and fight against discrimination, as well instructing about Roma culture<sup>463</sup>.

Conversely, the 2015 NRIS drops some of the language used previously and instead proposes “legal, civic and prevention education programs, in collaboration with Romanian citizens belonging to the Roma minority” as the 4<sup>th</sup> measure again under “Justice and social order”<sup>464</sup>. Here the link between Roma and criminality has been blurred by excising “crime”, although Roma are still presented under a policing frame and there is a vague mention of “prevention” programs which are unclear about what they aim to prevent<sup>465</sup>. It would be interesting to imagine what an analysis of the 2015 NRIS language would yield if one wouldn’t look back at the historical evolution of this particular measure, given its constant feedback from Roma NGOs and the Commission of the European Union. Arguably, it would be difficult to spot the problematic background we have seen in previous strategies and how it evolved to the much less direct discourse of 2015 Strategy.

Finally, the current NRIS, which is envisaged to run between 2022 and 2027, seems to have removed the association between Roma and criminality completely and instead have a more

<sup>461</sup> *Id.*, Annex 1, under Plans of sectorial measures, 2.: Justice and Public order.

<sup>462</sup> *Id.*, Annex 1, under Plans of sectorial measures, B: Employment.

<sup>463</sup> *Id.*, A: Education.

<sup>464</sup> HG 18/2015, Annex 1, under Plans of sectorial measures, F.2.: Justice and Public order.

<sup>465</sup> Popoviciu, Tileagă, “Subtle forms of racism in strategy documents concerning Roma inclusion”, 96-97.

pronounced antidiscrimination element. Annex 6, for example, contains measures aimed at curbing anti-Roma hate speech and combatting discrimination against Roma, many of which are not specifically targeted at Roma, but broader society, as for example running awareness campaigns regarding anti-Roma attitudes generating hate speech (measure 1.2), instructing agents that apply the law (such as the police) and magistrates (prosecutors and judges) on anti-Roma racism (measure 1.4) or organizing courses on combatting discrimination for civil servants or other employees of the public administration (measure 2.2).

What is most surprising, however, is that this latest strategy also proposes a whole slew of measures dedicated to commemorating the Roma Holocaust, Roma slavery and the history of assimilation of Roma in its 5<sup>th</sup> Annex<sup>466</sup>. These include redesigning school history manuals at all levels of education to better depict past traumatic experiences for the Roma minority (measure B1.1), training teachers to hold classes on these events, including on the forced assimilation of Roma during Communism (measure B1.2), instituting scholarships for Roma researchers to study these historical events in view of informing future public policies (measure B2.2) and building a monument to commemorate Roma slavery (measure B3).

Unlike all previous NRISs, the 2022 Strategy was adopted with a much more comprehensive participation from Roma civil society, NGOs, experts and other stakeholders<sup>467</sup>. However, despite this increase in transparency, it was noted that some important requests were not included in the final draft, including some proposals that were deemed not to have a narrow Roma dimension<sup>468</sup>. We can see that unfortunately, the Romanian government at the time continued to regard the NRIS in the same light as previous ones, namely as an instrument that is, at its core, not envisaged as targeting broader society, but as a form of lifting Roma from their

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<sup>466</sup> HG 560/2022, Annex 5, under B: Measures aimed at reconciliation with the past and recognition of slavery, the Holocaust and Roma assimilation.

<sup>467</sup> Roma Civil Monitor, “Civil society monitoring report on the quality of the national strategic framework for Roma equality, inclusion, and participation in Romania”, May 2022, 6, hereinafter “2022 Roma Civil Monitor report”.

<sup>468</sup> *Ibid.*

beleaguered situation. Other issues that the 2022 NRIS suffers from, much like previous iterations, is its lack of clarity regarding funding<sup>469</sup>, very few intersectional measures addressing Roma women, children or other categories<sup>470</sup> (despite the document expressly mentioning that it adopts an intersectional approach), as well as a lack of coordination with other strategies that touch issues of health, employment, poverty<sup>471</sup>.

Overall, the Romanian NRISs up until the present one have been criticized for their lack of transparency, resources and clarity of implementation, as well as for the more or less pronounced racialization of Roma, their othering discourse, their targeting of Roma instead focusing the aim at broader society and, probably most problematic of all aspects, their linking of Roma to criminality in an uncritical regurgitation of societal perceptions of Roma as “troublesome”. Despite improvements since the first NRIS, mostly due to external pressures, we have seen a general trend to repeat past problematic language. To cite the Roma Civil Monitor, which has been analyzing the effectiveness of Romanian NRISs: “Over the last 27 years, Roma issues have been approached in a rather superficial manner, mostly “on paper”, because of the conditions and constraints set by external stakeholders (for example, through the EU pre-accession process), while the interest of the wider Romanian society in Roma issues is very low”<sup>472</sup>. In other words, successive Romanian governments have demonstrated consistency in their lack of interest towards improving the effectiveness of their Roma integration strategies, always needing prompting and supervision from external actors and organizations, all while adopting an attitude of mimetic compliance in order to fend off criticism and present the country as modern and progressive. It remains to be seen whether the latest NRIS will be more effectively implemented than its previous iterations.

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<sup>469</sup> *Id.*, 6-7.

<sup>470</sup> *Ibid.*

<sup>471</sup> *Id.*, 36.

<sup>472</sup> Roma Civil Monitor, “March 2018 Roma Civil Monitor Report”, 19.



Arguably, Romanian governments still feel the same urgency in modernizing as their 19<sup>th</sup> and early 20<sup>th</sup> centuries counterparts and end up choosing again policy and law as instruments for socially engineering progress into Romanian society. Moreover, a four-sided interest convergence can be seen between Romanian governments, Western European elites, supranational entities such as the EU or the Council of Europe and the Roma community by which Romanian Roma policies are improved and some progress in protecting Roma rights is registered, albeit at many points in a superficial manner. Within this complex web of interests, Romanian elites are mainly interested in continuing their generally pro-Western foreign affairs stance, while Western European elites are arguably more concerned with stemming Roma migration from Romania. Meanwhile, organizations such as the European Union, the Council of Europe or the OSCE are indeed looking for human rights improvements, much like Romanian Roma, although their past securitization of Roma migration cannot be entirely ignored either. This rather self-interested explanation does have some merit, at least from a foreign relations stance, since Romania is neighboring countries that are either EU Member States with a history of opposition to the EU (Hungary, Poland and to a lesser extend Bulgaria), have a rocky EU accession process (Serbia and Ukraine) or are outright hostile (Russia). In this context, it would make sense why most Romanian governments would choose domestic modernization as a tool for showing their Western allies that Romania is a partner they can trust in contrast to neighboring countries.

### **3.5 Romanian Roma and the justice system**

Racialization can take many forms. One that is quite often the central point of CRT analyses is, of course, case law. However, in a civil law system like Romania, where precedent does not weigh in as much as in common law systems, such as the US, analyzing court behaviors, patterns and approaches to race-related topics can present different challenges to a CRT analysis than in the context where it first operated. While it is not that uncommon for Romanian courts to be

engaged in highly political or ideological debates through their decisions, much like their American counterparts, nor is it out of the ordinary for the courts themselves to be suspected of bias (including racial), it is considerably more difficult to get a comprehensive notion of how racial bias operates in court decisions. This is also compounded by the fact that Romanian courts' case law has limited accessibility and by how grossly underreported and under analyzed this phenomenon is. Nevertheless, a part of this phenomenon can be ascertained through cases involving Romanian Roma that end up at the European Court of Human Rights following the exhaustion of national remedies. Notwithstanding that these cases are most known as part of the ECtHR's case law, they not only originate in Romania, but more specifically have been subject to decisions by Romanian judges, were under investigation by Romanian police and prosecutors and were in the end implemented by Romanian national and local authorities. Moreover, the ECtHR's decisions are an integral part of Romanian positive law. As such, combined, they offer a glimpse into some of the systemic issues of racism plaguing the Romanian justice system.

ECtHR cases with Romanian Roma as applicants tend to revolve around certain key areas, rights' violations and actions or inactions of authorities. Many cases involve violations of some of the most basic rights protected by the ECHR, such as the right to life and the prohibition of inhuman or degrading treatment (Articles 2 and 3 ECHR), often paired with the prohibition of discrimination (Article 14 ECHR), the right to a fair trial (Article 6 ECHR) and the right to an effective remedy (Article 13 ECHR). Following an analysis into this area of the Court's case law, two categories of cases can be identified. In a first category, analyzed in **Subsection 3.5.1**, we have cases that originate from the anti-Roma wave of pogroms and violence that occurred in the 1990's which have been already discussed in Section 2.4. As such, examining this selection of cases will show the judicial reaction to these events. A second area, discussed in **Subsection 3.5.2**, involves police brutality under various forms: from cases of police brutalizing Roma individuals to large-scale raids and violent interventions, more often than not disproportionate

and responding to a perception of Roma communities as inherently dangerous and criminal. Many result in deaths and serious injuries for the applicants or members of their families. Finally, a handful of cases involve different interactions with authorities, such as rejections of welfare benefits, forced evictions<sup>473</sup> and provision of healthcare<sup>474</sup>.

We shall see, with particular emphasis on the first two categories, that a few patterns of racially-based violence can be detected. The Court usually has no problem identifying these as violations of the Convention. As it will become apparent, most cases highlight overt forms of racial bias coming from Romanian courts, police officers and prosecutors, which makes it a rather easy task for the ECtHR to read race into these manifestations. Despite this, we will see that the Court stumbles into what appears to be a racially colorblind approach when confronted with cases of less overt racial violence. In any case, the ultimate purpose of this section is to highlight patterns of systemic racism that Roma face during the national proceedings, whether they involve the courts and judges or other actors intimately implicated in judicial procedures, such as the police and prosecutors, while also critiquing parts of ECtHR case law and the way it is implemented by Romanian authorities. Moreover, since Romanian judges and other authorities tend to be more aware of ECtHR decisions against their own country, I will mostly focus on this part of the Court's case law as a way to also highlight the dynamics of the relationship between it and Romanian authorities. Lastly, I will also try to identify how the implementation process of the Court's decisions went and if we can detect similar reticence as in other areas where Romanian authorities attempt to improve Roma rights due to external pressures.

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<sup>473</sup> While the ECtHR has built a considerable body of case law on forced evictions of Roma, only two cases are against Romania: *Farkas and Others v. Romania* and *Cazacliu and Others v. Romania*. Neither of the two cases were decided on the merits due to procedural issues. However, like many of the areas where ECtHR case law on Roma is abundant, forced evictions are also a phenomenon that affect Roma in particular (see Sub-section 3.7.2.)

<sup>474</sup> In one case (*Center of Legal Resources on behalf of Valentin Câmpăanu v. Romania*, App. no. 47848/08), a young disabled Roma man died in a state hospital and the ECtHR found violations of Articles 2 and 13 in conjunction with Article 2, however the case did not bring into discussion discrimination based on race or ethnicity. Despite this, and like in the case of forced evictions, the mistreatment of Roma when it comes to healthcare is a widespread and studied phenomenon (see Sub-section 3.7.3.).

### 3.5.1 Cases of mob violence

Out of the ECtHR case law emanating from anti-Roma mob violence or pogroms, three cases sprang just from the infamous Hădăreni case of 1993 alone, when Romanian and Hungarian locals and police burned down several houses belonging to local Roma and even killed 3 Roma. These cases are: *Moldovan (no.1) and Others v. Romania*<sup>475</sup>, *Moldovan (no.2) and Others v. Romania*<sup>476</sup> and *Lăcătuș and Others v. Romania*<sup>477</sup>. Following the events in 1993, while some of the villagers involved in the attack were found guilty of murder and other offences, reparations to the affected Roma were either insufficient, ineffective or slow to materialize. In fact, from the Roma that had to flee, several developed serious diseases such as ulcer and hepatitis as a result of their poor living conditions following the loss of their houses. One child that had to flee in the night of the attack caught a severe cold, developed meningitis and later an intellectual disability, while another Romani woman developed a heart condition that subsequently led to a heart attack and her death in 1998<sup>478</sup>.

One of the first actions by Romanian authorities following the violence occurred in mid-October 1993, when a governmental commission was sent to investigate the incidents<sup>479</sup>. However, the commission tried to downplay the racial elements of the violence by instead criticizing the Roma community there for endangering the ethnic stability of the village by having too many children, for committing acts of violence, including verbal, and described them as illiterate and “not natives”, having moved to the village after 1977<sup>480</sup>. Ironically, for an assessment that aimed to dispel racist motivations of villagers, it relied on many common racist tropes: legitimizing Roma overpopulation and high fertility rates, the collective criminality of the Roma community, their

<sup>475</sup> *Moldovan and Others v. Romania (no. 1)*, App. nos. 41138/98 and 64320/01 (ECtHR, 5 July 2005).

<sup>476</sup> *Moldovan and Others v. Romania (no. 2)*.

<sup>477</sup> *Lăcătuș and Others v. Romania*, App. no. 12694/04 (ECtHR, 13 November 2012).

<sup>478</sup> *Moldovan and Others v. Romania (no. 1)*, para. 28.

<sup>479</sup> István Haller, “Lynching is not a crime: mob violence against Roma in post-Ceausescu Romania”, *European Roma Rights Centre*, May 15, 1998, <https://www.errc.org/cikk.php?cikk=1824>.

<sup>480</sup> *Ibid.*

social and moral inferiority, as well as their unwelcomed and foreign nature. Unsurprisingly, the victims of the attacks went to court with both criminal and civil claims, with some of the issues they faced along the way ending up in front of the ECtHR.

The first of the cases emanating from the Hădăreni pogrom, namely *Moldovan (no.1) and Others v. Romania*<sup>481</sup>, was settled out of Court by a part of the applicants and the Romanian Government, by which the latter agreed to pay them the sum of EUR 262,000<sup>482</sup> as well as to take several measures to ensure such cases would not repeat themselves. A part of the other applicants went forward with the case and this second case is known as *Moldovan (no.2) and Others v. Romania*. Given that Romania hadn't ratified the ECHR by the time the initial incidents took place, as this took place a year later, in 1994, the Strasbourg Court could not decide on those events, but did consider later violations of the Convention by the Romanian Government in their treatment of the victims.

In the case of the police officers which were found to having instigated the riot, both local military prosecutors and those from the Bucharest Military Court decided not to open criminal investigations, despite retaining that the members of the local police force, including the chief of local police, made statements such as “they (the Roma) will come out immediately if you set the house on fire”<sup>483</sup>. The latter prosecutor also retained that no form of complicity or instigation can be found in the case of police officers not intervening to curb the riots<sup>484</sup>. The police officers involved would not be indicted even when later testimonials taken during civilian criminal proceedings from villagers confirmed that police officers incited to the house burnings and tried to later cover up their involvement<sup>485</sup>. The prosecutor decided however that the proceedings will not be extended to the latter.

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<sup>481</sup> *Moldovan and Others v. Romania (no. 1)*, para. 28.

<sup>482</sup> *Id.*, para. 29.

<sup>483</sup> *Moldovan and Others v. Romania (no. 2)*, paras. 30-36.

<sup>484</sup> *Id.*, para. 36.

<sup>485</sup> *Id.*, paras. 38-43.

In the civilian criminal case, the Târgu-Mureș County Court did find several villagers guilty of extremely serious murder and other offences such as destroying property, outraging public decency and disturbing public order<sup>486</sup>. However, the County Court noted in its decision on the criminal case the following:

“The Roma community represents 14% of the total population and the marginal lifestyle of some categories of Roma, especially the ones who settled in the village after 1989, has often generated serious conflicts with the majority of the population.

Due to their lifestyle and their rejection of the moral values accepted by the rest of the population, the Roma community has marginalized itself, shown aggressive behavior and deliberately denied and violated the legal norms acknowledged by society.

Most of the Roma have no occupation and earn their living by doing odd jobs, stealing and engaging in all kinds of illicit activities. As the old form of common property that gave them equal rights with the other members of the community was terminated, the Roma population were allocated plots of land. However, they did not work the land and continued to steal, to commit acts of violence and to carry out attacks, mainly against private property, which has generated even more rejection than before.

Groups of Roma have started arguments with the young people in the village, attacked them or stolen their goods and money.

Moreover, they ostentatiously use insults, profanities and vulgar words in public places (...)

The records of the criminal-investigation authorities and of the courts of law in Mureș County disclose that seven criminal cases were registered between 1991 and 1993, having as their object acts of violence ranging from simple blows to murder.

In fact, the real number of the crimes committed by the Roma was much higher, but many of them were not judged in court because the injured parties did not file complaints, withdrew them or made peace with the perpetrators, for fear of vindictive threats by the Roma.

The community feels that most of the disputes were solved in an unfair, unsatisfactory manner in favor of Roma and this has caused an increase in the number of personal or collective vindictive actions.”<sup>487</sup>

We can see from the overly racist tone of the County Court that it considers Roma to be a general criminal, social and moral problem inside the community, especially “those who settled in the village after 1989”. This harkens back to what Nicolae Gheorghe was saying when he was

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<sup>486</sup> *Id.*, para. 54.

<sup>487</sup> *Id.*, para. 44.

trying to explain the outbursts of anti-Roma violence in 1990s Romania, which was covered in Section 2.4. However, in this case, it did not matter that these newly arrived Roma were not settled there by the defunct communist regime, since they were still perceived as a foreign element. This goes to show that even without the association with the secret police or the policies of the communist regime, which were deeply unpopular with many parts of Romanian society, hostility towards newly arrived Roma was maintained<sup>488</sup>. It would be quite easy to refute claims that anti-Roma attitudes were merely a bi-product of an already existing hatred towards the regime.

Going back to the County Court's language, we can see not only a criminalizing discourse that collectively holds the entire Roma community of Hădăreni as responsible for individual transgressions, but also one that justifies the equally collective "vindictive actions" of other villagers as merely responses to a slew of alleged crimes committed by the Roma community which were not properly dealt with by authorities. The moralizing aspects of the court's decision are also quite problematic as they set the tone for doubting the moral integrity of the applicants. For example, the civil case, having been separated by the Târgu-Mureş County Court, was decided later, in 2001, but there the court was likely influenced by this tone when it also cast doubt on the integrity of the applicants:

"Last but not least, the type of belongings allegedly destroyed and the quantity of goods allegedly in the possession of each civil party show a much more prosperous situation than that which a family of average income could have. Neither civil party adduced proof of having an income such as to allow them to acquire so many goods. As noted previously, the parties had no income at all. Moreover, the shape of the houses, the materials used for their construction and the number of rooms show

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<sup>488</sup> See for example Haller, "Lynching is not a crime". The author describes the context of the 1990s as follows: "Conspiracy theories of various kinds, rendered plausible by the previous extreme isolation of the country, became widespread. Such legends included the ludicrous idea, "Gypsies occupied the top positions in the Securitate [the despised and omnipresent secret service]" and the more implausible still "Ceaşescu was a Rom". These were disseminated widely in sensational form, for example in *Red Horizons*, the memoirs of fled Securitate general Ion Pacepa. Other newly blossomed rumours about Gypsies included the widely-held view that they were responsible for the election of Ceaşescu's unpopular successor Ion Iliescu".

an evident lack of financial resources. It should be stressed in this context that only work can be the source of revenue, and not events such as the present one...”<sup>489</sup>

As a result of this second “incrimination”, the applicants were given only partial pecuniary damages for the destroyed houses, but not for their belongings. It appears clearly that the County Court was biased in its approach, not only doubting the applicants’ good faith and the validity of their claims, but also the legality of their activities and of them owning the belongings they first claimed.

It should come as little surprise that the ECtHR found serious violations of the Convention on many accounts. It found a serious violation of article 8 in a continuing nature<sup>490</sup> due to the way the authorities (including the courts and prosecutors) have continually hindered the applicants’ right to respect for their private and family life and their homes. It also found a case of degrading treatment, as prohibited by article 3 of the ECHR, due to the discrimination based on race that the applicants suffered in front of various authorities, in particular in front of the courts, as well as due to the conditions they were forced to live in following the attacks<sup>491</sup>. The length of proceedings, especially the unreasoned delay of 4 years in arresting the suspects, also amounted to a violation of article 6 (1) of the Convention, as the legal proceedings lasted more than 11 years in total and thus did not meet the reasonable time requirement<sup>492</sup>.

Finally, the Court also noted the existence of discrimination due to the applicants’ Roma ethnicity, thus leading to a violation of article 14 in conjunction with articles 6 and 8<sup>493</sup>. According to the Court, “the applicants’ Roma ethnicity appears to have been decisive for the length and the result of the domestic proceedings”<sup>494</sup>. The Court particularly highlighted how the national courts’ discriminatory remarks seriously affected their chances of recovering some

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<sup>489</sup> *Moldovan and Others v. Romania* (no. 2), para. 71.

<sup>490</sup> *Id.*, para. 109.

<sup>491</sup> *Id.*, para. 111.

<sup>492</sup> *Id.*, para. 130.

<sup>493</sup> *Id.*, paras. 134 and 139.

<sup>494</sup> *Id.*, para. 139.



pecuniary damages, but also violated their right to family life. The Court would find similar violations of articles 3, 6 (1), 8 and 14 in conjunction with articles 6 and 8 in *Lăcătuș and Others v. Romania*, the third case that originated from the Hădăreni pogrom, albeit concerning other applicants.

The *Moldovan* case arose out of one of the many violent pogroms that occurred in 1990s Romania and would go on to define the situation of Roma in front of Romanian courts. The case did much to uncover deep-seated racism and bias against Roma within the Romanian justice system which are present to this day. Much like *Brown* in the United States, *Moldovan* was greeted as an important decision that highlighted a deeply racist system, arguably even more openly racist (despite there being no formal racial segregation in Romania at that time) but just as structural in nature. Right from the very beginning, we have police officers inciting to racial hatred which was already prevalent in the village, participating in racially-based violence and then trying to cover up the events with the help of the local mayor. When the case reached national courts, authorities further hesitated in apprehending the suspects, then delayed later proceedings, engaged in very obvious racist discourse and denied the Roma applicants justice on multiple layers. Arguably, similarly to *Brown*, awareness of the systemic racism the Roma applicants have suffered from also increased due to external pressures, although in this case, we are dealing with Romanian authorities being pressured by an ECtHR decision and by the subsequent actions of the Council of Europe's Committee of Ministers, which watched over the implementation of the decision.

Unfortunately, the similarities to *Brown* do not stop here, although this is usually where legal analyses of cases such as *Moldovan* end. With international media reporting heavily on the events at Hădăreni<sup>495</sup> and on the ECtHR decision<sup>496</sup>, the Romanian Government at the time was under

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<sup>495</sup> See for example Henry Kamm, "Hadareni Journal; Death Is a Neighbor, and the Gypsies Are Terrified", *New York Times*, October 27, 1993, <https://www.nytimes.com/1993/10/27/world/hadareni-journal-death-is-a-neighbor-and-the-gypsies-are-terrified.html?sec=&spon=&pagewanted=all>; Haller, "Lynching is not a crime"; Reuter,

immense pressure to act and it consequently issued Government Decision 523/2006 for the approval of the Community Development Program in Hădăreni, Mureș County as an attempt to show that further cases as the one in 1993 would not repeat themselves<sup>497</sup>. However, of the funds allocated to the program, most benefited not the local Roma in particular, but the majority population, including renovations brought to the local school, cultural center and infrastructure<sup>498</sup>. No programs were ever developed to prevent the sort of outburst that occurred in 1993, to the extent that a 2012 report<sup>499</sup> showed that out of the 38 measures the Government promised to undertake, only 4 had been fulfilled completely, while the rest were either not implemented at all or only partially. As in many cases, there was a lack of clear funding, very little institutional cooperation and an overall deficient implementation that signaled a clear disinterest in pursuing the measures initially envisaged<sup>500</sup>.

What did occur instead were a series of raids in 1995 and 1996 conducted by the Romanian Police in several locations where ethnic tensions between Roma and non-Roma were perceived as high<sup>501</sup>. In a perverse logic, the General Inspectorate of the Police understood that villagers took matters into their own hands in cases like Hădăreni because of their belief that the police had failed to take control of alleged Roma criminality. The solution adopted by the Romanian

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“Gypsies Threatened in Romania. The Washington Post”, *Reuter*, November 12, 1993, <https://www.washingtonpost.com/archive/politics/1993/11/13/gypsies-threatened-in-romania/f26f5587-2fa5-43d3-8286-cdfe3cfff5fe/>; Adrian Bridge, “Romanians vent old hatreds against Gypsies.

<sup>496</sup> Doug Merlino, D “Roma v. Romania, A judgment for the Gypsies gives them little satisfaction”, *Legal Affairs*, March 2006, [https://www.legalaffairs.org/issues/March-April-2006/scene\\_Merlino\\_marapr06.msp](https://www.legalaffairs.org/issues/March-April-2006/scene_Merlino_marapr06.msp); European Roma Rights Centre, “Landmark Ruling in 1993 Romanian Mob Violence Case”, *Cilevics*, July 3, 2003, [https://www.cilevics.eu/minelres/mailling\\_archive/2003-July/002810.html](https://www.cilevics.eu/minelres/mailling_archive/2003-July/002810.html).

<sup>497</sup> István Haller, “Conflicte nesoluționate de aproape 20 de ani” [Conflicts unsolved for almost 20 years], *Sfera politicii* no. 138 (2009), [https://revistasferapoliticii.ro/sfera/138/art04-haller.html#\\_ftn5](https://revistasferapoliticii.ro/sfera/138/art04-haller.html#_ftn5).

<sup>498</sup> Haller.

<sup>499</sup> Agenția de Dezvoltare Comunitară „Împreună”, Asociația „Institutul de Studii Strategice”, “Raport de evaluare a programului ‘Hădăreni’” [Hădăreni Program evaluation report], November 2012, [http://www.anr.gov.ro/docs/rapoarte/Raport%20de%20evaluare%20a%20programului%20Hadareni\\_ro\\_en.pdf](http://www.anr.gov.ro/docs/rapoarte/Raport%20de%20evaluare%20a%20programului%20Hadareni_ro_en.pdf).

<sup>500</sup> *Id.*, 75-81.

<sup>501</sup> Haller, “Lynching is not a crime”.

Police was to discourage such actions by intimidating Roma and thus reestablishing trust with majority communities<sup>502</sup>.

The Committee of Ministers of the Council of Europe would eventually consider in 2016 that the Romanian Government had fulfilled all of its requirements in the three Hădăreni cases and decided to close its examination of their implementation<sup>503</sup>. By 2016, according to the Romanian Government at that time, it had managed to implement measures that decreased interethnic conflicts and also better integrated Roma into the social, economic, cultural, political and educational life of the village<sup>504</sup>.

While the Hădăreni pogrom did arguably attract more attention than similar events, it is certainly not the only violent anti-Roma action of this sort that resulted in ECtHR case law. In three other similar cases, *Gergely v. Romania*<sup>505</sup>, *Kalanyos and Others v. Romania*<sup>506</sup> and *Tănase and Others v. Romania*<sup>507</sup> the Romanian Government admitted to violations the Convention following events quite similar to the ones in the *Moldovan* and *Lăcătuș* cases.

In *Gergely*, several Roma from Cașinul Nou, Harghita County, were displaced after a mob of locals burned down their houses in August 1990<sup>508</sup>. After the applicants lodged a complaint with the police and even identified some of the perpetrators, the Harghita County Prosecutor's Office nevertheless decided to discontinue the investigations because the large number of persons involved in the attack prevented the identification of the perpetrators<sup>509</sup>. Furthermore, the

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<sup>502</sup> *Ibid.*

<sup>503</sup> Council of Europe (Committee of Ministers), Resolution CM/ResDH(2016)39, Execution of the judgments of the European Court of Human Rights in Three cases against Romania (2016), <https://hudoc.echr.coe.int/eng?i=001-161718>.

<sup>504</sup> Council of Europe (Committee of Ministers), Action report (07/01/2016) - Communication from Romania concerning the cases of Moldovan and Others (No. 1 and No. 2) and Lăcătuș and Others against Romania (2016), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ad09a>.

<sup>505</sup> *Gergely v. Romania*, App. no. 57885/00 (ECtHR, 26 April 2007).

<sup>506</sup> *Kalanyos and Others v. Romania*, App. no. 57884/00 (ECtHR, 26 April 2007).

<sup>507</sup> *Tănase and Others v. Romania*, App. no. 62954/00 (ECtHR, 26 May 2009).

<sup>508</sup> *Gergely*, para. 10.

<sup>509</sup> *Id.*, para. 12.

Prosecutor's Office at the Târgu-Mureş Court of Appeal also blamed the local Roma for provoking the attack:

“in August 1990 several Gypsies [*țigani*] from the hamlet Caşinul Nou behaved in a manner contrary to good morals. They severely disturbed public order, which aggravated the conflict with the [non-Roma] population. These [conflicts] culminated when the Gypsies consumed alcohol in the local pub, and then without any apparent reason started beating up peaceful passers-by.”<sup>510</sup>

In the end, despite the requests of the applicants' lawyer, the investigations were stopped, and the case closed by the Prosecutor's Office at the Supreme Court of Justice in 1999<sup>511</sup>. The applicants therefore lodged an application with the ECtHR in 2000 claiming violations of articles 3, 6, 8, 13 and 14 of the ECHR.

The circumstances in *Kalanyos* are similar to those in *Gergely* and *Moldovan*. The events even took place in the same commune and county as the events in *Gergely*, although in a village a few miles north (Plăieşii de Sus) and a year later, in 1991<sup>512</sup>. However, bar these slight differences, the anti-Roma violence that occurred in Plăieşii de Sus followed a pattern that should already be quite familiar: following a fight between four Roma and a nightwatchman, a mob of non-Roma villagers attacked two Roma men and fatally injured one of them<sup>513</sup>. A few days later, another mob destroyed all the Roma houses in the village<sup>514</sup>. Despite some of the Roma informing local authorities that they have been warned of the house burnings beforehand, the latter did not intervene to stop the violence when it occurred and only advised the Roma to leave their houses for their own safety<sup>515</sup>. Much like in *Gergely* and *Moldovan*, the local Roma villagers were left without houses and were forced to live in improper conditions for an extended period of time. The local police then concluded in their investigations that the arson was caused by the previous fight started by the Roma and that the latter “are to blame for what happened” as “they steal for

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<sup>510</sup> *Ibid.*

<sup>511</sup> *Id.*, para. 13.

<sup>512</sup> *Kalanyos*, paras. 8-18.

<sup>513</sup> *Id.*, para. 10.

<sup>514</sup> *Id.*, para. 12.

<sup>515</sup> *Id.*, para. 11.

a living and are aggressive towards other people”<sup>516</sup>. The County Prosecutor, in a resolution almost identical to the one in *Gergehy*, identified the Roma as the source of the provocation and discontinued the investigations due to the impossibility of identifying the perpetrators of the arsons<sup>517</sup>. This decision was ultimately upheld by the Prosecutor's Office at the Supreme Court of Justice<sup>518</sup>.

In *Tănase*, a similar pattern of events occurred also in 1991: following a Roma villager killing a non-Roma in Bolintin Deal, Giurgiu County, a two thousand-strong mob burned down all Roma houses in the village<sup>519</sup>. Unlike in the previous two cases, the criminal trial did take place and resulted in the conviction of several perpetrators<sup>520</sup>. However, in the civil case, the applicants were awarded only half of their initial claims for the destruction of their houses as the District Court considered that they had provoked the arsons<sup>521</sup>. Moreover, the court did not award any damages for any objects or valuables lost due to them not being proven, mirroring the logic in of civil court in *Moldovan*, and referred to the applicants as “Gypsies” (*țigani*)<sup>522</sup>. The decisions were finally upheld by the Bucharest Court of Appeal in 1999<sup>523</sup>.

In *Kalanyos*, *Gergehy* and *Tănase*, the Romanian Government recognized that it had violated articles 3, 6, 8, 13 and 14, as well as of Article 1 of Protocol No. 1 to the Convention (only in *Tănase*) and listed a number of individual and general measures aimed at putting the applicants back in their original situations, as well as at curbing the more systemic issues that lead to anti-Roma sentiment and violence<sup>524</sup>. It should come to no surprise that the decision of the Romanian Government for *Kalanyos* and *Gergehy* came in 2006, a full year after the ECtHR held its ruling in *Moldovan*, while in *Tănase*, the admission came in 2008. Anticipating similar outcomes in these

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<sup>516</sup> *Id.*, para. 15.

<sup>517</sup> *Id.*, para. 17.

<sup>518</sup> *Id.*, para. 16.

<sup>519</sup> *Tănase*, paras. 9-10.

<sup>520</sup> *Id.*, para. 13.

<sup>521</sup> *Ibid.*

<sup>522</sup> *Ibid.*

<sup>523</sup> *Id.*, para. 14.

<sup>524</sup> *Gergehy*, para. 16 and *Kalanyos*, para. 19.

three subsequent cases, the Romanian Government decided to offer the applicants pecuniary damages, as well as promises to enact measures similar to those promised in *Moldovan* with the very ambitious ultimate goal of “eradicating racial discrimination within the Romanian judicial system”<sup>525</sup>. Notably, the Court readily accepted the Romanian Government’s unilateral declarations in these two cases, arguably to reduce its caseload, despite opposition from the applicants and the serious nature of the violations. These moves have been criticized previously as a sign that the Court does not take race-based violence against Roma seriously<sup>526</sup>.

Following the decisions in *Kalanyos* and *Gergely*, the Romanian Government hesitated in implementing its promised measures and, much like in the aftermath of *Moldovan*, took a long time to implement the decisions. A 2011 report by the European Roma Rights Centre<sup>527</sup> showed that four years after the two decisions and five years since the Government admitted to the violations, almost no measures had been effectively implemented. The only measure adopted by that point was Government Decision 1283/2008 approving the Educational Program for preventing and combating discrimination against Roma in the localities of Plăieșii de Sus and Cașinul Nou, which uncritically copied measures from the Hădăreni program from 2006. The Plăieșii de Sus and Cașinul Nou program was also criticized for not learning from past mistakes during the slow and inefficient implementation of the Hădăreni program and for failing to take into consideration the specificities of these two localities<sup>528</sup>. Moreover, while in both localities there still is a much smaller Roma minority, none of those affected by the events of 1990 and 1991 returned.

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<sup>525</sup> *Ibid.*

<sup>526</sup> Mathias Möschel, “Is the European Court of Human Rights’ Case Law on Anti-Roma Violence ‘Beyond Reasonable Doubt?’”, *Human Rights Law Review* 12:3 (2012), 490-491.

<sup>527</sup> European Roma Rights Centre, “Memorandum Concerning the Implementation and State of General Measures in the Judgments of *Moldovan and Others v. Romania* (No.1, friendly settlement), *Moldovan and Others v. Romania* (No.2), *Kalanyos and Others v. Romania* (friendly settlement), *Gergely v. Romania* (friendly settlement) (Application Nos. 41138/98, 64320/01, 57884/00, 57885/00)” (2011). [https://www.errc.org/uploads/upload\\_en/file/implementation-moldovan-kalanyos-gergely.pdf](https://www.errc.org/uploads/upload_en/file/implementation-moldovan-kalanyos-gergely.pdf).

<sup>528</sup> *Ibid.*

The extent to which the implementation of programs in Bolintin Deal following *Tănase* was successful or not is less documented (or in any case, very few sources are available). However, it goes to show that the Romanian Government's efforts have not been quite effective in stemming anti-Roma sentiment as in August 2022, the killing of a truck driver by a local that happened to be Roma reignited widespread anti-Roma violence in Bolintin Deal<sup>529</sup>. Gelu Duminică, Romanian Roma activist and sociologist, has decried at that point the attitude of local authorities in Bolintin Deal, who have been consistently rejecting the intervention of Roma NGOs in the area for decades<sup>530</sup>. In any case, in 2015, the Committee of Ministers decided that Romania had fulfilled all of its obligations stemming from *Kalanyos, Gergely*<sup>531</sup> and *Tănase*<sup>532</sup>.

Indeed, while violence against Roma in Romania never again reached the same extent and was never as widespread as in the 1990s, it nevertheless persisted. For example, in the summer of 2009, racist violence against Roma broke out in Sânmartin and Sâncrăieni, two neighboring Hungarian-majority villages in Harghita County (much like in the *Kalanyos* and *Gergely* cases), where non-Roma locals damaged or set fire to several Roma houses due to previous tensions, despite the presence of police. It is unclear the extent to which those affected by the violence sought justice. However, these cases present a new element: following the violence and under the guidance of the mayor of Sâncrăieni, a protocol was signed between representatives of the Hungarian and Roma communities as a way to allegedly curb future tensions. The so-called “11 commandments of the Hungarians of Sâncrăieni to the Gypsies”<sup>533</sup> imposed a series of rules that

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<sup>529</sup> Teodor Serban, “De ce mocnește de 30 de ani conflictul dintre romi și români la Bolintin. Gelu Duminică: ‘Butoiul de pulbere a rămas cu fitilul aprins’” [Why the conflict between Roma and Romanians in Bolintin has been simmering for 30 years. Gelu Duminică: “The powder keg’s fuse remained lit”], *Ziare.com*, January 14, 2022, <https://ziare.com/conflict-interetnic-bolintin/conflict-interetnic-bolintin-romi-crime-romani-1720128>.

<sup>530</sup> *Ibid.*

<sup>531</sup> Council of Europe (Committee of Ministers), Resolution CM/ResDH(2015)214. Execution of the judgments of the European Court of Human Rights *Kalanyos and Others and Gergely against Romania* (2015), <https://hudoc.exec.coe.int/eng?i=001-159358>.

<sup>532</sup> Council of Europe (Committee of Ministers), Resolution CM/ResDH(2015)238. Execution of the judgments of the European Court of Human Rights *Tănase and Others against Romania* (2015), <https://hudoc.exec.coe.int/eng?i=001-159608>.

<sup>533</sup> Hotnews, “Cele 11 porunci ale maghiarilor din Sâncrăieni către țigani: Sa-si lege cainii, sa-si faca WC in gospodarie, sa-si inregistreze caii, sa nu mai fure, sa adune lemne” [The 11 commandments of the Hungarians of Sâncrăieni to Gypsies: They should tie their dogs, build toilets in their houses, register their dogs, stop stealing,

the local Roma ought to follow in order to prevent further conflict, such as the requirements to clean their households, to send their children to school, to use the local pool in hygienic conditions, as well as mandates termed as “permanent” such as displaying a civilized day to day behavior, as well as a stop to the thefts. Moreover, according to this “protocol” the local Roma were not allowed to own horses or go to the agricultural fields if they did not own 0.50 hectares of land and were expected to provide proof of property for their lands and houses within 15 days<sup>534</sup>.

These measures triggered condemnation from several NGOs<sup>535</sup>, as well as investigations as to their legality. Despite these condemnations, later in 2009, then-Romanian MP Iulian Urban initiated a similar “protocol” inspired by the Sâncrăieni one, only this time addressed to Roma in another village, in Ilfov County, near the capital Bucharest<sup>536</sup>. The so-called “Balotești protocol” reiterates several obligations that already exist in Romanian law, albeit now specifically targeted at Roma, with a silent presumption operating that the latter do not respect these obligations on a daily basis<sup>537</sup>. Furthermore, “Roma leaders” are mandated to cooperate with the police in case of any crime perpetrated by local Roma<sup>538</sup>, while Roma are prohibited from refusing a job offered to them by the local employment authority<sup>539</sup>.

We can see that in both cases, the response to previous ethnic tensions between Roma and non-Roma or to possible future ones was presented as a sort of social contract that would guide future relations between the two communities. This is nothing short of a parallel legal system

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gather wood], *HotNews*, July 14, 2009, <https://www.hotnews.ro/stiri-esential-5961661-cele-11-porunci-ale-maghiarilor-din-sancraieni-catre-tigani-lege-cainii-faca-gospodarie-inregistreze-caii-nu-mai-fure-adune-lemne.htm>.

<sup>534</sup> *Ibid.*

<sup>535</sup> Center for Legal Resources, “Press release. The Nazi Uniform, the racial laws, and Romania of the year 2009”, July 27, 2009, [https://www.crl.ro/userfiles/editor/files/CLR\\_press\\_release\\_racial\\_regulations\\_in\\_Romania%2027\\_07.pdf](https://www.crl.ro/userfiles/editor/files/CLR_press_release_racial_regulations_in_Romania%2027_07.pdf).

<sup>536</sup> Dan Tapalaga, “Un senator cu discurs anti-tiganesc in PDL” [A senator with anti-gypsy discourse in PDL], *HotNews*, July 13, 2009, <https://www.hotnews.ro/stiri-opinii-5956389-senator-discurs-anti-tiganesc-pdl.htm>.

<sup>537</sup> Center for Legal Resources, “Letter of protest. Protocol of Balotești, following the model of the racial laws, under the heading of the Romanian Senate”, December 16, 2009, 2, [https://www.crl.ro/userfiles/editor/files/Letter\\_of\\_protest\\_EN\\_16\\_dec.pdf](https://www.crl.ro/userfiles/editor/files/Letter_of_protest_EN_16_dec.pdf).

<sup>538</sup> *Ibid.*

<sup>539</sup> *Ibid.*



“agreed upon” (although in reality it was forced upon local Roma) by the local community as a means to mitigate what the non-Roma saw as the inability of law enforcement to contain the “Gypsy problem”. In a way, the two “protocols” of Sâncrăieni and Balotești function with the same logic as the earlier cases of mob violence against Roma – they are a system of curbing what the villagers and part of the local authorities identified as a perennial issue of Roma violating moral and legal norms. In effect, they are racial laws that single out one community based on a racial perception of their behavior, which is grounded in permanent illegality and immorality. It comes to no surprise that NGOs critical of the “protocols” immediately saw the obvious connection between their underlying precepts and the formality and appeal to legality used to justify racial laws leading to the Holocaust<sup>540</sup>. They do, ultimately, function in a similar fashion: by singling them out based on the presumption that their entire community is prone to behavior in violation of legal or moral norms, Roma were faced with the option to “reintegrate” into civilized society or (presumably) face the same type of violence they were previously subjected to by the majority. Their behavior would be monitored by the police through selected “Roma leaders” acting as representatives of a community seen as essentially tribal and as acting as a collective. Interestingly enough, even though there was no central authorization or validation of these “protocols”, we have already seen<sup>541</sup> that similar measures were codified into some of the National Roma Inclusion Strategies whereby leaders of Roma communities were again identified as partners in police attempts to curb what is essentially seen as Roma crime.

Similar to the national courts’ doubting the property of Roma applicants in *Moldovan*, here too the two “protocols” would either call on Roma to provide proof of their properties, since most likely the presumption is that of illegality, irregularity or nonexistence of titles of ownership, or restrict certain rights based on property. The particular obligation to accept jobs offered by the

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<sup>540</sup> Center for Legal Resources, “Press release. The Nazi Uniform”.

<sup>541</sup> See Section 3.4.

local unemployment agency as in the “Balotești protocol” also plays into the common stereotype that Roma are jobless and instead rely on illegal activities or on social security.

Given the many troubling and outright racist elements found in these documents, it is quite disturbing to see that during a Human Dimension Implementation Meeting of the OSCE, the Romanian delegation responded to a presentation by Roma NGO Romani CRISS on the situation in Sânmartin and Sâncrăieni by highlighting the “protocol” as a positive achievement and thus partly recognizing their legality:

“Furthermore, on July 13, 2009, the representatives of local communities of Sâncrăieni village (Roma and Hungarian) signed in the mayoralty, before a mediation commission, the “protocol for a peaceful life together”, in which the Roma community members committed themselves to adopting a civilized behavior, including the immediate pulling down of the offences against personal property, registering of their horses and starting formalities for sending their children to school.”<sup>542</sup>

What I aimed to show with this interlude into the case of the two “protocols” was that, while they do not involve the court system *per se*, they are surrounded by events similar to the ones that reached the ECtHR and show that 20 years after the events in Hădăreni, Plăieșii de Sus, Cașinul Nou and Bolintin Deal, Romanian authorities were not only unable to prevent similar episodes from occurring, but even sanctioned attempts at enforcing racial legislation (at least some local authorities and police, the endorsement of one MP and of the Romanian delegation to the OSCE). Indeed, even 30 years later, similar events still occur, such as in 2017 in Gheorgheni, Harghita County, where local Hungarians stormed Roma houses after finding out from local media that thefts were perpetrated in the village by Roma children, then proceeded to beating several Roma and setting one of their houses on fire<sup>543</sup>.

<sup>542</sup> Organization for Security and Co-operation in Europe, Comments of the Romanian delegation in reply to the presentations concerning the conflicts in Sâncrăieni and Sânmartin villages (Harghita county, Romania). Side Event: Populism-Extremism-Racism-Social Exclusion, October 8, 2009, <https://www.osce.org/files/f/documents/3/6/39617.pdf>.

<sup>543</sup> Mihai Ivascu, “Incident între romi și maghiari la Gheorgheni. Maghiarii ar fi incendiat o casă și mai multe bunuri, după ce doi minori de etnie romă ar fi furat 30.000 de lei din mașina unui bătrân din localitate” [Incident between

It is unclear how the criminal and civil court cases went and there is no indication that Hădăreni-style programs were implemented in Sânmartin and Sâncrăieni apart from a temporary solution of establishing police and gendarmerie patrols in the two villages. In any case, there was no Government Decision as with the ones establishing programs for Roma in Hădăreni, Plăieșii de Sus and Cașinul Nou. It is entirely possible that, without the pressure of a formal claim at the ECtHR, Romanian central authorities did not consider that these later cases would merit programs of their own, despite the lingering tensions between Roma and non-Roma.

Early cases of anti-Roma violence such as those discussed by the ECtHR in *Moldovan (1 and 2)*, *Lăcătuș*, *Kalanyos*, *Gergely* and *Tănase* paint a very alarming image of virulent Romaphobia that permeated entire sectors of Romanian society. We have already seen the extent of such events in a previous section<sup>544</sup>. However, what becomes apparent after going through the events that followed the initial violence is that Roma victims were faced with systematic racism from local and national authorities, police, prosecutors and even judges. The type of racially-motivated violence that the victims first endured at the hands of local angry mobs is thus mirrored by a no less subtle racial bias coming from authorities handling the cases. On the other hand, subtler forms of racial bias can be inferred from belated police intervention in opening investigations or arresting suspects, the long duration of the trials in all cases in front of national courts as well as the hesitant, underfunded and inefficient remediation of the situations that sparked the initial violence. A continued attitude of disinterest also shows when we see that anti-Roma violence on a large scale can still occur today.

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Roma and Hungarians in Gheorgheni. The Hungarians allegedly set fire to a house and several goods, after two Roma minors allegedly stole 30,000 lei from the car of an old man from the village], *HotNews*, April 3, 2017, <https://www.hotnews.ro/stiri-esential-21696928-conflict-intre-romi-maghiari-din-gheorgheni-ungurii-incendiat-casa-mai-multe-bunuri-dupa-doi-minori-etnie-roma-furat-30-000-lei-din-masina-unui-batran-din-localitate.htm>. See also Bernard Rorke, “Eyes wide shut: collective punishment of Roma in 21st-century Europe. Retrieved from Open Democracy”, *Open Democracy*, January 24, 2020, <https://www.opendemocracy.net/en/can-europe-make-it/eyes-wide-shut-collective-punishment-roma-twenty-first-century-europe/?fbclid=IwAR2PHMbXLGcjmoxd4M7cMWISICnkBZmPkaWfkFJifz8xrJzbZkCJe1oZZFc>.

<sup>544</sup> See Section 2.4.

However, not all cases of racial bias encountered by Roma applicants in their navigating the Romanian judicial system are detected by the ECtHR. One particularly telling case is that of *Negrea and Others v. Romania*<sup>545</sup>, a case that originated in several Roma applicants being refused child allowances due to the fact that their marriages were not officially registered. The applicants petitioned to the NCCD, yet it failed to find a case of discrimination, while appeals to higher courts resulted in them upholding the NCCD's initial decision. While the national courts did find that the refusal was illegal, since parents in common law marriages can receive child allowances according to Romanian law, they detected no discriminatory behavior from the civil servant who had refused them the allowance in the first place. The ECtHR, on the other hand, concluded that there was a violation of the applicants' right to a fair trial within a reasonable time (Article 6) and their right to an effective remedy (Article 13 taken together with Article 6). The seven-year duration of the national proceedings was seen as going beyond the reasonable standard of the ECtHR, yet the Court did not find that there was a violation of the prohibition of discrimination (Article 14 in conjunction with Article 8 and/or Article 1 of Protocol No. 1). The Court's argument was that since the civil servant in question had illegally refused child allowance to non-registered cohabitating couples in general and not to Roma couples in particular, there is no indication of discriminatory behavior.

The applicants had argued specifically for indirect discrimination based on several factors which highlighted that Roma were particularly affected when child allowance requests were rejected. Besides reminding the Court of the general situation of wide-spread discrimination against Roma in Romania, they also argued that unregistered or common law marriages are very common amongst Roma and that due to the state of poverty in which many Roma find themselves, child allowances are an important source of income<sup>546</sup>. However, the ECtHR did not find this

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<sup>545</sup> *Negrea and Others v. Romania*, App. no. 53183/07 (ECtHR, 24 July 2018).

<sup>546</sup> Statement of the alleged violations (taken from the application to the ECtHR), *European Roma Rights Centre*, [https://www.errc.org/uploads/upload\\_en/file/negrea-application-statement-of-violations-16-february-2015.pdf](https://www.errc.org/uploads/upload_en/file/negrea-application-statement-of-violations-16-february-2015.pdf).

argumentation compelling enough to raise a presumption of discrimination which would then need to be refuted by state representatives.

What is noteworthy about *Negrea* is that in some ways, it presents similarities with the difficulties Roma applicants faced in *Moldovan* in the aftermath of the Hădăreni pogrom. In *Moldovan*, the Court had no difficulty in linking racial bias with the long duration of the national court proceedings, as well as the obstacles and hesitations of prosecutors, police and other public authorities. Indeed, it was impossible not to see racial bias given that the national courts expressly reiterated common stereotypes of Roma and seemed to hold the entire Roma community collectively responsible for creating tensions with the majority society. In *Negrea*, we are arguably faced with a less overt form of racial bias initiated by a member of the local administrative apparatus which, probably through disinterest in investigating the issue further, was maintained through subsequent decisions by quasi-judicial (NCCD) and judicial (the national court system) bodies. However, it was not only a statistical reality (presented to the Court), even at that time, that far more Roma were living in un-registered *de facto* marriages (*concubinaj* in Romanian) than other ethnic groups in Romania<sup>547</sup>, but also a phenomenon widely reported on by Romanian media<sup>548</sup> and arguably well-known by the wider population, not to mention by civil servants specifically dealing with Roma couples, as the one in *Negrea*. While it is impossible to truly determine whether that particular civil servant was acting on a racial bias or not, it can be argued quite convincingly (and indeed has been argued by the applicants in front of the ECtHR) that there were enough elements to arrive to a presumption of indirect discrimination. Such a measure taken arbitrarily quite clearly impacted Roma more than the average Romanian citizen

<sup>547</sup> Gabriel Bădescu et al. “Barometrul Incluziunii Romilor” [The barometer of Roma inclusion] (2007), 67, <http://www.edrc.ro/docs/docs/cercetari/Barometrul-incluziunii-romilor.pdf>. According to the study, 39% of Roma between the ages of 18 and 29 were living in unregistered marriages, compared to just 8% in the case of “other ethnicities”. A similar pattern can be observed for other age groups. For the ages between 30 and 39, there were 33% (Roma) compared to 10% (other ethnicities); for the ages between 40 and 49, there were 25% (Roma) compared to 7% (other ethnicities); and for those between 50 and above, there were 17% (Roma) compared to 2% (other ethnicities).

<sup>548</sup> Alongside similar topics like how Roma practice child marriages and lack official papers and documents, as some of the stereotypical focuses of Romanian media in their portrayal of the Roma “Other”.

and ought to have been treated with much more circumspection than the Court ended up doing. To a certain extent, then, the Court in *Negrea and Others* fell into a colorblind trap, refusing to situate the facts of the case in the context where they occurred.

### 3.5.2 Cases of police brutality

In the previous part of this section, we have seen how in several parts of Romania mob violence spurred on by Romaphobia has generated court actions which in turn revealed systemic racism directed at Roma applicants. In many of these cases, we have also seen how local authorities, police, prosecutors and judges have either expressed racist feelings or have indirectly affected Roma disproportionately through their actions. To reiterate, it is essential to look into these cases because otherwise it is nigh-impossible to see how the Romanian judicial system racializes Roma or, on the contrary, strips them of the “badge of race” as in *Negrea*. Even though they only show us a glimpse into the kind of routine racialization Roma face, it is nevertheless important to establish certain patterns, especially in the face of a more or less general lack of documentation of national case law which involves Roma applicants.

One pattern which we have already seen is that following local tensions which involve Roma in one way or another, the police seem to have a tendency to either hesitate in intervening to protect potential Roma victims or, as in *Moldovan*, actively participate in the violence against Roma and even try to hide evidence of their actions. To no surprise, police brutality against Roma, as well as racial profiling of Roma individuals is another phenomenon which can be detected from a series of cases from the ECtHR. I chose to distinguish these cases from the previous category since, while also involving the actions of police officers, they do not present cases of mob violence.

One of the first such cases lodged at the ECtHR was that of *Cobzaru v. Romania*<sup>549</sup>, where a 25-year old Roma man was beaten up by the police as he was trying to locate his girlfriend<sup>550</sup>. The applicant had previously forced the door to her flat fearing she might try to commit suicide and left for the police<sup>551</sup>. At the same time, several of his girlfriend's relatives tried to beat the applicant, although he managed to escape<sup>552</sup>. The relatives then lodged a complaint against the applicant for forcing the door to the apartment<sup>553</sup>. While at the police station, several police officers viciously beat the applicant up and forced him to sign a declaration that he was beaten up by his girlfriend's relatives instead<sup>554</sup>. While the applicant did lodge a complaint with the national military tribunal, the investigations into the actions of the police officers were discontinued, a decision ultimately upheld by the last instance military prosecutor<sup>555</sup>. The case importantly also featured, much like in *Moldovan*, overtly racist remarks made by military prosecutors, such as that the applicant had "antisocial elements prone to violence and theft", that he was "in constant conflict with 'fellow members of their ethnic group'"<sup>556</sup>, and "a 25-year-old gypsy" "well known for causing scandals and always getting into fights"<sup>557</sup>. The prosecutors also dismissed a witness, the applicant's cousin, who saw the applicant coming out of the police station with bruises, since she is also a "gypsy"<sup>558</sup>. The ECtHR found violations of Articles 3 (both due to the inhuman treatment and due to the failure to investigate them), 13 (due to denial of an effective remedy) and 14 taken together with Articles 3 and 13 (due to the discriminatory treatment as a Roma person).

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<sup>549</sup> *Cobzaru v. Romania*, App. no. 48254/99 (ECtHR, 26 July 2007).

<sup>550</sup> *Id.*, para. 8.

<sup>551</sup> *Ibid.*

<sup>552</sup> *Ibid.*

<sup>553</sup> *Id.*, para. 9.

<sup>554</sup> *Id.*, para. 12.

<sup>555</sup> *Id.*, para. 33.

<sup>556</sup> *Id.*, para. 28.

<sup>557</sup> *Id.*, para. 31.

<sup>558</sup> *Id.*, para. 28.

Cases in the *Cobzaru* pattern are uncannily numerous. *Stoica v. Romania*<sup>559</sup> is another such example, where, during rising tensions between police and a few Roma, the mayor of a village in Romania ordered the police to “teach the Roma a lesson”<sup>560</sup>. The applicant in that case, a 14-year old Roma boy, was beaten up by the police and was left severely disabled<sup>561</sup>. Like in *Cobzaru*, the applicant, through his parents, lodged a complaint against the police officers responsible, yet the investigations were eventually dropped<sup>562</sup>. Notably, the local police claimed to the prosecutor that no investigation had been started against the Roma who engaged with the police since their behavior was “pure Gypsy” and did not constitute a crime<sup>563</sup>. Again, similarly to *Cobzaru*, the Court found violations of Articles 3, 13 and 14 taken in conjunction with Article 3.

Police violence against Roma individuals occurred also in *Carabulea*<sup>564</sup>, *Boacă and Others*<sup>565</sup>, *Gheorgbiță and Alexe*<sup>566</sup>, *Soare and Others*<sup>567</sup> and *Ion Bălăsoiu*<sup>568</sup>, yet although the Court found serious violations in these latter cases, such as of Articles 2, 3 or 13, it did not find any discriminatory behavior, and thus no violations of Article 14. As with *Negrea*, in many of these cases, the Court either did not find any explicit racist remarks which could identify racial bias against the Roma involved or was not satisfied with the evidence brought. As an example of the latter, in *Soare and Others*, the police officer who beat a 19-year-old Roma man and shot him in the head leading to coma and partial paralysis later declared to the prosecutor investigating him that he was “attacked by a gypsy”. Yet the Court concluded that this remark “was not sufficient in itself to require the authorities to ascertain whether the incident had been sparked by racist motives”<sup>569</sup>. Similarly, in *Carabulea* the Court also did not consider that Romanian authorities had the

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<sup>559</sup> *Stoica v. Romania*, App. no. 42722/02 (ECtHR, 4 March 2008).

<sup>560</sup> *Id.*, para. 7.

<sup>561</sup> *Id.*, para. 14.

<sup>562</sup> *Id.*, para. 40.

<sup>563</sup> *Id.*, para. 36.

<sup>564</sup> *Carabulea v. Romania*, App. no. 45661/99 (ECtHR, 13 July 2010).

<sup>565</sup> *Boacă and Others v. Romania*, App. no. 40374/11 (ECtHR, 17 January 2017).

<sup>566</sup> *Gheorgbiță and Alexe v. Romania*, App. no. 32163/13 (ECtHR, 31 May 2016).

<sup>567</sup> *Soare and Others v. Romania*, 24329/02 (ECtHR, 22 February 2011).

<sup>568</sup> *Ion Bălăsoiu v. Romania*, App. no. 37424/97 (ECtHR, 17 February 2015).

<sup>569</sup> *Soare and Others*, para. 208.



obligation to investigate whether the death of a 25-year-old Roma man in police custody had any discriminatory elements surrounding it due to his ethnicity. In this latter case, the dissenting opinion even remarked that due to the widespread and institutionalized racism against Roma that exists in Romania, it should have been an obligation for the authorities to investigate whether discrimination played a role in the death<sup>570</sup>.

It appears thus that when there are no explicit remarks which could lead the presumption of discrimination to be tilted in the favor of the applicants, the Court is routinely blind to cases of potential racial discrimination against Roma. Its refusal to see any racialization in *Soare and Others* is particularly baffling, as the police officer in the case expressly reduced the identity of the person he shot as “Gypsy” to justify his action. Given how Romanian authorities are generally uninterested in pursuing the issue of racial discrimination against Roma, cases such as these set out a dangerously low standard coming from a transnational body which otherwise is one of the few guarantors of Roma rights protection in Romania. Faced with the legitimization of such a colorblind approach, it would be unsurprising if Romanian authorities would feel less pressured to investigate cases of police violence against Roma, or, even more perversely, would only focus on training police officers to not use racial slurs, since they seem to be the only evidence which could lead to a violation of Article 14, and not even then in all cases (as in *Soare and Others*). The behavior of Romanian courts would also be affected by the ECtHR’s standard and Romanian judges would feel less inclined to require investigations into potential cases of anti-Roma discrimination.

At this point, it might be worth mentioning that the ECtHR has a less than stellar approach to race-based violence against Roma in general, not just when it comes to Romanian cases. While not the ultimate purpose of this sub-section, I think it is nevertheless relevant to take note of the broader context in which many of these cases occur. According to an analysis of ECtHR case

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<sup>570</sup> *Carabulea*, dissenting opinion paras. 3, 8.

law involving violence against Roma<sup>571</sup>, the Court has had a tendency to require a high level of proof when violations of Article 14 were claimed in Roma cases. In these cases involving not only Romania, but also Bulgaria, Greece, Hungary, Slovakia and other countries, the Court has persistently used the “beyond reasonable doubt” threshold, which allowed for very few procedural violations of Article 14 to be detected and even fewer substantive violations, despite many of these judgments finding violations of Articles 2 and 3<sup>572</sup>, much like in the Romanian cases we focus on. Cases like *Soare and Others* are not unique either – the Court has insisted in other cases as well that calling a person ‘Gypsy’ does not trigger an obligation of the State to disprove any potential racial discrimination<sup>573</sup>. The Court was also initially quite hesitant to identify racial discrimination in cases involving forced sterilizations of Roma women, particularly in Slovakian cases<sup>574</sup>. Indeed, while its case law on anti-Roma discrimination indicates the persistence of a colorblind approach even in later cases, the Court also recognizes indirect discrimination in *D.H. and Others*,<sup>575</sup> a school segregation case against Czechia decided in 2006 with Roma applicants. As we will see, it would take until 2019 for the Court to officially concede that Roma in Romania are faced with systemic racism in an anti-Roma violence case.

Going back to our analysis, we see that in a slew of other cases, police intervened in numbers in raids that were directed at Roma communities or settlements. What is particular about these cases is how Roma are collectively presumed as criminals, thus soliciting excessively violent interventions by police and the use of special forces despite the existence of no provocations. In *Ciorvan and Others v. Romania*<sup>576</sup>, police in Mureş County shot and injured several Roma, while later

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<sup>571</sup> Möschel, “Is the European Court of Human Rights’ Case Law on Anti-Roma Violence ‘Beyond Reasonable Doubt?’”.

<sup>572</sup> Möschel, 484.

<sup>573</sup> See, for example, *Vasil Sashov Petrov v. Bulgaria*, App. no. 63106/00 (ECtHR, 10 June 2010) and *Dimitrova and Others v. Bulgaria*, App. no. 44862/04 (ECtHR, 27 January 2011).

<sup>574</sup> The most infamous are probably *V.C. v. Slovakia*, App. no. 18968/07 (ECtHR 8 November 2011), *N.B. v. Slovakia*, App. no. 29518/10 (ECtHR, 12 June 2012) and *I.G. and others v. Slovakia*, App. no. 15966/04 (ECtHR, 13 November 2012).

<sup>575</sup> *D.H. and Others v. Czech Republic*, App. no. 57325/00 (ECtHR, 7 February 2006).

<sup>576</sup> *Ciorvan and Others v. Romania*, Apps. nos. 29414/09 and 44841/09 (ECtHR, 27 January 2015).

a prosecutor found the police officers involved to be innocent<sup>577</sup> and declared that the reason for the clash between the police and Roma was due to the “strange reaction that Roma people have on seeing police cars or policemen”<sup>578</sup>. Here the Court found violations of Articles 2 (due to the police shooting at random into a crowd and failure to investigate this), 3 (due to a failure to properly investigate accusations of ill-treatment) and 14 taken in conjunction with Articles 2 and 3. Like in *Cobzaru* before it, police in *Ciorcan* severely overreacted when interacting with a crowd of Roma and used excessive force, risking the lives of several of the applicants.

Similarly grave assaults happened in *Lingurar and Others*<sup>579</sup>, where police officers entered Pata-Rât in search for individuals suspected of theft. Pata-Rât is particularly notorious for being formed almost exclusively of Roma families evicted from nearby Cluj-Napoca near a landfill. As with other cases, the police used excessive violence and brutalized several Roma and the Court did find a violation of Article 3. However, the Court did not find the actions of the police themselves to be discriminatory as under Article 14, but the fact that the authorities did not further investigate allegations of racism. Thus, the Court only found a violation of the procedural limb of Article 14, echoing a similar standard of colorblindness as in *Negrea, Carabulea and Soare and Others*. However, lately, the Court seems to have made a switch with a case that is not only similar in facts, but also name. In *Lingurar*<sup>580</sup>, 85 policemen and gendarmes specifically targeted a Roma family in Vâlcele, Covasna County for a raid as they perceived the Roma community in general as criminal. The raid resulted in several of the Roma applicants being injured and the Court found a violation of Article 3 and also 14. Like in many cases before, the Court found it easy to detect racial profiling and the racial bias that the organizers of the raid had since members of the police directly attributed the excessively violent intervention to the aggressiveness that Roma inherently display and other habits “specific to Roma”. Importantly,

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<sup>577</sup> *Id.*, para. 67.

<sup>578</sup> *Id.*, para. 66.

<sup>579</sup> *Lingurar and Others v. Romania*, App. no. 5886/15 (ECtHR, 16 October 2018).

<sup>580</sup> *Lingurar v. Romania*, App. no. 48474/14 (ECtHR, 16 April 2019).

though, *Lingurar* was the first case where the ECtHR expressly highlighted the systemic nature of racism that Roma are confronted with in Romania: “Roma communities are often confronted with institutionalized racism and are prone to excessive use of force by the law-enforcement authorities”<sup>581</sup>. Even though the case presented the Court with an easy finding of discrimination under the substantive limb of Article 14 and not just the failure to investigate allegations of racism, it is a positive step in the right direction. Nevertheless, it remains to be seen whether the Court will be more perceptive of systemic racism against Roma in Romania in the future, particularly in situations that call for a reversal of the *onus* of proof, such as in cases involving police brutality, negation of child benefits or other interactions with public authorities.

Despite the difficulties posed by the lack of Romanian national case law databases on discrimination against Roma, the previous delving into the case law of the ECtHR has revealed much about how Roma face several layers of challenges when dealing with Romanian courts, police, prosecutors, as well as other public authorities. We have seen how mob violence cases have triggered an entire series of cases at the ECtHR, which nonetheless allowed us to glance at how the Romanian court system has consistently failed to address exceptionally serious and large-scale racially motivated crimes against Roma. The actors involved in the judicial proceedings, such as judges and prosecutors, did not only fail at this challenge, but openly contributed to the already viscerally Romaphobic context of Romanian society at large. Yet, even after the Court has identified serious breaches of the Convention, we have seen how national and local authorities constantly resisted the implementation of measures and stalled, instead miming compliance and offering up underfunded and inefficient solutions to an issue which is institutional and would need to be tackled as such. Given this rather grim picture, it comes to no surprise that the risk of large-scale mob violence against Roma, while subsiding, is still a very real threat 30 years after the initial outbreak in the 1990s.

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<sup>581</sup> *Id.*, para. 80.

The police brutality cases, on the other hand, showed just how endemic police violence against Roma is in Romania and how easy it is for such cases to be dismissed or for investigations into them to be discontinued. Equally serious is the Court's tendency of colorblindness in cases which do not involve clear racist or pejorative remarks at Roma applicants. If anything, this approach encourages Romanian police officers to be less overt in how they express their racial biases verbally or in written reports, but does nothing to discourage violent behavior towards Roma.

A few recent studies have shown that, understandably, Roma have very little trust in public authorities, with the least trusted being the police<sup>582</sup>. One study published in 2021<sup>583</sup> focused on two counties shows that 33% of Roma women in rural areas and 67% in urban areas believe they cannot solve difficult legal issues even if they try hard enough, while the percentages for men are 40% for those living in rural areas and 60% for those living in urban environments. Of the participants in the study, only around 7% would go to the police if they did not manage to solve an issue<sup>584</sup>. In another study<sup>585</sup>, this time conducted on judges, lawyers and NGOs (including Roma NGOs), Roma appear to have a high level of distrust in courts, prosecutors and police, with the police being again the most distrusted institution, with the perception that more than half of Roma have a very low level of trust in them<sup>586</sup>. Going to court is also perceived by Roma

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<sup>582</sup> At this point, it is important to also take note that Roma women find themselves in a particular situation compared to Roma men, whereby they also suffer from domestic violence, which is then consistently ignored by Romanian police as due to "cultural practices". This situation also adds to the distrust in the police that many Roma already have more generally. See, for example the November 2018 report of the Commissioner for Human Rights of the Council of Europe following the visit to Romania: "Moreover, it was stressed that acts of violence committed against Roma women are routinely ascribed to "cultural practices" specific to their communities and ignored on that ground. Concerning this last aspect, the Commissioner welcomes the recent amendments to Act no. 217/2003 on preventing and combating domestic violence which state that custom, culture, religion, tradition and honour cannot, in any form or circumstances, be considered as a justification for any acts of domestic violence". Council of Europe (Commissioner for Human Rights), "Report of the Commissioner for Human Rights of the Council of Europe following her visit to Romania from 12 to 16 November 2018" (2018), <https://rm.coe.int/report-on-the-visit-to-romania-from-12-to-16-november-2018-by-dunja-mi/1680925d71>.

<sup>583</sup> Gabriela Petre, "Access to justice – Trust and perceptions of the Roma minority", *Journal of Community Positive Practices*, XXI(2) (2021), 31-45.

<sup>584</sup> *Id.*, 40.

<sup>585</sup> Romanița Iordache, "Improving access to justice for Roma and other vulnerable groups. An integrated approach" (2014), [http://old.csm1909.ro/csm/linkuri/26\\_01\\_2015\\_72130\\_ro.pdf](http://old.csm1909.ro/csm/linkuri/26_01_2015_72130_ro.pdf).

<sup>586</sup> *Id.*, 85.

NGOs as expensive and that prejudice against Roma is a major obstacle in access to justice<sup>587</sup>. Half of the NGO respondents in this particular study have also underlined that discrimination before state institutions is the most pressing issue faced by Roma<sup>588</sup>. Respondents from courts and even bar associations seem to be less concerned about the cost of litigation and even fewer consider that Roma distrust courts and police<sup>589</sup>. This situation is mirrored by transnational bodies, such as the Council of Europe's Commissioner for Human Rights, which highlighted the fact that "Roma are confronted at present mainly with institutionalized racism combined with excessive use of force by law-enforcement authorities"<sup>590</sup>. The same can be said of the European Commission against Racism and Intolerance (ECRI)<sup>591</sup> and the EU's Fundamental Rights Agency (FRA)<sup>592</sup>, both of which have highlighted the high amount of case of racial profiling and racial violence against Roma.

### 3.6 The antidiscrimination legislation – rocky start and problematic case law

Much like case law, antidiscrimination law has often been a point of focus for Critical Race Theory scholars who pointed out some of its deficiencies in the US<sup>593</sup>. Although this thesis focuses on a European country, member to both the European Union and the Council of Europe, it is crucial to remember that European antidiscrimination law as a whole is indebted to

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<sup>587</sup> *Id.*, 86- 92.

<sup>588</sup> *Id.*, 94.

<sup>589</sup> *Ibid.*

<sup>590</sup> Council of Europe (Commissioner for Human Rights), "Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his visit to Romania from 31 March to 4 April 2014" (2014), <https://rm.coe.int/16806db83b>.

<sup>591</sup> European Commission against Racism and Intolerance, "ECRI Report on Romania (fifth monitoring cycle)", 10.

<sup>592</sup> European Union (European Union Agency for Fundamental Rights), "Second European Union Minorities and Discrimination Survey. Roma – Selected findings" (2016), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-eu-minorities-survey-roma-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf).

<sup>593</sup> See, for example Kimberlé W. Crenshaw, "Race, reform and retrenchment: transformation and legitimization in anti-discrimination law", *Harvard Law Review*, Vol. 101, No. 7 (1988); and Alan D. Freeman, "Legitimizing racial discrimination through antidiscrimination law: critical review of supreme court doctrine", *Minnesota Law Review*, Vol. 62, No. 6 (1978).

a large extent to the experiences of antidiscrimination law in the United States<sup>594</sup>. This is apparent not only in EU antidiscrimination law, whose concepts and conceptualization were influenced to a great degree by its more tested US counterpart, but also when looking at national antidiscrimination law, much of it stemming from the previously mentioned EU framework<sup>595</sup>. However, while in the US, the struggle for the interpretation of racial equality contained in constitutional and antidiscrimination law is well-documented and quite salient, the same cannot be said of Romania, where antidiscrimination law and positive actions appear not to be as active a battlefield. Indeed, the contestation of racial justice in the US, especially by its Supreme Court, has garnered much attention from CRT scholars who, amongst others, criticized its colorblind approach in important cases<sup>596</sup> as well as the narrowing down of racial justice claims<sup>597</sup>. Others have suggested a move away from the preference-disguised-as-principle approach of the Supreme Court to the “pure politics” of ordinary lawmaking as an environment better suited for racial equality claims<sup>598</sup>. Conversely, in Europe and especially in Central and Eastern Europe, as well as in Romania, race is far from being a focus of antidiscrimination law.

As a concept, race was introduced into the legal landscape of many European countries by way of implementing the *acquis Communautaire*, especially the Racial Equality Directive, one of the main pillars of EU antidiscrimination law. While other European countries might have had previous antidiscrimination legislation that contained race as one of its concepts, this was not the

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<sup>594</sup> Gráinne De Búrca, “The Trajectories of European and American Antidiscrimination Law”, *The American Journal of Comparative Law*, Vol. 60, Issue 1 (2012), <https://doi.org/10.5131/AJCL.2011.0016>.

<sup>595</sup> *Id.*, 2-5.

<sup>596</sup> Gotanda, “A Critique of ‘Our Constitution Is Colorblind’”.

<sup>597</sup> See, for example, Freeman, “Legitimizing racial discrimination through antidiscrimination law”, at 1061: “For one thing, many of the same decisions that denied fundamental right claims also refused to characterize the problems involved as ones of actual racial discrimination. The Court accomplished that rejection by employing the narrow conception of violation associated with the perpetrator perspective. In addition, even apart from whether the cases should have been treated as racial discrimination cases, to have recognized substantive fundamental rights would have been tantamount to recognizing affirmative claims, a practice associated with the victim perspective. By rejecting such claims, the law, when directly confronted with the victim perspective, explicitly rejected it. Thus, what starts out as a victim perspective claim about the results of racial discrimination is transformed into a complaint about not racial but economic injustice, and then denied in those recast terms. The net effect is that the victim of racial discrimination must persevere until the utopian day when everyone is entitled to distributive justice”.

<sup>598</sup> Girardeau A. Spann, “Pure Politics”, *Michigan Law Review*, Vol. 88, Issue 7 (1990), <https://repository.law.umich.edu/mlr/vol88/iss7/2>.

case in Romania, where the first dedicated antidiscrimination legislation was only passed following adoption of the RED by the European Communities. Race was thus introduced within the Romanian legal landscape, yet we shall see that this compliance to external standards did not necessarily render it operable.

Furthermore, looking at Romania's history of adopting antidiscrimination legislation in **Subsection 3.6.1** will show not only how seriously (or rather not) discrimination as a social phenomenon is being taken by authorities and the broader society, but also shed light on the process of how the legislative is transplanting external human rights standards in the Romanian legal framework. By looking deeper into the legislative process, even before Romanian accession to the EU, we can already see that adopting EU antidiscrimination standards was not a streamlined process, but one marred by indifference and lack of debate, on the one hand, and sometimes even blockages and regression, on the other. When this framework, together with its institutional corollaries, started indeed to function properly, we will see in **Subsection 3.6.2** that its specialized body adopted a problematic view on some of the grounds for discrimination – namely race, ethnicity and social category. The aim of this section would thus be to highlight the way in which race functions within a legal landscape that is rather unaccustomed to it. For this purpose, I will first investigate the process by which the antidiscrimination legislation that first contained race as a ground for discrimination, then move to analyze a part of the caselaw of the NCCD in order to uncover how race operates in Romania.



### 3.6.1 Brief history of the adoption of antidiscrimination legislation in Romania

In 2000, the Romanian Government at the time passed Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination<sup>599</sup> (hereinafter OG 137/2000) in a move towards harmonizing national law with European law on antidiscrimination, in particular with the Racial Equality Directive that came into force the same year. At first lauded as a positive step by the European Commission, the ordinance was initially inoperable because of a lack of further legislation and its functioning was plagued by legal gaps and inconsistencies. For example, it did not expressly ban indirect discrimination and did not provide for a shifting of the burden of proof to the respondent when there a *prima facie* discrimination case was established<sup>600</sup>. Moreover, enabling the ordinance through a law decided in Parliament saw a debate where the text was stripped of the words “the community of national minorities”, thus excluding it from the category of persons protected by it, despite the protest of the Hungarian party and their subsequent departure from the debates. The final version of the ordinance also failed to define harassment and to mention victimization, unlike the Racial Equality Directive<sup>601</sup>. On a more institutional level, another hinderance in adopting a fully functional antidiscrimination framework was presented by the fact that the specialized organ charged with cases of antidiscrimination, the National Council for Combating Discrimination (NCCD) was put under the control of the Government, as an organ belonging to the local public administration. This move was heavily criticized both by the European Commission and ECRI<sup>602</sup>, as the former also signaled the lack of representation in the NCCD of civil society and

<sup>599</sup> Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette No. 431/02.09.2000.

<sup>600</sup> Gergely Dezideriu, Mădălin Morteau, “Implementarea legislației anti-discriminare în România: Combaterea discriminării etnice prin proceduri juridice” [Implementation of anti-discrimination legislation in Romania: Combating ethnic discrimination through legal procedures], *Romani CRIS* (2004), 19.

<sup>601</sup> Council Directive 2000/43/EC of 29 June 2000, arts. 2, 3 and 9.

<sup>602</sup> Council of Europe (European Commission Against Racism and Intolerance), “Second Report on Romania”, CRI(2002)5 (2002), point 22.

vulnerable groups<sup>603</sup>. In 2002, the European Commission also remarked in its regular report on Romania's accession to the EU that the NCCD is not an independent institution, as it was still subordinate to the Government<sup>604</sup>. This critique, as well as others related to the NCCD's efficiency and transparency, would be reiterated in the following years, in 2003<sup>605</sup>, 2004<sup>606</sup> and 2005<sup>607</sup>.

Early in its mandate, the functioning and reform of the NCCD was fraught with NGOs complaining about the lack of transparency. Even though members of the NCCD publicly requested civil society to participate with reform proposals in 2003, the governmental meetings where the reform of the antidiscrimination legislation and of the NCCD were discussed took place without consideration being given to proposals coming from civil society<sup>608</sup>. Despite this, Ordinance 77/2003, meant to supplement or correct some of the gaps left behind by OG 137/2000, did resolve some of the initial issues, such as the lack of an express mentioning of indirect as well as multiple discrimination or the lack of dispositions on victimization<sup>609</sup>. On the other hand, the new ordinance introduced a possibility of mediation at the NCCD. This procedure, as expressed by Romani CRISS, an NGO militating for the rights of Roma people, did not benefit from a division of labor inside the NCCD and the same council members who might mediate between parties would later decide for the existence of discrimination should the mediation fail<sup>610</sup>. As late as 2005, the NCCD was still being criticized for its awkward position under the Government, as well for its lack of independence and transparency<sup>611</sup>. It would take

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<sup>603</sup> European Union (Commission of the European Communities), "2002 Regular report on Romania's progress towards accession", COM(2002) 700 final (2002), 29.

<sup>604</sup> *Ibid.*

<sup>605</sup> European Union (Commission of the European Communities), "2003 Regular report on Romania's progress towards accession", COM(2003) 676 final (2003), 22.

<sup>606</sup> European Union (Commission of the European Communities), "2004 Regular report on Romania's progress towards accession", COM(2004) 657 final (2004), 23.

<sup>607</sup> European Union (Commission of the European Communities), "2005 Regular report on Romania's progress towards accession", COM(2005) 655 final (2005), 54.

<sup>608</sup> Dezideriu, Morteau, "Implementarea legislației anti-discriminare în România". 26.

<sup>609</sup> *Id.*, 27.

<sup>610</sup> *Ibid.*

<sup>611</sup> Asztalos C. Ferenc, "Report regarding the implementation of racial Directive in Romania 2005-2010" (2011), 20, <https://www.cncd.ro/wp-content/uploads/2021/10/Raport-Directiva-43-engleza.pdf>.

until 2006 for the NCCD to become fully independent<sup>612</sup>, when Law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000 finally took the institution away from under the control of the Government and placed it under the supervision of the Parliament. Presently, the NCCD plays a key role as the first level of protection for individuals affected by discrimination and while its punitive capacities are limited, being able only to impose fines, its decisions are well-documented, accessible and are often the subject of news, if not controversy (though mostly in the particular case of fining well-known politicians and usually for discriminating against various ethnic groups<sup>613</sup>). Compared with other equality bodies in Europe, the NCCD ended up functioning in a rather maximalist fashion, not just compiling studies and reports on important human rights issues or issuing general recommendations, but also operating as a quasi-judicial body that can issue binding decisions on a case-by-case basis, which can then be taken to a regular court of law. As a matter of fact, the NCCD's position on matters of antidiscrimination is taken quite seriously by regular courts, whose judges either consult it, follow its decisions or accepts its participation during trial as a third party<sup>614</sup>.

In any case, these later changes would slowly and gradually lift the initially lackluster antidiscrimination framework to the standards desired by the European Commission and the NCCD would also start building its own, fairly consistent, body of case law. Coincidentally, the consistency of the NCCD's case law in what concerns one particular aspect is what presents

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<sup>612</sup> *Id.*, 23.

<sup>613</sup> Some of the most high-profile cases included decisions against President Klaus Iohannis for inflammatory comments regarding the Hungarian minority in Romania. See, for example, Romania Insider, "Anti-discrimination agency fines Romanian president for reaction to draft law on Szeklerland autonomy", *Romania Insider*, May 20, 2020, <https://www.romania-insider.com/cncd-fine-romanian-president-hungarians>. Former President Traian Băsescu was also fined once for a similar reason in 2021: Istvan Fekete, "Anti-discrimination watchdog fines ex-president for Hungarophobic comment", *Transylvania Now*, August 31, 2021, <https://transylvanianow.com/anti-discrimination-watchdog-fines-ex-president-for-hungarophobic-comment/>; as well as twice for violating the right to dignity through his comments directed at the Roma community: See Alina Grigoras, "Former president has to pay RON 600 fine for discriminating statements against Roma", *Romania Journal*, April 1, 2016, <https://www.romaniajournal.ro/society-people/social/former-president-has-to-pay-ron-600-fine-for-discriminating-statements-against-roma/> for the 2016 commentaries and "CNCD: Traian Băsescu și Nicolae Bacalbașa, amendați pentru discriminare la adresa romilor" [CNCD: Traian Băsescu and Nicolae Bacalbașa, fined for discrimination against Roma], *Europa Liberă*, May 20, 2020, <https://romania.europalibera.org/a/cncd-traian-basescu-si-nicolae-bacalbașa-amendați-pentru-discriminare-la-adresa-romilor-/30623686.html> for his 2020 commentaries. All these cases and many similar others were intensely mediatized and politicized.

<sup>614</sup> Moisă, Rostas, "Civil Society Monitoring Report".

most interest to the topic of this thesis. More precisely, the NCCD seems to have a very particular understanding of race in its choice of framing complaints of discrimination under this ground for discrimination. The following part of this section will continue by analyzing how the NCCD operates with race and whether it reads race into or out of Romanian antidiscrimination law.

### **3.6.2 Analyzing the National Council for Combatting Discrimination's case law on racial discrimination**

What becomes apparent when looking at the case law of the NCCD is firstly the number of cases decided where “race” and “ethnicity” were grounds for discrimination. While the latter has been used to frame a total of 807 cases from 2007 until the time of writing this thesis, the former is present in only 29 cases for the same time period. Ethnicity is indeed one of the most prevalent grounds for discrimination found in the NCCD's body of decisions, alongside 712 cases on disability, 503 on nationality, 222 on language and a disproportionate 1673 on social category. Of course, the NCCD, as much as any other body, including the regular courts, does not operate in a void, bereft of social, historical or cultural meanings and uninfluenced by them. Conversely, racism is a real and problematic phenomenon in Romania. Could it be that there is a hesitancy to frame cases under “race” or “racial origin”?

Throughout the process of implementing the European *acquis* on antidiscrimination, Romania was one of the countries which decided for a very broad list of grounds for discrimination, opting to include race and ethnicity as distinct categories, besides also having the partially overlapping grounds of language, religion and nationality. This is, of course, not the case in all EU Member States' approaches, with some countries, such as Austria<sup>615</sup>, Czechia<sup>616</sup>, Finland<sup>617</sup>,

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<sup>615</sup> In Austria, courts have been documented for using the term “ethnic affiliation” in a very broad understanding to encompass race, ethnicity and nationality (though not with the understanding of “citizenship”). See Farkas, “The meaning of racial or ethnic origin in EU law”, 63, 77.

France<sup>618</sup> or Germany<sup>619</sup>, either not referring to “race” or “racial origin” at all or combining it interchangeably with “ethnicity”. On this point, it is also interesting to notice how for many Western European states, such as France or the United Kingdom, who have a colonial past and a history of immigration that differs from countries in Central and Eastern Europe, “ethnicity” or “ethnic origin” are usually associated with the discrimination of immigrants and their descendants<sup>620</sup>, while in Central and Eastern European countries, including Romania, the same concepts usually refer to traditional national minorities<sup>621</sup>, usually groups formed as a consequence of border changes or dissolution of former geopolitical entities (such as the Austro-Hungarian and Ottoman empires or Yugoslavia). This is important to remember for our discussion, since ethnicity might present a more diluted notion usually referring to any traditional minority, without singling out the particular history of Romanian Roma, which we have seen have not been historically regarded by Romanian elites as equal to other (white) minorities.

Going back to the NCCD, however, we can see at first glance from the case law categorized under the “race” ground for discrimination that the word itself, or at least the root, is used indeed in most cases. In **Table 1** below this section, I have marked out the 29 cases on racial discrimination which can be found on the NCCD’s new website as well as its archived one, which is no longer updated. In the first column, besides the main ground under which these cases have been filed, between brackets there are mentions of how the word “race” itself or its

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<sup>616</sup> The Czech Constitutional Court uses racial and ethnic origin interchangeably. *Id.*, 63.

<sup>617</sup> Finland prefers using the term “origin” to refer to both ethnic and racial origins. *Id.*, 64.

<sup>618</sup> In France, the *Assemblée Nationale* even banned the word “race” from being used in French legislation in 2013 and tried unsuccessfully to erase it from the Constitution in 2018. See Cengiz Barskanmaz, Emilia Roig, “La République against Race”, May 22, 2013, *Verfassungsblog*, <https://verfassungsblog.de/la-republique-against-race-2/> and Alexandre Lemarié, “L’Assemblée supprime de la Constitution le mot «race» et interdit la «distinction de sexe»” [The Assembly suppresses the word “race” from the Constitution and bans “distinction on sex”], June 27, 2018, *Le Monde*, [https://www.lemonde.fr/politique/article/2018/06/27/les-deputes-suppriment-le-mot-race-de-la-constitution\\_5322107\\_823448.html](https://www.lemonde.fr/politique/article/2018/06/27/les-deputes-suppriment-le-mot-race-de-la-constitution_5322107_823448.html).

<sup>619</sup> In the German Constitution, as well as in the German Act on Equal Treatment, the AGG, the concept “race” can be found, yet “ethnic origin” is preferred. See Farkas, 65. The German left-wing party, Die Linke, has also proposed in 2013 and 2020 that the word “race” be removed from the Basic Law. See “Linke gegen Begriff ‘Rasse’ im Grundgesetz” [Linke against the term “race” in the Basic Law], *Bundestag*, July 2, 2020, [https://www.bundestag.de/webarchiv/presse/hib/2020\\_07/704144-704144](https://www.bundestag.de/webarchiv/presse/hib/2020_07/704144-704144).

<sup>620</sup> Mark Bell, “The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model?”, *The Political Quarterly*, Vol. 79, No. 1 (2008), 37-38

<sup>621</sup> *Ibid.*

root is used to describe the case or if other grounds were mentioned by the NCCD. If “race” is to be found alone in the column, the cases concerned have been filed under that ground, but the word itself or its root is not to be found in the text of the decision. The second column compiles the racial or ethnic identities of the petitioners, where available from the case text, as well as a small description of the case or key words. The third column contains the solution to the cases brought before the NCCD and the final column contains the case numbers.

What can be observed is that wordings including “race”, “racism”, “remarks referring to race”, “incitation to racial hatred”, “racist environment” can be found in 20 of the 29 cases. However, in 6 out of these 20 cases, the wording containing the root “race” is to be found alongside one or more other terms suggesting other grounds or basis for discrimination, such as “xenophobia”, “nationalist-chauvinistic actions”, “insults on the basis of ethnicity”. The NCCD’s handling of this terminology in the text of the cases *per se* is also suggestive of what can be at first deduced as a lack of clarity, since in some cases (especially after 2015), it frames the issues brought before it as cases of potential racial discrimination, while in others it uses combinations such as “race and ethnicity” or “race and xenophobia”. Important to note, however is that, while in some cases the petitioners do indeed mention the word “race” under various forms, it is usually the NCCD who frames the cases under this ground. Unfortunately, this does not mean that “race” or variations thereof cannot be found in other parts of its case law, as there are several examples within its case law under the “ethnicity” ground where “race” can be found. Consequently, this analysis is mostly focusing on the cases which the NCCD website’s search engine lists under the ground “race”, which most likely is used also for its yearly reports<sup>622</sup>. Moreover, apart from some possible labelling and filing mistakes<sup>623</sup>, what is clear is that these are the cases where the NCCD considers that the racial discrimination aspect is most pronounced, notwithstanding its presence

<sup>622</sup> This is apparent, since in its last report, from 2020, the NCCD lists 20 cases under the “race” ground for discrimination, from 2002 until 2020. See National Council for Combatting Discrimination, “Activity Report 2020” (2021), 6, <https://www.cncd.ro/wp-content/uploads/2021/06/Raport-de-activitate-CNCD-2020-EN.pdf>.

<sup>623</sup> A few of the cases under the “race” ground for discrimination are uploaded twice, while one (Decision 387/2010) was a case purely on religious discrimination.

in cases filed under different grounds for discrimination. Regarding the solutioning of the cases, it appears that most of the cases (20 out of the 29) have either been dismissed under procedural grounds, such as the tardiness, withdrawal or incomplete state of the petition (4 cases), lack of competence of the NCCD (3 cases), or a discrimination was not found, usually due to lack of proof (7 cases out of the 13 cases where the NCCD did not find discrimination to have taken place).

Another interesting aspect to take notice of is that of the identity of the applicants in cases regarding race. Out of the 29 previously mentioned, 4 cases concerned a Roma person or the Roma community in general, one a was case of antisemitism, one concerned an Iraqi person (while the message directed against him referred to Arabs), one concerning a Syrian citizen, while 19 referred to black people (either Africans, African-Romanians or people of African descent from other countries), people of color or “mulattos”. We can already see with the NCCD that it has a fairly strong trend in associating people of African descent in particular with “race” as a ground for discrimination.

What is also interesting (and telling) to notice is which are the cases where the NCCD found discrimination. From these 9 cases, 8 concerned black people or people of color and only one concerned the Jewish community in general. Thus, while initially, the terminological confusion of the NCCD might suggest that it does not tell apart “race” from other grounds for discrimination, especially “ethnicity”, it becomes more and more apparent that in fact it does seem to operate with a particular understanding of “race” and tends to associate people of color or of African descent with this term more than any other group. This, of course, should not be read as a very strong and well-delimited notion of “race”, since, as shown above, many cases concerning non-black or non-African people were dismissed for reasons not related to the actual content or the subject of the petitions, but rather due to procedural issues. Indeed, a sizeable

number of cases concerning people of color were also dismissed for these reasons (12 out of the total of 29 and out of the 20 referring to people of color or of African descent).

However, an analysis of the facts of the cases concerning race tends to support the thesis that the NCCD associates “race” with people of color or of African descent more than with, for example, the older historical Roma community in Romania. From the cases involving people of color, most of them involved situations where the petitioner or affected party was called a “monkey” or monkey sounds were made in their presence (most commonly in sport matches). The first of these cases where the NCCD gave hints of its understanding of “race” and racism was in Decision no. 395/2016<sup>624</sup>, where the hosts of a Romanian radio show compared the Congolese football fans in the audience to a football match held in Romania with monkeys<sup>625</sup>. Before ultimately finding a case of discrimination in the sense of OG 137/2000, the NCCD expresses for the first time its view on racial remarks such as those in the case at hand:

“(…) negative prejudices and public elements of racist notoriety are being used [in the present case], and the comparison in this case expresses a negative prejudice against people of color, *just because of skin color* (emphasis added). Through the comparison to monkeys the idea is conveyed that Africans have an inferior status of underdevelopment and lacking human dignity and that they do not deserve respectful and humane treatment. We are in the presence of racist claims whenever a human is compared to an animal on the basis of skin color and of human inferiority status (such as comparison with a crow or a monkey).”<sup>626</sup>

In other subsequent cases, the NCCD also refers to skin color as the primary element which points to racial and racist discourse. In the much more recent Decision 563/2019<sup>627</sup>, the NCCD was confronted with a similar case where African-American tennis player Serena Williams was

<sup>624</sup> NCCD, Decision no. 395/2016, Case no. 6A/2016.

<sup>625</sup> *Id.*, see para. 8: “The Congolese came with 8000 monkeys; they were supported by 8000 monkeys. We say monkeys because we are preparing something with monkeys on Radio ZU (...) Congo's gallery is called Monkey Tail. At the entrances to the stadium where the match was held, there was a queue of monkeys...you never saw anything like it (...) What's the difference between our coach and Congo's coach: Ours...believes in God, Congo's coach believes in the Chimpanzee (...) They played [with] the gorillas, basically. To score 1-1 with the gorillas is not a given. They've got muscles, they hide in trees...”

<sup>626</sup> *Id.*, para. 19. An almost identical wording is to be found in Decision 93/2020, which involved a mayor referring to several African nations as descending from trees and that they will “conquer us and become our bosses”. See Decision no. 93/2020, Case no. 14A/2019, para. 17.

<sup>627</sup> NCCD, Decision no. 563/2019, Case no. 2A/2019.



compared by a Romanian TV show host to a monkey<sup>628</sup>. Again, the NCCD makes a similar remark, contextualizing the racist remark even more than in the previous case:

“Comparing a ‘person of color’ with a monkey is particularly offensive and was used to motivate racism and even slavery. ‘Blacks’ were not considered to be human, but rather monkeys, so they could be deprived of rights even in countries that advocated for the rights of citizens.”<sup>629</sup>

From the above cases, it appears that the NCCD interprets racism as a phenomenon which primarily concerns skin color and makes no reference to any cultural aspects which are more reflective of present-day racism. Of course, in these cases, these particular remarks which the NCCD had to deal with were not in any way subtle or akin to today’s more prevalent “new racism”. On that ground, one might partially excuse the NCCD for keeping the discussion within the limits imposed by the facts of the cases brought before it. However, the NCCD does not stop there and instead gives a short “history lesson” when it mentions the historical roots of racism (“‘Blacks’ were not considered to be human”) and links it with particular periods in history (“...was used to motivate racism and even slavery”). While this contextualization is welcome in comparison to previous cases which are bereft of any similar enterprises, as an *obiter dictum* it does fall short of providing a more realistic account of racism in the present day. It is, after all, in today’s context where the remarks concerned were made and even though this more virulent and open type of racism still exists in Romanian society, probably more than in Western countries, more perverse and subtle forms of racism are also present and not mentioned by the NCCD.

The NCCD’s apparent lack of sensitivity or inability to detect allegedly softer, subtler forms of racism comes to the forefront in one particular case. In Decision 159/2020<sup>630</sup>, the Council was faced with a case where the then mayor of Bucharest said of a former vice-mayor (and political

<sup>628</sup> *Id.*, see para. 28: “She looks like zoo monkeys look like with that red ass. If you put some pants over that ass, [the monkey] would exactly like [she] did in the field”.

<sup>629</sup> *Id.*, para. 38.

<sup>630</sup> NCCD, Decision no. 159/2020, Case no. 23A/2019.

opponent) of hers that his office was a “bar of blacks”. The NCCD ultimately found no discrimination, with a vote of 5 to 3:

“From the interpretation of the statements, the Board of Directors notes that the defendant uses the possibly harsher expression ‘black bar/bar of blacks’ but *cannot retain a racist connotation or an incitement to hatred such as in a society like the United States of America or the United Kingdom* (emphasis added). The respondent criticized a political competitor, describing the disorder and chaos in his office when he held the position of Deputy Mayor of the capital”<sup>631</sup>.

“Bar of blacks” or “black bar” is a regrettably common expression used in Romanian society which usually refers to a place of chaos and disorder and most likely is linked to the segregation between white and black people, probably in the United States, where compared to the places for white social gatherings, their “black” counterparts were viewed as rowdy and uncivilized places. Indeed, in the present case, the defendant referred to her predecessor’s office as always “full of alcohol, cigarettes and pestilential persons”<sup>632</sup>. The NCCD took the defendant’s intention for granted and in the process overlooked the overtly racist and derogatory meaning of the expression, which it also took for granted. Notwithstanding the rather rare occurrence of dissenting opinions, three members of the Council noted the racist connotation of the phrase and consequently voted against the decision of the majority<sup>633</sup>. What this shows, from the limited body of case law available for the public, is that the NCCD gives preference to situations of overt racism, while slightly subtler forms (as subtle as one could consider “bar of blacks” as being) appear not to irritate the limits to freedom of speech enough for the Council to deem it as discriminatory.

Moreover, and probably even more revealing of the NCCD’s decision-making process, it expressly sought to delimitate the present case from other contexts, finding that it “cannot retain

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<sup>631</sup> *Id.*, para. 13.

<sup>632</sup> *Id.*, para. 6.

<sup>633</sup> *Id.*, 5. See the Dissenting opinion of Haller István and others: “The term ‘black bar’ has its origins in the United States where there was segregation, so there were bars for ‘white’ people and bars for ‘blacks’. Through the use of the phrase ‘black bar’ it is intended to create an even more negative opinion, based on the idea that there, compared to a bar for ‘whites’, the mess [or chaos] is greater. Consequently, this phrase is of racist origin”.

a racist connotation or an incitement to hatred such as in a society like the United States of America or the United Kingdom”<sup>634</sup>. What did the Council’s Board of Directors aim to highlight with this statement? It does appear to go out of its way to make sure that a distinction is being made between Romanian society, where a phrase such as “bar of blacks”, with its derogatory meaning, would not amount to racism or incitement to hatred, whilst in the US or UK, it would. What I suspect here is something that up until now was only hinted at, namely that the NCCD members believe that race is not as relevant in the Romanian context as in other societies that experienced segregation, slavery and colonialism (which, probably in the eyes of the NCCD, distinguish the latter from the Romanian historical experience). They showed this through its infinitely less numerous case law on “race” compared to “ethnicity” and now they expressly distance themselves from American or British socio-historical contexts, where, as the argument might go, racism towards people of color is more typical, salient and prevalent and maybe even that “race” would thus be a category for discrimination more suitable to those countries. Now while Romanian society never experienced colonialism the same way American or British societies did, it is not difficult to argue a similar racial relationship exists between Roma, who did experience slavery, segregation and systemic marginalization, and the Romanian majority. While the small number of cases from the NCCD prevents having a too strong argument on this point, it does appear from the data available that the Council has the tendency to underuse “race” and to ascribe its functionality and operability to Western (ex-)colonizing societies, such as those of the US or the UK.

A similar case, this time referring to the Roma community, only goes to strengthen this argument. With Decision 275/2010<sup>635</sup>, the Council had to deal with a newspaper article accused of racist discourse towards the Roma community in Romania. The article, titled “The gypsyization of Romania” was deploring how “Gypsy culture” has taken over Romania and that

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<sup>634</sup> *Id.*, para. 13.

<sup>635</sup> NCCD, Decision no. 275/2010, Case no. 97/2010.

the word “Rrom”<sup>636</sup> is used to create confusion with the ethnonym for Romanians in the West<sup>637</sup>. Politicians who are either Roma or have been “gypsysized” are considered “stupid, uneducated, aggressive, vulgar”<sup>638</sup> and “politics have become a ‘*țigănie*’”<sup>639</sup>. The author also concludes that “the curses of Romanians are Communism and the Gypsies” and refer to Roma as “the blackish ethnicity/ethnic group”<sup>640</sup> (“*etnia tuciurie*”). Faced with what would very easily and reasonably be considered as a clear case of racist discourse and discrimination against the Roma community, the NCCD fails to detect racist elements in the article. On the contrary, the decision goes to say that while the latter two phrases could be taken out of context and considered discriminatory, in the specific context of the article, they are merely a harsh criticism of Romanian society in general<sup>641</sup>. Neither the usage of the word “*țigan*” (Gypsy) nor the clear association between the adoption of alleged Gypsy culture, mores or habits and the decay of civilized Romanian society seem to convince the Council’s members of the presence of discrimination on the basis of race. The decision even mentions previous case law for the purposes of showing discourse and terminology which *does* qualify as discrimination in the eyes of the NCCD, such as “dirty Gypsy”, “f\*cking Gypsy”, “disgusting Gypsy”, “stinking crow”, “you crows, you Gypsies”<sup>642</sup>. The discourse in the case at hand, however, was deemed to amount to merely a critical, albeit harsh, appraisal of Romanian society in general, with no racist elements to affect the Roma community whatsoever. The only person objecting to the majority’s decision was Asztalos Csaba Ferenc, the

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<sup>636</sup> The word for Roma in Romanian sometimes takes the form of “rrom”, instead of “rom”. Although the form with “rr” is closer to the way “Roma” is pronounced in the Romani language (denoting an “r” with a thrill, instead of the single “r”, which sounds similar to how a single “r” is pronounced in Italian or Romanian), the single “r” form is usually used in Romanian, since it does not use thrilled “r” sounds, as for example the French or German languages usually do. However, notwithstanding the hesitancy to use “rom” or “rrom” in Romania by some parts of society due to its falsely assumed intentional proximity to the Romanian endonym (“român”), the “rrom” version can sometimes denote that the user wants to disassociate “român” from the Roma, in a similar way to using the much more frowned upon exonym “*țigan*” (Gypsy). For a discussion on the etymology of “rom” and “rrom”, see Yusuke Sumi, “Morphological analyses of Rromani terms related to law”, *Studia Universitatis Babes-Bolyai - Studia Europaea*, issue 64 (2019).

<sup>637</sup> NCCD, Decision no. 275/2010, para. 5.1.2.

<sup>638</sup> *Ibid.*

<sup>639</sup> *Ibid.* The word “*țigănie*” (Gypsydom/a Gypsy affair/related to Gypsies) is a derogatory term usually employed to refer to something which has degraded into Gypsydom or can be associated with Gypsies, i.e. is messy, disorganized, filthy, uncivilized.

<sup>640</sup> *Ibid.*

<sup>641</sup> *Id.*, paras. 6.23 and 6.24.

<sup>642</sup> *Id.*, para. 6.22.

NCCD's president since 2005, who wrote in his dissenting opinion that the article finds scapegoats in the Roma community and goes beyond the limits for exercising freedom of expression<sup>643</sup>.

The decision fails in its spectacular blindness to an obvious case of highly racist discourse and incitation to hatred, but what is even more problematic is that, corroborated with the cases concerning people of color, it becomes apparent that the NCCD does not have a clear grasp of how racism manifests in society and lets "subtler" forms of racism slip through the cracks in its gaze. Much like in Decisions 395/2016, 563/2019 and 159/2020 563/2019, discussed above, the NCCD only finds a violation of OG 137/2000 when it sees clear-cut insults with racist intent and when individuals are compared to animals<sup>644</sup>.

In the end, this plays into a more general theme of either lack of awareness of less extreme forms of racism or, even worse, downplaying or dismissing them. It is a theme that finds itself reproduced in many variations at several levels. In the case of Romanian legislation concerning or affecting minorities<sup>645</sup> (in particular the Roma) or establishing the antidiscrimination framework (as in the present section), we see it in the difficulties and back-and-forth motions these legal packages have and continue to go through to be implemented and, even after that, we see it in the hesitancy of providing them with functionality. Then at an institutional level, we see that bodies, such as the NCCD, specially tasked with providing an additional weapon against discrimination, are in the end rather ineffective in detecting and sanctioning anything less than the most egregious forms of racial discourse in present-day Romanian society.

<sup>643</sup> *Id.*, Separate opinion expressed by Board of Directors member Asztalos Csaba Ferenc, para. 3.2.

<sup>644</sup> Even though, ironically, in the article discussed in Decision 275/2010, the text of the article expressly associates people who vote for "gypsized politicians", and who are therefore also "gypsized", with animals, though generically: "These people, although they will not show themselves, they are loaded with money and don't give a damn about the truly poor 'social democrats', who constantly support them, in all kinds of elections, so they could get their hands on the breadbasket, while throwing them some breadcrumbs, like animals". See *id.*, para. 5.1.2.

<sup>645</sup> See Sections 3.2. and 3.3.

Importantly, despite the otherwise essential ability of the NCCD to hear individual cases, it has a history of hesitancy in issuing administrative fines, arguably its most potent tool. In one report compiled by the Council itself regarding its implementation of the RED between 2003 and 2010, from 129 cases heard on race and ethnicity, in only 32 were there fines issued, the NCCD's Board of Directors choosing to issue mere warnings in 65 cases and recommendations in 31 other cases<sup>646</sup>. The vast majority of these cases (97 out of the total 129) involved Roma petitioners, all while the NCCD's report lists "race/color" as a separate ground, distinct from the other groups enumerated (including Roma, Hungarians, Jews etc.)<sup>647</sup>, similar to what we have detected in the previous examination of parts of its case law. This hesitancy in issuing fines seems to have continued at least until 2013, with the sanctions receiving criticism for being immaterial and insufficiently dissuasive<sup>648</sup> when it comes to cases featuring discrimination based on race and ethnicity.

In issuing warnings and recommendations, the NCCD continues to interpret OG 137/2000 quite liberally, in the sense that despite it sanctioning discrimination only with administrative fines<sup>649</sup>, the Council looked to the more general framework established by Government Ordinance 2/2001<sup>650</sup>, which laid out the rules for sanctioning administrative offences<sup>651</sup> and which allows for warnings and recommendations in addition to fines. While cases of discrimination, as understood by OG 137/2000, are considered administrative offences, it has been argued<sup>652</sup> that the former is a *lex specialis* in relation to Government Ordinance 2/2001, and as such, the antidiscrimination regime should be applied by excluding warnings and recommendations. The NCCD's overreliance on the latter two has even been the focus of a 2013

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<sup>646</sup> National Council for Combating Discrimination, "Report on the implementation of the Race directive in Romania, 2003-2010" (2011), 32

<sup>647</sup> *Ibid.*

<sup>648</sup> Moisă, Rostas, "Civil Society Monitoring Report", 55.

<sup>649</sup> Art. 26 of OG 137/2000 only lists fines as the sanction to be applied in case of discrimination.

<sup>650</sup> Government Ordinance 2/2001 regarding the legal regime of contraventions, published in the Official Gazette no. 410/25.07.2001.

<sup>651</sup> Or petty/summary offences. The term in Romanian is *contravenție*, similar to the French *contravention*, a crime of less serious nature usually sanctioned by fines or warnings.

<sup>652</sup> Marin, Csonta, "Discrimination of Roma Communities. Romania National Report", 13.

preliminary ruling by the Court of Justice of the European Union in *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*<sup>653</sup> (The Accept Association v. the National Council for Combatting Discrimination). The ruling concerned a case of discrimination based on sexual orientation where a football club owner was issued a warning by the NCCD for remarks he previously made. Accept, an NGO advocating for LGBTQA+ rights was the petitioner in this case. However, in reasoning its choice for the sanction, the NCCD concluded that it followed the rules present in Government Ordinance 2/2001, whereby fines are prescribed within 6 months of the offense. Since in that case, the said 6 months had already lapsed by the time Accept filed the discrimination claim, the NCCD argued that it could only issue a warning. In interpreting the situation, the CJEU referred back to article 17 of the Equality Framework Directive, which held that Member States should make sure that sanctions for discriminatory behavior within the meaning of the Directive should be effective, proportionate and dissuasive. The Court further noted that “a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78”<sup>654</sup> and that the NCCD’s practice of issuing warnings, usually associated in the Romanian legal system with minor offenses, was “not commensurate to the seriousness of a breach of the principle of equal treatment”<sup>655</sup>. It therefore concluded that the Equality Framework Directive precludes situations where discrimination based on sexual orientation could only be sanctioned with warnings<sup>656</sup>.

Despite the case not being about race or ethnicity, it is safe to assume a similar outcome if the case had concerned any of the many more cases the NCCD decided on discrimination of Roma people, especially since the Race Equality Directive contains an identical requirement for sanctions in article 15. Notwithstanding this, the NCCD has since continued to issue both warnings and recommendations. Since 2010, where its own report on the implementation of the

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<sup>653</sup> Case C-81/12, Judgment of the Court (Third Chamber) of 25 April 2013: *Asociația Accept v. Consiliul Național pentru Combaterea Discriminării*. The Court of Justice of the European Union.

<sup>654</sup> *Id.*, para. 64.

<sup>655</sup> *Id.*, para. 70.

<sup>656</sup> *Id.*, para. 73.

RED stops, and until the end of 2023, the NCCD has issued a total<sup>657</sup> of 3 warnings, 12 fines and 2 recommendations in cases on race and 89 warnings, 136 fines and 61 recommendations in cases on ethnicity<sup>658</sup>. Since 2012, when the CJEU case was lodged by Accept, there has been indeed a significant uptick in the NCCD issuing fines which continues to this day, yet, at the same time, the Council still relies heavily on sanctions that are arguably ineffective and lack in dissuasive effect. Moreover, when the NCCD does issue fines in cases on racial or ethnicity-based discrimination, they are usually so low that even their dissuasive effect has been called into question<sup>659</sup>, most of them ranging between RON 1000-2000 (EUR 200-400).

Ultimately, while the NCCD does provide a useful venue for filing claims of discrimination and is perceived by regular courts as having an important say in such cases, we have also seen how it fails in several regards to identify and effectively sanction discrimination of Roma. Through its language and practice, it appears to strip Roma of the “badge of race” by funneling the vast majority of its cases that involve Romani petitioners or broader Roma communities under different grounds for discrimination, such as ethnicity and social category, where they are robbed of their particularity. This occurs despite the ability Council to operate with race, as provided by Romanian antidiscrimination legislation. Indeed, the NCCD does give some degree of operability to race, although even then it has a rather clear track record of negating its relevance for a Romanian socio-historical context by instead associating race-based discrimination with countries with a past of colonial practices or slavery. It expressly considers discrimination based on race as “the gravest form of discrimination”<sup>660</sup> as it quotes the ECtHR’s decision in *D.H. and*

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<sup>657</sup> Note that this total takes into consideration the number of warnings, fines and recommendations issued and not the number of cases where they were applied as sanctions. This is due to the reporting system of the NCCD. As such, in any given case, there might be several persons who were issued fines or other sanctions. Nevertheless, the aim of this endeavor is to showcase the NCCD’s over- or underusage of fines compared to less dissuasive sanctions, such as warnings and recommendations.

<sup>658</sup> See the NCCD’s reports at: <https://www.cncd.ro/rapoarte/>.

<sup>659</sup> Roma Civil Monitor, “March 2018 Roma Civil Monitor Report”, 8.

<sup>660</sup> NCCD, Decision no. 182/2016, Case no. 1A/2016, para. 5.33.



*Others v. the Czech Republic*<sup>661</sup>, but its thinnest case law is on race. It thus contributes to a rhetoric of othering race and adds to an already ubiquitous colorblindness in Romania.

Of course, one might argue that its case law on ethnicity makes up for this lack of case law on race and from a purely functional perspective, and there is some truth to this, since in the end, the aim of antidiscrimination law is to be effective and dissuade from discriminatory actions or practices. However, we have also seen that the NCCD has a preference for issuing warnings and recommendations over arguably more punishing fines in cases of ethnic and racial discrimination, even in the face of a critical decision by the CJEU.

Finally, even when looking at the fines issued, their amounts appear to be insufficiently dissuasive. Combined with the difficult journey the Council and Romanian antidiscrimination law have faced, fraught with initial inoperability as well as a lack of transparency and independence, one could see how this area of Romanian law has also been marked by the urgency to adhere to European standards in view of accession to the EU and consequently also by a interest convergence between successive Romanian governments and civil society, in particular NGOs representing Roma rights. Given how fast the European antidiscrimination directives were transposed into Romanian law, yet how ineffective they were rendered by robbing them of an independent equality body, it appears that Romanian lawmakers again engaged in mimetic compliance in order to satisfy external observers and quicken accession to the EU. However, their attempts were faced with criticism for several years leading to the 2007 accession, in particular targeting the effectiveness of the transpositions, as well as the independence and well-functioning of the NCCD.

Following its empowerment and reform in 2006, the NCCD finally started to build its own case law, many times intervening to curb some of the most egregious forms of discrimination against Roma, including condemning, although not always effectively sanctioning, hate speech from high

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<sup>661</sup> *D.H. and Others v. Czech Republic*.

dignitaries such as the President and Prime Minister<sup>662</sup> or, as we shall see in a later sub-section, fighting school segregation of Roma<sup>663</sup>. Notwithstanding some of the good work the NCCD has done over the years, it continues to de-racialize cases involving anti-Roma discrimination and fails to take a harsh stance against a structural problem by issuing ineffective sanctions. The recent election of the first Roma woman to the Council's Board of Directors in 2020<sup>664</sup> might signal a change, but it is too early to tell.

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<sup>662</sup> See, for example the Section 2.4. and Sub-section 3.7.1.

<sup>663</sup> See Sub-section 3.7.3.

<sup>664</sup> Delia Marinescu, "Lupta e o vindecare. Povestea primei femei rome de la consiliul anti-discriminare" [Struggle is healing. The story of the first Roma woman from the anti-discrimination council], *Scena9*, July 16, 2020, <https://www.scena9.ro/article/catalina-olteanu-CNCD-discriminare-romi>.

**Table 1:** NCCD cases on race

Ground for discrimination	Racial/ethnic identity of petitioners	Solution	Decision number
Race (“Article discriminates on the basis of race”)	Two radio stations and one newspaper refer to a person as “Syrian citizen” and insinuate that his actions in his conflict with a family allegedly illegally occupying his commercial space are “terrorist”	No competence for the radio messages No discrimination in the case of the newspaper article	777/2008
Race (“Refusal was because of racial hatred”)	Roma person not being given fiscal certificate by mayor after buying house because locals opposed a Roma moving there	No discrimination	17/2008
Race (“Racist and xenophobic affirmations”)	Anti-Roma and antisemitic remarks	No discrimination	190/2009
Race (“Nationalist-chauvinistic actions, instigation to racial and national hatred”)	One antisemitic banner; another banner saying that Szekler land is not Romania	Discrimination (RON 600 Fine)	419/2010
Race (“Right to dignity touched through racist affirmations”)		No discrimination	137/2010
Race (“News piece. Racial discrimination”)	News article entitled “Gypsyization of Romania” deploring how “Gypsy culture” has taken over Romania	No discrimination	275/2010
Race (“Xenophobic, hostile and racist environment”)	News portal with comments that were discriminating on the basis of race	No discrimination	386/2010
Race	Half-Nigerian person was refused his luggage by a bus driver	No competence	52/2011
Race (“Campaign of intimidation – race, ethnicity, age, social category, supposed belonging to a sexual minority ‘homosexuals’”)		No discrimination	409/2011

Race	Person of color (African-Romanian) was disqualified from a TV show	Petition was withdrawn	589/2013
Race (“Instigating and inciting racial hatred, displaying banners with racist and xenophobic messages”)	Football fans were chanting racist chants at a match; anti-Roma messages	No discrimination	55/2013
Race	Child is marginalized in school because he is “mulatto”	No discrimination	44/2014
Race	Discriminatory affirmations because petitioner and her son are Senegalese-Romanian and “mulatto”	No discrimination	643/2014
Race (“Insults from neighbors on racial grounds”)		Incomplete petition	295/2015
Race (“Insults and abusive behavior towards the petitioner and the petitioner’s wife on a racial basis”)	Petitioner is from Ghana	Incomplete petition	106/2015
Race (“Racist gestures”)	Person of color handball player from a French team was greeted with monkey sounds by the audience and called a monkey	Discrimination (RON 2000 to 5000 fines)	182/2016
Race (“Racism”)	Radio anchor comparing Congolese football fans with monkeys	Discrimination (RON 5000 fine to each of the two defendants)	395/2016
Race	Sudanese petitioner suffered racist affirmations	Discrimination (warning)	750/2016
Race (“Insults on the basis of race and ethnicity”)	Iraqi petitioner was named “two-cent Arab”	Discrimination (RON 1000 fine)	84/2017
Race	Person of color	No discrimination	268/2017
Race	Children’s magazine shows white parents with black children and asks children to identify the intruder	Incomplete petition	538/2017
Race (“Racist insults and affirmations”)	Person was called “black” in a derogatory way and “crow”	No discrimination	186/2018
Race (“Racist remarks”)	American tennis player Serena Williams was compared to a monkey	Discrimination (RON 8000 fine)	563/2019

Race (“Racist remarks”)	Petitioner was called “stinky/dirty black” during football match by another player	Discrimination (a RON 10000 fine for player and a RON 10000 fine for his football club)	861/2019
Race (“Remarks referring to race”)	Remarks such as: “ <i>șatră de negri</i> ” <sup>665</sup> to refer to Kenyan citizens, and “blacks stay in the jungle”	No competence (insulted husband asked to send the case to the court)	241/2019
Race (“...creates an atmosphere of hostility towards people of color”)	Mayor referred to several African nations as descending from trees and that they “will conquer us and become our bosses”	Discrimination (RON 10000 fine)	93/2020
Race	Mayor of Bucharest used the term “black bar” to refer to her predecessor’s office.	No discrimination	159/2020
Race (“Incitation to racial hatred”)	Remarks such as: “You destroyed Romania with your blacks”	Discrimination (warning)	212/2020
Race	Petitioner was called “black monkey” during rugby match	No discrimination	617/2020

<sup>665</sup> “*Șatră*” is usually understood to refer to a nomadic Roma group or community or to tents. The term is sometimes used in a derogatory fashion.

### 3.7 Access to social rights

In a previous chapter<sup>666</sup>, we have seen how Roma have been historically marked out as a social category, usually associated by successive Romanian governments, be them liberal, fascist or communist, with vagrancy, nomadism and joblessness. Despite the apparently socio-economic paradigm used in these cases, what lingers behind many past and present Romanian policies affecting or targeting Roma are essentially racial elements. We have seen in the section discussing the Romanian NRISs how core policies or frameworks which are supposed to inform further, more detailed and targeted policies and laws can carry with them stereotypes of Roma. Conversely, while some policies or laws may not even carry hidden or overt forms of racialization, they may still be robbed of their effectiveness through underfunding, a lack of institutional cooperation in implementing them or avoidance of tackling complex issues in an integrated manner. In these latter scenarios it becomes considerably harder to detect whether systemic racism plays a part in rendering these policies or laws inoperable.

Despite the difficulties inherent in any attempt to catalogue the myriad of ways in which Romanian law racializes Roma without studies and statistics, there are certain key areas where Romani access to social rights appears to be affected drastically by systemic racism. In the following section, we will first look into access to healthcare (**Subsection 3.7.1**), with particular focus on Roma women's access to reproductive healthcare and more specifically on the Roma Health Mediator program (hereinafter, RHS). Afterwards, we will move on to discuss housing rights and more specifically the issue of forced evictions, arguably one of the areas where Roma are most visibly discriminated against (**Subsection 3.7.2**). Finally, we will also look into the persistence of racial segregation in education (**Subsection 3.7.3**). While these topics do not cover all aspects pertaining to social rights, they do present crucial areas where discrimination

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<sup>666</sup> See Chapter 2 and more specifically Section 2.3.

against Roma is well-known not only on a societal level in Romania, but also to international and regional human rights organizations, who constantly make observations on these grounds.

### 3.7.1 Reproductive healthcare and Roma Health Mediators

If one were to find one life aspect where ‘equal misery’ arguments would find the most readily accepting crowd when it comes to comparing the living experiences of Roma and ethnic Romanians, it would probably be access to healthcare. Healthcare is arguably one of the most divisive subjects in Romanian society, especially following the “Colectiv” fire of 2015, where a nightclub that caught fire caused an uproar in particular because of the high number of preventable deaths that occurred not directly due to the fire, but because of unsanitary conditions in hospitals<sup>667</sup>. More generally, life expectancy is the second lowest in the EU and healthcare spending by the Romanian Government is considerably below the EU average, while preventable mortality rates are three times the EU average<sup>668</sup>. However, within this rather bleak context, there is still a sizeable gap between the healthcare experiences of Roma and those of the rest of the populace. Life expectancy of Roma men is 5.3 years lower than that of the men from the general population, while for Roma women the discrepancy in regard to their Romanian counterparts is even higher – their life expectancy is 8.6 years lower<sup>669</sup>. When it comes to health insurance coverage, compared to the 85.5% of the general population, only 58% of Roma were covered by health insurance in Romania in 2021<sup>670</sup>. Finally, according to the Fundamental Rights

<sup>667</sup> Radu Dumitrescu, “Eight years after the Colectiv club fire, Romania still lacks a dedicated center for severe burn injuries”, Romania Insider, 30 October, 2023, <https://www.romania-insider.com/eight-years-colectiv-club-fire-bucharest-2023>.

<sup>668</sup> See OECD/European Observatory on Health Systems and Policies, “Romania: Country Health Profile 2021, State of Health in the EU, OECD Publishing, Paris/European Observatory on Health Systems and Policies” (2021), [https://health.ec.europa.eu/system/files/2021-12/2021\\_chp\\_romania\\_english.pdf](https://health.ec.europa.eu/system/files/2021-12/2021_chp_romania_english.pdf).

<sup>669</sup> European Union (Fundamental Rights Agency), “Roma in 10 European countries. Main results”, 48.

<sup>670</sup> *Id.*, 50. See also the OECD, “Health status database”, [https://stats.oecd.org/index.aspx?DataSetCode=HEALTH\\_STAT](https://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT).

Agency, 16% of Romanian Roma felt discriminated against in 2021 when accessing health services because of being Roma<sup>671</sup>.

Against this backdrop, it is worth looking into the particular issue of Roma women's access to reproductive healthcare. The reason for focusing on this topic is not only because it highlights the particularities of Roma women's positionality, which is marked by the intersection of race, gender and class amongst others, but also due to how prone Central and Eastern European societies in general are to racializing Roma women's bodies as objects of population control. Czechia<sup>672</sup> and Slovakia<sup>673</sup> in particular have been found to be home to systemic practices of coercive sterilization of Roma women not only during Communism, but also following the breakup of Czechoslovakia<sup>674</sup>, with infamous ECtHR cases such as *V.C. v. Slovakia*<sup>675</sup>, *N.B. v. Slovakia*<sup>676</sup>, *I.G. and Others v. Slovakia*<sup>677</sup>. A 2004 case involving Hungary, *A.S. v. Hungary*<sup>678</sup>, albeit decided by the UN Committee on the Elimination of Discrimination Against Women (CEDAW) highlighted similar practices there.

From what we are aware of, there does not seem to be any such systemic practice of coerced sterilization having occurred or occurring in Romania, as there is no data on the topic<sup>679</sup>. However, discourse on the issue has been marked by overtly racist and eugenic remarks. Such is the example posed by a far-right group from Timișoara who posted in 2013 on their blog an

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<sup>671</sup> *Id.*, 49.

<sup>672</sup> European Roma Rights Centre, "Coercive and cruel: Sterilisation and its Consequences for Romani Women in the Czech Republic (1966-2016)" (2016), [https://www.errc.org/uploads/upload\\_en/file/coercive-and-cruel-28-november-2016.pdf](https://www.errc.org/uploads/upload_en/file/coercive-and-cruel-28-november-2016.pdf).

<sup>673</sup> Centre for Reproductive Rights, Counselling Centre for Citizenship, Civil and Political Rights "Body and Soul: Forced Sterilisation and Other Assaults on Roma Reproductive Freedom in Slovakia" (2003), [https://reproductiverights.org/sites/crr.civicaactions.net/files/documents/bo\\_slov\\_part1.pdf](https://reproductiverights.org/sites/crr.civicaactions.net/files/documents/bo_slov_part1.pdf).

<sup>674</sup> According to an estimation made by the Czech Ombudsman, between 1970 and 1990, around 90.000 Roma women were left infertile due to coerced sterilization surgeries. See Beth Walker, ed., "State of the World's Minorities and Indigenous People, Minority Rights Group International" (2013), 183, <https://minorityrights.org/app/uploads/2024/01/download-1293-state-of-the-worlds-minorities-and-indigenous-peoples-2013.pdf>.

<sup>675</sup> *V.C. v. Slovakia*.

<sup>676</sup> *N.B. v. Slovakia*.

<sup>677</sup> *I.G. and Others v. Slovakia*.

<sup>678</sup> *A.S. v Hungary*, Communication No. 4/2004, UN Doc. CEDAW/C/36/D/4/2004, 29 August 2004.

<sup>679</sup> Roma Civil Monitor, "Civil society monitoring report on implementation of the national Roma integration strategies in Romania: Assessing the progress in four key policy areas of the strategy" (2018), 56, hereinafter "December 2018 Roma Civil Monitor Report".



“offer” of RON 300 for any Roma woman who can prove that she underwent voluntary sterilization surgery<sup>680</sup>. The same year, Rareș Buglea, then a member of the Romanian National Liberal Party and member of the local council in Alba-Iulia openly supported sterilizing Roma women and decried that in the future, those “Gypsies who are uneducated and not integrated” will continue to overpopulate the country to the point that the proportion will be “five (of their children) to one (of ours)”<sup>681</sup>. Also in 2013, then President Traian Băsescu lamented in a public speech how “Gypsy women can have five-six children and Romanian women can’t”<sup>682</sup>. Faced with these cases, human rights and Roma NGOs released a statement condemning the rise of pro-sterilization discourse in Romanian society<sup>683</sup>. While there is no causal link between these three examples which all occurred within a few months of each other, they attest to a more generalized perception of Roma women as overly fertile, uneducated and as the principal harbingers of a future population shift which will see white Romanians in the minority.

Ultimately, the first two instances of hate speech were indeed sanctioned: the Timișoara group was found criminally liable for promotion of fascist, racist or xenophobic ideologies<sup>684</sup>, while the local councilor from in Alba-Iulia was given a RON 8.000 (around EUR 1.700) fine by the

<sup>680</sup> The post read as following (translated from Romanian): “We offer a reward of 300 lei to each Gypsy woman from the Banat area, who can present a medical certificate proving that she voluntarily submitted to a sterilization operation in the year 2013. If they cannot educate their offspring to stop being a burden on Romanian society, we offer them 300 lei guaranteed for the voluntary sterilization operation performed in the year 2013. The offer is as serious as possible, and those interested should contact the Autonomous Nationalists by e-mail”. Carmen Gheorghe, “Cu fustele-n cap pentru feminismul rom” [With skirts above the head for Roma feminism], Dorobanțu, Gheorghe, eds, *Problema românească: o analiză a rasismului românesc*, 137-138.

<sup>681</sup> Gheorghe, “Cu fustele-n cap pentru feminismul rom”, 138.

<sup>682</sup> Digi24, “T. Băsescu, despre natalitate: Cum Dumnezeu femeia romă poate ține cinci-șase copii, iar româncă nu poate?” [T. Băsescu, about birth rate: How on earth can a Roma woman have five or six children, and a Romanian woman can’t?], Digi24, June 18, 2013, <https://www.digi24.ro/stiri/actualitate/politica/t-basescu-despre-natalitate-cum-dumnezeu-femeia-roma-poate-tine-cinci-sase-copii-iar-romanca-nu-poate-83166>.

<sup>683</sup> Asociația pentru Libertate și Egalitate de Gen A.L.E.G et al., (2013, November 21) “Sterilizarea femeilor rome - expresia urii sistematice și instituționale” [The sterilization of Roma women - expression of systematic and institutional hatred], *Feminism Romania*, November 21, 2013, <https://www.feminism-romania.ro/activism/38-ong/1174-sterilizarea-femeilor-rome-expresia-urii-sistematice-i-instituționale>.

<sup>684</sup> HotNews, “Timișoara: Dosar penal pentru rasism, după ce o grupare nationalistă a anunțat că recompensează femeile rome care se sterilizează” [Timișoara: Criminal case for racism, after a nationalist group announced that it rewards Roma women who undergo sterilization], *HotNews*, January 11, 2013, <https://www.hotnews.ro/stiri-esential-13985368-timisoara-dosar-penal-pentru-rasism-dupa-grupare-nationalista-propus-sterilizarea-femeilor-rome.htm>.

NCCD<sup>685</sup>. Traian Băscu's comments, on the other hand, were deemed by the NCCD as not discriminatory<sup>686</sup>. Even though the NCCD retained that the then President's statement did contain negative stereotypes on the role of women in society and on the evolution of Roma birth rate and "disapproves of the content of the statement", it found that the remarks could not be construed as inciting to discrimination based on gender or race<sup>687</sup>. If anything, it considered that public opinion countered the remarks and that "precisely such public debates contribute to the progress of a society, to the dismantling of negative stereotypes towards a group of people"<sup>688</sup>. The NCCD seems to think that promoting such negative stereotypes, as it itself described them, somehow contributes to their dismantling. Equally curious, the NCCD found no intersection between race and gender, instead treating the remarks as containing stereotypes on women and Roma, but not Romani women in particular. In truth, it would take until 2017 for the NCCD to find a case of intersectional discrimination against a Romani woman based on gender and ethnicity (though not race), with Decision 484/2017<sup>689</sup>.

The lack of any proven systemic sterilization of Romani women cannot however exclude other attempts to control reproduction. Communist authorities under Ceaușescu, while banning contraceptives and abortion for the general population in an effort to increase natality, were also willing to turn a blind eye to or even encourage abortions among the Roma. Initially, in an effort to drastically increase the population of the country, communist Romanian authorities sought to

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<sup>685</sup> Digi24, "Decizie CNCD. Consilierul local care a propus sterilizarea femeilor rome, amendat cu 8.000 de lei" [NCCD decision. The local councilor who proposed the sterilization of Roma women, fined 8.000 lei], *Digi24*, November 23, 2013, <https://www.digi24.ro/stiri/actualitate/social/decizie-cncd-consilierul-local-care-a-propus-sterilizarea-femeilor-rome-amendat-cu-8-000-de-lei-139518>.

<sup>686</sup> Raluca Pantazi, (2013, 3 July) "Consiliul National pentru Combaterea Discriminarii: Declaratiile lui Traian Basescu referitoare la natalitate nu sunt discriminatorii" [National Council for Combating Discrimination: Traian Basescu's statements regarding birth rate are not discriminatory], *HotNews*, July 3, 2013, <https://www.hotnews.ro/stiri-esential-15118214-consiliul-national-pentru-combaterea-discriminarii-declaratiile-lui-traian-basescu-referitoare-natalitate-nu-sunt-discriminatorii.htm>.

<sup>687</sup> *Ibid.*

<sup>688</sup> *Ibid.*

<sup>689</sup> NCCD Decision 484/2017, Case no. 98/2017. The NCCD held that: "The defendant's claims create a distinction based on ethnicity and gender that has the effect of restricting the exercise, under equal conditions, of the right to dignity. The board of directors finds that the act specifically targets the dignity of Roma women, thus the distinction is based on two criteria, representing multiple discrimination".

reverse their previous stance on abortions framed by Decree no. 463 from 1957<sup>690</sup>, which legalized voluntary abortions for the first time in the country's history (although abortions for medical reasons were first legalized with the adoption of the 1936 Criminal Code). The result of this change of policy was the infamous Decree no. 770 from 1966<sup>691</sup> through which contraceptives were banned, while abortions were severely restricted, except for a few cases including women over 45, those who already bore four children or cases where the pregnancy was due to incest<sup>692</sup>. Decree 770 was later modified in 1985 to increase the number of children required for an abortion to be legal from four to five, while contributions for those above 25 and childless were raised<sup>693</sup>.

While the decree did achieve its aim of boosting natality, it also led to a substantial increase in illegal or sometimes botched and even fatal abortions which had long-lasting effects on those affected and remains a tragic moment that is still very much present in Romanian collective memory. Another persistent effect was a significant increase in the number of orphans, which, by the end of the communist regime, resulted in overcrowded orphanages and the emergence of a “baby trade” for mothers wishing to give their children for adoption in exchange for money or other benefits<sup>694</sup>. However, one aspect which is usually missing from discourse in Romania surrounding the banning of abortions and the orphan crisis of the late 1980's and early 1990's is that an important number of orphans were Roma. In one extensive report on reproductive policies under Ceaușescu, sociologist Gail Kligman underlines how Roma were over-represented in orphanages and also in the so-called “baby trade”:

“According to U.S. Consular representatives, most of these children have been gypsies, or ‘Roma’. Though they are notably dark skinned by Romanian criteria, westerners do not generally consider them to be markedly different in appearance. Indeed, it is believed that Romanian children, including gypsies, are popular in

<sup>690</sup> Decree no. 463 of 30 September 1957 for the approval of pregnancy interruptions.

<sup>691</sup> Decree no. 770 of 1 October 1966 for the regulation of the interruption of the course of pregnancy.

<sup>692</sup> *Id.*, art. 2.

<sup>693</sup> Gail Kligman, “When abortion is banned: The politics of reproduction in Ceausescu's Romania, and After”, *The National Council for Soviet and East European Research* (1992), 18.

<sup>694</sup> *Id.*, 37.

western adoption circles because they are Caucasian. Given that prejudice against the gypsies is unlikely to be erased in the near future in Romania, adoption is thought to provide a humanitarian road out for some of these children whose chances at productive lives would otherwise be slim. Many Romanians view the exodus of adopted gypsy children as a legitimate means to rid the country of them at the expense of foreigners; there are others who resent the squandering of western altruism and resources on gypsies.”<sup>695</sup>

The disproportionate representation of Roma children among Romanian orphans offered for adoption to families from Western countries, including the US, was also signaled by Roelie Post, a former European Commission civil servant who worked on Romania’s accession to the European Union and uncovered many child rights violations. Post also highlighted in her book<sup>696</sup> and in a recent interview with Radio Free Europe Romania<sup>697</sup> that in many cases, Romani women were pressured to sign adoption papers, despite not knowing their content, while comparing the situation with that of Native American children in North America, many of whom were dispersed via adoption.

It is important to take note of the racial undertones surrounding many of these adoptions, as well as the different ways in which Roma children were perceived racially as “Caucasian” by US adopting families compared to how they were framed as racially inferior by Romanian standards. However, going back to the issue of reproductive healthcare, we can also see that, due to their perceived higher natality rate, Roma were considered a social problem by communist authorities, who, in a major derogation from their pronatalist position, sought to dissuade minorities from reproducing. Roma were particularly targeted by this “exemption” from the ban on abortion, the official reason being that they were considered backward socially and culturally and that their reproduction was a cause of concern for their integration into the socialist society envisaged by the Romanian Communist Party. Already in 1980, despite intensifying the pronatalist campaign

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<sup>695</sup> *Id.*, 37.

<sup>696</sup> Roelie Post, *Romania for export only: The untold story of the Romanian orphans* (Eurocomment Diffusion, 2007).

<sup>697</sup> Ana M. Ciobanu, “Interviu. Amintiri din perioada „exportului” de orfani din România. Roelie Post: ‘Aș fi sperat că această istorie este închisă, dar nu e’” [Interview. Memories from the period of the ‘export’ of orphans from Romania. Roelie Post: “I would have hoped that this history is closed, but it is not”], *Europa Libera Romania*, December 26, 2022, <https://romania.europalibera.org/a/adoptii-internationale/32189261.html>.

for the majority population, Romanian authorities sought not to encourage parents who were not engaged in a “useful social activity” to have more than five children<sup>698</sup>, thus trying to target Roma families in particular, which were seen as living on child subsidies.

Again, as we have previously seen in Section 2.3, racialization of Roma persisted throughout the duration of the communist regime despite the official dogma being that they are a social problem rather than a racially inferior group. Nevertheless, looking beyond official dogma, we see that communist authorities continued to perceive Roma through a highly racialized lens and controlling their population through reproduction policies (or deviations from them) was seen as an effective tool in fighting the “Gypsy problem”.

Following the fall of the communist regime, Romani women continued to be seen as “welfare queens” that are highly fertile and thus are the “reproducers of a dangerous population”<sup>699</sup>. When critically analyzing the road many post-communist European countries took in their transition towards market economies, it is not surprising that Romania followed the same trends as its neighbors and absorbed much of the neoliberal discourse on “welfare dependents”, as highlighted by Angéla Kóczé<sup>700</sup>. We have seen previously in this chapter that Romani women are targeted in particular by Romanian media and public figures for their alleged burdening of the welfare system and reproducing an unwanted population as examples of how neoliberal discourses preserved racial, gendered and classed bias.

In this context, we turn our attention to one particular example where this gendered, classed and racialized discourse on Romani women takes a perverse form – the Roma Health Mediator (RHM) program. The RHM program started initially as a grassroots project in 1993 by Romani CRISS, a Romanian Roma NGO, with the aim of enlisting the help of members of the Roma community to act as mediators between the latter and the health system and to facilitate Roma

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<sup>698</sup> Barany, “Politics and the Roma in state-socialist Eastern Europe”, 426.

<sup>699</sup> Angéla Kóczé, “Gendered and Racialized Social Insecurity of Roma in East Central Europe”, in Huub Van Baar, Angéla Kóczé, *The Roma and their struggle for identity in contemporary Europe* (Berghahn Books, 2020), 140.

<sup>700</sup> *Ibid.*

access to healthcare<sup>701</sup>. The RHM program proved to be quite effective and it was soon adopted by other European countries with Roma minorities. In 2001, the Romanian Government institutionalized the program to a certain extent by adding Roma Health Mediator as one of the official list of occupations and in 2007, the National Council for the Professional Training of Adults approved occupational standards for health mediation<sup>702</sup>. Also in 2001, the hiring of Roma Health Mediators was added in the first Romanian NRIS as a measure to be undertaken by the government and other authorities<sup>703</sup>. Subsequent strategies would continue to include similar measures. According to one report, in 2007, the number of RHMs rose to 475 operating in Romania<sup>704</sup>.

Despite the success of the program, the RHM system was decentralized in 2009 and since then, the financial and organizational responsibilities fell on the mediators themselves, as well as associations representing them and local authorities which were less inclined to hire mediators, arguing financial difficulties<sup>705</sup>. Moreover, in a move that mirrors other areas of policies targeting Roma, decentralizing the RHM program has allowed the Roma Party to effectively control their organization by electing local RHM heads<sup>706</sup>. Thus, like in many other areas of effective implementation of national policies on Roma, such as those included in the NRISs, the Roma Party is put in the position of sole partner to successive Romanian governments. We can see that the same client system that has its roots in the functioning of the reserved seats system in Parliament (discussed in Section 3.3) is reproduced locally and in the specific case of the RHM program.

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<sup>701</sup> Paul Silva, ed., “Roma Health Mediators: Successes and Challenges” (2011), 50, <https://www.opensocietyfoundations.org/publications/roma-health-mediators-successes-and-challenges>.

<sup>702</sup> *Id.*, 51.

<sup>703</sup> Approved through Government Decision 430/2001 (HG 430/2001). See also measure no. 19 of the 2001 NRIS.

<sup>704</sup> Silva, 50.

<sup>705</sup> *Ibid.*

<sup>706</sup> *Ibid.*

As a consequence of this decentralization, the number of RHMs shrunk from 475 in 2007 to only 380 by the end of 2010<sup>707</sup>. Despite tending to a greater population than in 2001, the number of health mediators would only increase to 464 in 2023, according to a recent report done by the Romanian Government on the implementation of the latest NRIS<sup>708</sup>. Furthermore, the process also created new tensions between the health mediators and local authorities, including mayors, local councils and healthcare providers who either refused to hire RHMs, failed to cooperate with those that did exist and even tasked them with jobs unrelated to their occupation<sup>709</sup>.

Despite their success in improving the Roma population's access to healthcare<sup>710</sup>, the RHM program functions within a profoundly racialized, gendered and classed environment, where Roma women in particular are reluctant to visit doctors due to many of them being overtly racist or altogether refusing to see Roma patients<sup>711,712</sup>. While many doctors, nurses or other healthcare staff have a negative image of Roma in general, their interactions with Romani women in particular bring to light their eugenic beliefs<sup>713</sup>. Ideas of Romani women's "excessive fertility" and the need to segregate them from Romanian patients were brought up during interviews for

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<sup>707</sup> *Ibid.*

<sup>708</sup> The Romanian Prime Minister's Chancellery, The National Roma Agency, "Raport anual cu privire la progresul înregistrat în implementarea strategiei guvernului României de incluziune a cetățenilor români aparținând minorității rome pentru perioada 2022-2027. Perioada supusă evaluării: mai 2022 – aprilie 2023" [Annual report on the progress made in the implementation of the Romanian government's strategy for the inclusion of Romanian citizens belonging to the Roma minority for the period 2022-2027. Evaluation period: May 2022 – April 2023] (2023), 7, <https://sgg.gov.ro/1/wp-content/uploads/2023/12/RAPORT-2.pdf>.

<sup>709</sup> Cosmin Briciu, Vlad Grigoraș, "Evaluarea impactului programului de mediere sanitară" [Evaluating the impact of the health mediation program] (2011), [https://www.researchgate.net/publication/344224572\\_Evaluarea\\_impactului\\_programului\\_de\\_mediare\\_sanitara\\_M\\_S\\_10062011](https://www.researchgate.net/publication/344224572_Evaluarea_impactului_programului_de_mediare_sanitara_M_S_10062011).

<sup>710</sup> *Id.*, 7.

<sup>711</sup> According to one report, the fact that 30% of Romanian Roma are not registered with their GPs is also due to the reluctance of medical practitioners to receive Roma patients. See European Monitoring Centre on Racism and Xenophobia, "Breaking the Barriers – Romani Women and Access to Public Health Care" (2003), 39, [https://fra.europa.eu/sites/default/files/fra\\_uploads/180-ROMA-HC-EN.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/180-ROMA-HC-EN.pdf).

<sup>712</sup> More recently, in August 2023, a Romani woman in a village close to Slobozia, Ialomița County, went to the local hospital to give birth. The hospital manager called an ambulance, citing lack of a gynecology ward, so that the woman could reach a hospital in Slobozia, 60 km journey. Meanwhile, the woman was not consulted, but instead told to wait for the ambulance outside. She ended up giving birth in front of the hospital. See The European Roma Rights Center, "Activists take legal action after Romani woman gives birth on pavement outside hospital in Romania", *European Roma Rights Centre*, August 24, 2023, <https://www.errc.org/press-releases/activists-take-legal-action-after-romani-woman-gives-birth-on-pavement-outside-hospital-in-romania>.

<sup>713</sup> Charlotte Kühlbrandt, "Confronting racism in family planning: a critical ethnography of Roma health mediation", *Sexual and Reproductive Health Matters*, 27:1 (2019), 83-92, <https://doi.org/10.1080/09688080.2019.1571324>.

one ethnographic study by medical practitioners who harbored a fear of Roma overpopulation<sup>714</sup>. Romani women were, according to them, having too many children<sup>715</sup>. Within this logic, contraceptives and abortion are seen as effective measures aimed at controlling the Roma population by encouraging Romani women to use them.

One of the less talked about consequences of this context is that many Roma health mediators themselves have internalized much of the racializing discourse surrounding reproductive health of Romani women. The position of the Roma health mediators puts them in a unique position between the “civilized” perception on reproduction, whereby contraceptives are seen as emancipating women from their husbands, and the “primitive” beliefs of conservative and patriarchal Roma communities where abortion and contraceptives are seen as a moral evil<sup>716</sup>. Thus, many see their mission as a civilizing one, aiming to empower their peers to lead better lives. It is mostly accurate that the health mediators do improve awareness within Roma communities of healthcare possibilities, especially considering the widespread belief that some benefits which are free of charge need to be paid. Even when it comes to giving out contraceptives and informing about abortions, they indeed manage to empower Romani women to some extent, both in respect to Roma men and the rest of the community and towards healthcare officials.

At the same time, some health mediators are reported stating that the reason for Romani women not taking contraceptives is rather cultural<sup>717</sup>. Interestingly, they reproduce the same discourse that many health officials, Romanian media and some public figures promote, which is that

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<sup>714</sup> Enikő Magyari-Vince, “Social Exclusion at the Crossroads of Gender, Ethnicity and Class A View of Romani Women’s Reproductive Health” (2006), 36-38. In this study, the author reports on the perception many doctors have of Romani women: “In the attitudes of doctors towards Romani women I was able to uncover some ‘double talk’. Their gestures, words used in characterizing them (as quoted above) and informal confessions (about the “fact” that mainly Roma women seek abortions at a state clinic; about the “need” to segregate them in order “to protect our Romanian patients”; or about the “immorality of an abortion”) reveal the existence of mechanisms aimed at excluding Romani on the basis of their ethnicity and when from a particular location”.

<sup>715</sup> *Id.*, 36-38.

<sup>716</sup> Kühlbrandt, 89.

<sup>717</sup> *Ibid.*



Romani women are more backward and thus reluctant to use the modern, “civilized” solution of contraception, preferring to have more children. Although it is not clear what is the extent of this phenomenon and how much it negatively affects Romani women, it does present itself as a problematic situation. A program which, like many forms of positive action already discussed in this thesis, aims at emancipating Roma people and breaching the gap between Roma and the majority society, can at the same time reproduce existing forms of racialization and shift the blame from structural racism present in Romanian society and the health system to cultural differences<sup>718</sup>. All of this is compounded also by the fact that the RHM system is in practice under the control of the Roma Party, which, as mentioned before, is mostly subservient to successive Romanian governments and receives very few Roma votes.

Moreover, the way the system avoids tackling structural issues presents itself as all the more perverse when we consider that almost all RHMs in Romania are Romani women themselves<sup>719</sup>. As a matter of fact, the job of Roma Health Mediator is considered so intrinsically linked with women employees that in some Romanian language reports, the term ‘mediator’ is found in its feminine form (*mediatoare*) to refer to all mediators<sup>720</sup>, despite the general preference in Romanian to consider the masculine gender the default one when referring to jobs or positions.

Ultimately, racialization takes two forms which appear to be contradictory. On the one hand, there is the discourse of health officials which also affects health programs and are aimed at subtle forms of population control through guiding Roma women towards methods of contraception. On the other hand, due to the ineffective way in which information on contraception is passed or due to doctors conditioning otherwise free contraception on what for all intents and purposes are bribes, many Roma women feel that contraception is expensive and

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<sup>718</sup> *Ibid.*

<sup>719</sup> Silva, ed., “Roma Health Mediators: Successes and Challenges”, 25.

<sup>720</sup> See, for example Briciu, Grigoraș, “Evaluarea impactului programului de mediere sanitară”.

therefore either do not access the various forms of contraception available or discontinue their visits to the doctor.

### 3.7.2 Housing rights and evictions

Following access to healthcare, housing rights are usually singled out by human rights reports as another area where Romanian Roma are faced with systemic and persistent discrimination. According to the European Union's Fundamental Rights Agency, for example, in 2021, 70% of Romanian Roma were faced with housing deprivation, down from 83% in 2016<sup>721</sup>. Both of these figures are some of the highest in Europe. Also one of the highest is the percentage of Roma living in overcrowded houses: 87% in 2021, this time going up from 76% in 2016<sup>722</sup>. Housing conditions, such as access to water, are another systemic issue, with 40% of Roma living without running tap water in 2021, down from 68% in 2016, yet still one of the highest figures in Europe<sup>723</sup>.

Against this backdrop, forced evictions are highlighted as a phenomenon that disproportionately targets entire local Roma communities, compared with the mostly individual basis for evictions in the case of non-Roma<sup>724</sup>. Like many issues that affect Romanian Roma and which have been already discussed in this thesis, forced evictions not only occur within a profoundly racialized context, but are themselves a form of racialization of Roma. Also similarly to other areas of anti-Roma systemic and structural bias, such as police brutality, anti-Roma riots and discrimination in access to healthcare, this phenomenon too has its roots in how the previous communist regime handled the "Roma issue".

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<sup>721</sup> European Union (Fundamental Rights Agency), "Roma in 10 European countries. Main results", 52.

<sup>722</sup> *Id.*, 54.

<sup>723</sup> *Id.*, 55.

<sup>724</sup> Marian Mandache, "A brief insight into the systemic racism Roma face in accessing housing in Romania" (2020), [https://www.feantsa.org/public/user/Resources/magazine/2020/Winter%20Roma/Systematic\\_Racism.pdf](https://www.feantsa.org/public/user/Resources/magazine/2020/Winter%20Roma/Systematic_Racism.pdf).

Thus, as part of the socialist state's understanding of housing as a basic social right, social housing projects during the communist regime aimed at transitioning Romanian society from agrarian to industrialized. This basic premise was coupled with the authorities' goal of homogenizing Romanian society, which, especially under Ceaușescu, meant amongst others that national minorities would be awarded positions and adjacent social housing in areas away from where their original communities were territorially concentrated. Such a socially construed policy actually hid the true aim, which was to Romanianize the country. However, since Roma were never officially considered a co-inhabiting nationality, they were not targeted as such, but as a socially and economically disadvantaged category and often, though not as systematically, as a “problem” population riddled with vagrancy, crime and nomadism. As a consequence of the regime's attempt to curb Roma nomadism and to “integrate” them into the socialist society and of their more general concern for housing rights, many Roma also benefited from social housing during this period. This did not mean that the pathologization of perceived Roma tendencies of criminality and homelessness stopped. If anything, communist authorities were very strict to enforce anti-vagrancy laws on Roma, who were considered essentially “unproductive” as a community<sup>725</sup>.

Following the fall of the communist regime and during the subsequent chaotic transition to a market economy, many former owners of flats and houses nationalized during Communism started flooding Romanian courts with claims for restitution of nationalized properties, based on Laws 18/1991<sup>726</sup>, 112/1995<sup>727</sup> and 10/2001<sup>728</sup>. What resulted was a case of “super-homeownership”, as Irina Zamfirescu and Liviu Chelcea refer to the phenomenon, whereby

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<sup>725</sup> Irina Zamfirescu, Liviu Chelcea, “Evictions as infrastructural events”, *Urban Geography* (2020), 6, <https://doi.org/10.1080/02723638.2020.1778281>.

<sup>726</sup> Law 18/1991 on the land fund, published in the Official Gazette no. 1/05.01.1998.

<sup>727</sup> Law 112/1995 for the regulation of the legal situation of some buildings intended for housing, passed into the ownership of the state, published in the Official Gazette no. 279/29.11.1995.

<sup>728</sup> Law 10/2001 regarding the legal regime of some buildings taken over abusively between March 6, 1945 - December 22, 1989, published in the Official Gazette no. 798/02.09.2005.

around 98% of Romanian families own their houses<sup>729</sup>. On the other hand, many of the previous owners were left without a home, including an overly represented number of Roma homeowners who were evicted from their properties. With social housing almost disappearing in the decades following 1989, evictions became a common, albeit underdiscussed spectacle whose targets were often classed and racialized groups. Many of these actions were carried out violently by the police and in most cases, those evicted either had no legal remedies to halt the evictions despite contesting them due to legal gaps or were given little in compensation<sup>730</sup>.

Some of the first cases of mass forced eviction of Romani people started to draw the attention of civil society in the early 2000s. In 2000, 12 Roma families were violently evicted by Romanian police from an apartment building in Bucharest with no prior notice or eviction warrants presented<sup>731</sup>. In 2001, 150 Roma families were evicted from their homes in Piatra Neamț and relocated to sheds inside a former chicken farm outside the city<sup>732</sup>. This came following an announcement made on national television by the city's mayor, Ion Rotaru, that he intended to create a ghetto for Roma outside the city, where they would be guarded by police<sup>733</sup>. A similar plan was voiced by a subsequent mayor, who claimed that the measure would be done so that "the surrounding population would be less affected"<sup>734</sup>. Following his election, a second mass eviction occurred in 2004 also in Piatra Neamț, this time affecting 35 Roma families<sup>735</sup>. Several mass

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<sup>729</sup> Zamfirescu, Chelcea, "Evictions as infrastructural events", 7.

<sup>730</sup> European Commission against Racism and Intolerance, "ECRI Report on Romania (fifth monitoring cycle)", paras. 76-77.

<sup>731</sup> European Roma Rights Centre, "Romanian police evict Roma", *European Roma Rights Centre*, December 5, 2000, <https://www.errc.org/roma-rights-journal/romanian-police-evict-roma>.

<sup>732</sup> Mandache, "A brief insight into the systemic racism Roma face in accessing housing in Romania", 36.

<sup>733</sup> European Roma Rights Centre, "Romanian town plans ghettoization of Roma", *European Roma Rights Centre*, November 7, 2001, <https://www.errc.org/roma-rights-journal/romanian-town-plans-ghettoisation-of-roma>.

<sup>734</sup> European Roma Rights Centre, "Romanian mayor announced intention to evict Romani families", *European Roma Rights Centre*, December 7, 2004, <https://www.errc.org/roma-rights-journal/romanian-mayor-announces-intention-to-evict-romani-families>.

<sup>735</sup> Mandache, 36.

forced evictions occurred in Bucharest, including in 2002<sup>736</sup>, involving over 50 Roma families, 2003<sup>737</sup>, 2008<sup>738</sup>, 2010<sup>739</sup> and 2014<sup>740</sup>.

In one case which is largely representative of the type of mass evictions many urban Roma face in Romania, the original owner of a yard of houses on Vulturilor Street in Bucharest was given back the right to property over the area in 2002<sup>741</sup>. The houses were previously nationalized by communist authorities and many of the Roma families living there had been doing so since the 1970s, when they were allocated social housing in the area<sup>742</sup>. Importantly, like many Roma, the families on Vulturilor Street were not given access to the new social housing apartment buildings built by communist authorities, but to older buildings, usually built in the previous periods<sup>743</sup>. Following the passing of a 5-year grace period, provided for by the previously mentioned Law 10/2001, during which the tenants paid rent, in 2007, like many in similar situations, the original owner sold the property rights to a private investor<sup>744</sup>. The tenants left on the area were all Roma, more exactly around 150 persons. Soon after acquiring the property, the investor started proceedings to evict the tenants, which eventually happened later in 2014. The case was intensely mediatized, usually framing the former Roma tenants that took up camping around the building as vagrants and the eviction itself was portrayed as being done “with scandal” (due to the Roma

<sup>736</sup> European Roma Rights Centre, “Evictions of Roma in Romania”, *European Roma Rights Centre*, November 7, 2002, <https://www.errc.org/roma-rights-journal/evictions-of-roma-in-romania>.

<sup>737</sup> European Roma Rights Centre, “Roma forcibly evicted by Romanian officials”, *European Roma Rights Centre*, February 7, 2004, <https://www.errc.org/roma-rights-journal/roma-forcibly-evicted-by-romanian-officials>.

<sup>738</sup> ProTV, “Scandal în Capitală! Zeci de romi au fost evacuați dintr-un imobil” [Scandal in the capital! Dozens of Roma were evicted from a building], *ProTV*, August 15, 2008, <https://stirileprotv.ro/locale/42/scandal-zn-capital-zeci-de-romi-au-fost-evacua-i-dintr-un-imobil.html>.

<sup>739</sup> ProTV, “40 de romi evacuați cu poliția dintr-o casa din Sectorul 2” [40 Roma evicted by the police from a house in Sector 2], *ProTV*, June 6, 2010, <https://stirileprotv.ro/stiri/eveniment/40-de-romi-evacuați-cu-poliția-dintr-o-casa-din-sectorul-2.html>.

<sup>740</sup> Gwendolyn Albert, “Romania: Yet another vulnerable Roma community evicted in the capital”, *Romea*, September 26, 2014, <https://romea.cz/en/uncategorized/romania-yet-another-vulnerable-roma-community-evicted-in-the-capital>.

<sup>741</sup> Michele Lancione, “Eviction and housing racism in Bucharest”, *Open Democracy*, September 14, 2015, <https://www.opendemocracy.net/en/can-europe-make-it/eviction-and-housing-racism-in-bucharest/>.

<sup>742</sup> Zamfirescu, Chelcea, “Evictions as infrastructural events”, 8-9.

<sup>743</sup> Dominic Teodorescu, *Dwelling on substandard housing: A multi-site contextualization of housing deprivation among Romanian Roma* (2019), Uppsala Department of Social and Economic Geography.

<sup>744</sup> *Ibid.*

tenants)<sup>745</sup>. On the other hand, the camp attracted also support from civil society, was analyzed as an example of Roma resistance<sup>746</sup> and even featured in a documentary on forced evictions in Bucharest, *A început ploia* (The rain started)<sup>747</sup>. For two years, the former tenants camped in front of their previous houses until 2016, when a newly elected district mayor forced them to abandon the site.

For more than 8 years between the first eviction notices in 2008 and the dispersal of the Roma campers in 2016, Romanian authorities have failed to provide appropriate alternative housing. Then again, in most of cases involving eviction of Roma, besides the police violence involved, the evicted families are usually left homeless, a situation which violates several international human rights treaties Romania is part to, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR), whose Committee stated already in 1997 that these evictions should not result in homelessness and that the State should provide for alternative housing<sup>748</sup>.

However, arguably the most mediatized case of forced mass eviction of Roma families occurred in 2010 in Cluj-Napoca. In December of that year, local authorities evicted around 76 families<sup>749</sup>, of whom 56 were Romani families<sup>750</sup>, from Coastei Street in the center of Cluj-Napoca to Pata Rât, an industrial area northwest of the city nearby a large waste dump. The area was and remains unsuitable for living due to pollution caused by the toxic waste, as well as due to the conditions

<sup>745</sup> See, for example Digi24, “Evacuare cu scandal în centrul Bucureștiului. Câțiva romi s-au urcat pe o casă în semn de protest” [Evacuation with scandal in the center of Bucharest. Several Roma climbed a house in protest], *Digi24*, September 15, 2014, <https://www.digi24.ro/stiri/actualitate/social/evacuare-cu-scandal-in-centrul-bucurestiului-cativa-romi-s-au-urcat-pe-o-casa-in-semn-de-protest-293905>.

<sup>746</sup> Ioana Pelehatăi, “Aici o să rămânem. Ori trăim, ori murim” [We will stay here. We either live or we die], *Scena9*, May 9, 2017, <https://www.scena9.ro/article/interviu-michele-lancione-documentar-evacuari-vulturilor>.

<sup>747</sup> See, for example Zamfirescu, Chelcea, “Evictions as infrastructural events”, 8-9; Irina M. Zamfirescu, “Housing eviction, displacement and the missing social housing of Bucharest”, *Calitatea Vieții*, 26(2) (2015). Retrieved from <https://revistacalitateavietii.ro/journal/article/view/64> and Adrian-Nicolae Dan, “Homelessness prevention in the context of evictions in Romania”, *Sociology and Social Work Review* 1 (2018), <https://globalresearchpublishing.com/wp-content/uploads/2018/06/Homelessness-prevention-in-the-context-of-evictions-in-Romania.pdf>.

<sup>748</sup> United Nations (Committee on Economic, Social and Cultural Rights), General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions (1997), para. 16.

<sup>749</sup> Călian, Rostaș, “Comunitatea de pe rampă - Pata-Rât”, 5.

<sup>750</sup> European Roma Rights Centre, “Taken from the city. Romanian Roma evicted to a rubbish dump” (2012), 5, [https://www.errc.org/uploads/upload\\_en/file/romania-report-pata-rat-17-dec-2012-en.pdf](https://www.errc.org/uploads/upload_en/file/romania-report-pata-rat-17-dec-2012-en.pdf).

in the housing offered by the municipality, most not having access to the water supply or electricity<sup>751</sup>. Not all Romani families were offered housing initially, with some having to stay with relatives or face the winter in self-made shelters. This was, however, not the first time that Roma were evicted to Pata Rât, as it was already a site where several Romani families had been living since 2005<sup>752</sup>. Then, restitutions of houses based on Law 10/2001 resulted in several local Roma being moved to the same area around the landfill.

The case is quite similar to the previous ones, yet it became singularly visible, arguably due to the magnitude of the eviction (around 270 people) and the inhumane conditions where the alternative houses were placed. Moreover, the physical segregation of Romani families from the urban areas was perceived by civil society as particularly egregious, especially since the 2010 evictees were moved to an area already negatively associated by the population of Cluj-Napoca with Roma people<sup>753</sup>. The effects the eviction took on the lives of the evicted Romani families were multifold. The families involved suffered from overcrowding, lack of heating, water and cooking facilities, amongst others<sup>754</sup>. Due to the proximity of the landfill and the improper living conditions, there was an increase in physical illnesses, yet at the same time, due to the distance from the city, healthcare facilities were considerably farther away and ambulance times increased to 92 minutes (compared with 11 before the eviction)<sup>755</sup>. Several Romani children were refused admission to schools due to their location, while others were placed in special education facilities alongside children with mental disabilities following the eviction<sup>756</sup>. Meanwhile, unemployment increased drastically and several Romani jobseekers reported being turned down jobs following their disclosure of their new address<sup>757</sup>. In a sense, the eviction catalyzed a self-fulfilling prophecy: Roma are often perceived as living in improper housing, being unemployed and failing

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<sup>751</sup> Călian, Rostaş, “Comunitatea de pe rampă - Pata-Rât”, 5.

<sup>752</sup> *Id.*, 2.

<sup>753</sup> European Roma Rights Centre, “Taken from the city”, 8.

<sup>754</sup> *Id.*, 6.

<sup>755</sup> *Ibid.*

<sup>756</sup> *Ibid.*

<sup>757</sup> *Ibid.*

at education and following the eviction, all of these racialized perceptions became statistical realities.

Several NGOs pursued the case to the NCCD, which eventually sanctioned the mayor of Cluj-Napoca with two administrative fines and a warning<sup>758</sup>: RON 2000 (around EUR 460 in 2011) for refusal to grant rights or facilities to a person or a group of persons<sup>759</sup>, RON 6000 (around EUR 1380 in 2011) for discriminatory public behavior<sup>760</sup> and a warning for behavior aimed at moving or expelling a person or a group of people from a neighborhood or building<sup>761</sup>. The NCCD found that the victims' Roma ethnicity was the basis for the discriminatory behavior of the mayor. The case was also taken to the civil courts and the Cluj Tribunal concluded that the eviction was carried out illegally, without an authorization and during December, despite the Code of Civil Procedure banning evictions between the 1<sup>st</sup> of December and the 1<sup>st</sup> of March<sup>762</sup>. The Tribunal also awarded RON 2000 in moral damages to each of the persons who was evacuated and was party to the civil suit<sup>763</sup>. The Cluj-Napoca mayor then asked the Cluj Court of Appeals for a review, whereby the latter annulled the moral damages and sent the case for a retrial to the Cluj District Court, the court of first instance<sup>764</sup>. It remains uncertain what the latter court decided due to unavailability of the decision, yet it is clear that no moral damages were given to the Roma applicants.

Despite its severity, Pata Rât is not the only case of physical segregation of Roma in post-1989 Romania. Only one year after the Roma were evicted from Cluj-Napoca, in another city from

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<sup>758</sup> NCCD Decision no. 441/2011, Case no. 145/2011.

<sup>759</sup> OG 137/2000, art. 10 (h),

<sup>760</sup> *Id.*, art. 15.

<sup>761</sup> *Id.*, art. 13 (1).

<sup>762</sup> The decision was based on the previous Code of Civil Procedure from 1865. According to Art. 578<sup>1</sup> (1): "No eviction from residential buildings can be made from December 1<sup>st</sup> until March 1<sup>st</sup> of the following year, unless the creditor proves that, in accordance with the provisions of the housing legislation, he and his family do not have a suitable home or that the debtor and his family have another suitable home where they could move immediately". Romanian Code of Civil Procedure of 9 September 1865.

<sup>763</sup> See the Cluj Tribunal decision here: <https://www.clujjust.ro/wp-content/uploads/2014/05/Sentinta-civila-nr.16903-CLUJUST.pdf>.

<sup>764</sup> Clujjust, "Procesul evacuarii romilor de pe Coastei se va rejudeca" [The eviction process of Roma from Coastei Street will be retried], *Clujjust*, May 18, 2014, <https://www.clujjust.ro/procesul-evacuarii-romilor-de-pe-coastei-se-va-rejudeca/>.



Transylvania, this time Baia Mare, the city's mayor, Cătălin Cherecheș, decided to erect a wall to separate a series of apartment flats inhabited mostly by Roma from the rest of the population<sup>765</sup>. The move was officially argument as an attempt to curb traffic accidents in the area, yet it was quickly found to be racially motivated. An initial decision by the NCCD in 2011 found the wall to be discriminatory and issued the mayor a fine of RON 6000 (around EUR 1380 in 2011). The decision was appealed by the mayor and the Cluj Court of Appeals annulled it, but in the end, the NCCD's decision was maintained by the High Court of Cassation and Justice in 2013<sup>766</sup>. The same mayor was fined again by the NCCD with RON 7000 in 2011 (around EUR 1610 in 2011) for making discriminatory remarks about the Roma, including saying that: "Romanians from Baia Mare have no obligation to tolerate the inability of Gypsies to adapt. These people must learn to wash themselves and work. We are not obliged to give them social housing, after which some take bribes. They are the shame of the city"<sup>767</sup>. A third decision by the NCCD in 2020 fined the mayor with RON 7000 (around EUR 1400 in 2020)<sup>768</sup> for refusing to demolish the wall, while in 2024, the Maramureș Tribunal gave a final decision obliging the mayor to demolish the wall<sup>769</sup>.

Notwithstanding the fact that people living under the poverty line in Romania are generally at risk of being evicted following these restitution processes of formerly nationalized buildings, it does appear that Roma find themselves at the particular confluence of both class- and race-based discriminatory governance which predates the communist era, was preserved by it and is now

<sup>765</sup> Centrul de Resurse Juridice, "Racism reaches a new level: ghettos are coming back to Baia Mare", *Centrul de Resurse Juridice*, July 1, 2011, <https://www.crj.ro/userfiles/phpFdOpVz.pdf>.

<sup>766</sup> Mădălina Prundea, "Instanța supremă: Ridicarea zidului de la Baia Mare, discriminare față de romi" [The supreme court: The building of the Baia Mare wall, discrimination against the Roma], *Digi24*, September 30, 2013, <https://www.digi24.ro/stiri/actualitate/justitie/instanta-suprema-ridicarea-zidului-de-la-baia-mare-discriminare-fata-de-romi-126240>.

<sup>767</sup> NCCD Decision no. 383/2011, Case no. 300/2011, para. 4.1.1.

<sup>768</sup> Europa Liberă România, "Cherecheș primește a doua amendă pentru zidul împotriva romilor" [Cherecheș receives the second fine for the anti-Roma wall], *Europa Liberă România*, January 29, 2020, <https://romania.europalibera.org/a/chereches-a-doua-amends-zidul-impotriva-romilor/30404566.html>.

<sup>769</sup> Cătălin Vischi, "Primăria din Baia Mare este obligată de instanță să demoleze zidul de pe Strada Horea considerat discriminatoriu: sentința este definitivă și trebuie pusă în aplicare" [Baia Mare mayor is obliged by the court to demolish the wall on Horea Street considered discriminatory: the sentence is final and must be implemented], *2mn*, February 16, 2024, <https://2mnnews.ro/exclusiv-primaria-baia-mare-este-obligata-de-instanta-sa-demoleze-zidul-de-pe-strada-horea-considerat-discriminatoriu-sentința-este-definitivă-si-trebuie-pusă-in-aplicare/>.

exacerbated in the increasingly short-of-social-housing neoliberal context of post-1989 Romania<sup>770</sup>. Mass forced evictions are understood as a phenomenon which targets Roma almost exclusively<sup>771</sup>, in a context where informal housing is underregulated and not afforded much legal protection<sup>772</sup>. Despite a law being passed in 2019 which regulates informal housing<sup>773</sup>, its application is still lackluster, all while mass evictions still occur. The laws passed in the 90s and early 2000s aimed at a *restitutio in integrum* in kind for those who have been abusively dispossessed by communist authorities following World War Two. However, the lack of sufficient guarantees and tools to fight eviction disproportionately affected Roma who lacked means for alternative housing. Moreover, once evicted, many Roma were “offered” inappropriate living alternatives, such as emergency centers, as in the case of the tenants of Vulturilor Street in Bucharest, when the district mayor suggested it as a solution despite the fact that the Roma families concerned would have been split off in the process<sup>774</sup>. Beyond the forced displacement and rendering homeless of many Roma, even more serious cases of racialization occur in the form of physical segregation and ghettoization, such as in Pata Rât, Baia Mare and other similar examples.

When it comes to access to social housing, its main framework is lined out by Law 114/1996 on housing<sup>775</sup>, which defines social housing and lists its beneficiaries, yet leaves to local councils the discretion to establish further criteria, in particular the order of preference<sup>776</sup>. Albeit not problematic in theory, in practice, many local councils have established criteria which indirectly preclude Roma people from access to social housing. This usually occurs through a point system

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<sup>770</sup> See in particular Kóczé, “Gendered and Racialized Social Insecurity”.

<sup>771</sup> Romani CRISS, Centrul de Resurse Juridice, “Prezentare generală a respectării dreptului la locuire în cazul grupurilor vulnerabile și propuneri de schimbări legislative și de politici publice” [General presentation of respect for the right to housing in the case of vulnerable groups and proposals for legislative and public policy changes] (2020), 1, <https://www.crj.ro/wp-content/uploads/2020/02/policy-paper-final.pdf>.

<sup>772</sup> *Ibid.*

<sup>773</sup> Law no. 151/2019 for completing Law no. 350/2001 on territorial planning and town planning published in the Official Gazette no. 623/26.07.2019.

<sup>774</sup> Totb, “Comunitatea de evacuați de pe Vulturilor 50 împlinește un an de locuit în stradă” [The evicted community of Vulturilor 50 marks one year of living on the street], Totb, September 14, 2015, <https://www.totb.ro/comunitatea-de-evacuati-de-pe-vulturilor-50-implineste-un-an-de-locuit-in-strada/>.

<sup>775</sup> Law no. 114/1996 on housing, published in the Official Gazette no. 393/31.12.1997.

<sup>776</sup> According to art. 21 from Government Decision 1275/07.12.2000 regarding the approval of the Methodological Norms for the implementation of the provisions of the Law no. 114/1996 on housing, published in the Official Gazette no. 690/22.12.2000.

where certain categories of people are given preference to social housing to others. Some local councils, such as in Cluj-Napoca, Reghin, Deva, Timișoara, Drobeta-Turnu Severin and Râmnicu Vâlcea<sup>777</sup> have given significant points to persons with higher levels of education or for academic achievements, which disproportionately affects precisely categories which have less access to education and in particular Roma people. The local council decisions in Cluj-Napoca and Reghin which established a link between education level and access to social housing have even been found to be discriminatory by the NCCD<sup>778</sup>, with the latter decision being found to be discriminatory against Roma people in particular. Other discriminatory criteria include giving preference to candidates with no outstanding debts to the local budget (in Focșani), those that have a domicile in the city as opposed to living in a different city (in Alba-Iulia), those with higher incomes (in Alba-Iulia), parents who can be established through the opinion of educators as having a high interest in educating their children (in Sfântu Gheorghe), by giving points for parents whose children visit classes regularly (in Constanța) or, conversely, taking points away from those who quit school early or do not go to classes frequently (in Baia Mare, Tulcea and Alba-Iulia)<sup>779</sup>. Right from the start, none of these criteria respect the aim of social housing, which ought not to be tied to point systems giving preference to candidates who are already better off financially. Conspicuously, most of the criteria target areas of life where Roma are statistically disadvantaged compared with the general population, such as higher rates of school abandonment, lower incomes, higher unemployment rates or, ironically, living on the outskirts of cities (some even due to being previously evicted by the same municipality that now sanction them by giving fewer points towards social housing).

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<sup>777</sup> Georgiana Iorgulescu, “Accesul la locuințe sociale și nediscriminarea” [Access to social housing and non-discrimination] (2021), [https://www.crj.ro/wp-content/uploads/2021/09/Policy-social-housing\\_RO.pdf](https://www.crj.ro/wp-content/uploads/2021/09/Policy-social-housing_RO.pdf).

<sup>778</sup> NCCD Decisions 531/2017, Case no. 692/2016 and 511/2016, Case no. 258/2016 respectively.

<sup>779</sup> Iorgulescu, “Accesul la locuințe sociale și nediscriminarea”, 16-20.

### 3.7.3 The right to education and segregation of Roma in schools

In similar trends to access to healthcare and housing, education is another area where we can see a considerable gap, arguably the most stringent, between Romanian Roma and the general population. For example, according to the EU's Fundamental Rights Agency, only 22% of Roma people aged 20 to 24 have completed at least upper secondary education in 2021<sup>780</sup>, compared to 83% of the general population. Comparatively, only 27% of Roma children aged 3 up to the age of mandatory primary education attended early childhood education and care in 2021<sup>781</sup>, while in the general population the share is 79%. Discrimination is another issue, with 14% of Romanian Roma, both parents/guardians and students, reporting in 2021 that they were discriminated against for being Roma by school authorities<sup>782</sup>, while 18% have reported hate crimes and bullying<sup>783</sup>. In these circumstances, it is not surprising to note that a large proportion of Roma students choose to discontinue their studies – 75% abandon education or training early, the second highest percentage in the European Union<sup>784</sup>. Holders of tertiary education are also very few – only 1% of Roma aged 30 to 34 hold tertiary education degrees<sup>785</sup>, compared to between 21% (for men) and 28% (for women) of the general population aged 25 to 34<sup>786</sup>.

There are, of course, some positive actions that Roma students benefit from. Those in primary and high schools, as well as Roma university students have been benefiting from education in Romani language, classes on Roma history and culture, as well as reserved quotas. According to a report prepared for the Roma Civil Monitor program, in 2016, there have been 622 places set aside for Roma students in universities at bachelor level, 265 places in master's degree programs

<sup>780</sup> European Union (Fundamental Rights Agency) "Roma in 10 European countries. Main results", 38.

<sup>781</sup> *Id.*, 37.

<sup>782</sup> *Id.*, 65.

<sup>783</sup> *Id.*, 65.

<sup>784</sup> *Id.*, 65.

<sup>785</sup> *Id.*, 65.

<sup>786</sup> Organization Economic Co-operation and Development (2023). "Education at a glance 2023: OECD Indicators. Romania" (2023), OECD iLibrary, <https://www.oecd-ilibrary.org/sites/4b21c36d-en/index.html?itemId=/content/component/4b21c36d-en>.

and 3.150 places for Roma students in secondary schools<sup>787</sup>. However, what is particularly interesting to note is that the Law on Education, the National Roma Inclusion Strategy and the National Strategy on Social Inclusion and Poverty Reduction<sup>788</sup> all seem to treat the Roma community more as a social category rather than a national minority. For example, in providing the legal basis for special seats in schools, the Law on Education mentions in art. 206 (6) that Roma, as well as “other candidates from high socio-economic risk backgrounds or socially marginalized” can benefit from guaranteed budgeted places. Similarly, the National Roma Inclusion Strategy starts out by highlighting the importance of viewing the Roma population, “among the youngest in the EU”<sup>789</sup>, as an economic and human resource<sup>790</sup> and then goes on to frame most positive action programs in socio-economic terms<sup>791</sup>. Continuing in the same vein, the National Strategy on Social Inclusion and Poverty Reduction mentions Roma people as a whole among 6 other categories of people who are socially vulnerable, in addition to the poor, children deprived of parental care, lone or dependent elderly people, persons with disabilities, people living in marginalized communities and other vulnerable groups.<sup>792</sup>

While it is true that the Roma community in Romania faces a particularly difficult socio-economic situation, this approach, by which the entire Roma minority is lumped in as a whole was seen as avoiding<sup>793</sup> other issues such as gender and race and not addressing the diversity and complexity of this community<sup>794</sup>. It seems the legislation and strategies in question function on a

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<sup>787</sup> Roma Civil Monitor, “March 2018 Roma Civil Monitor Report”, 21.

<sup>788</sup> National Strategy on Social Inclusion and Poverty Reduction (2015-2020), as adopted through Government Decision no. 383/2015 for the approval of the on Social Inclusion and Poverty Reduction for the period 2015-2020 and the Strategic Action Plan for the period 2015-2020, published in the Official Gazette no. 463/26.06.2015.

<sup>789</sup> National Roma Inclusion Strategy, 5.

<sup>790</sup> *Ibid.*

<sup>791</sup> Roma Civil Monitor, “March 2018 Roma Civil Monitor Report”, 7-8.

<sup>792</sup> National Strategy on Social Inclusion and Poverty Reduction, p. 28.

<sup>793</sup> See Romsics, “Roma Memory Games”, at 149: “A natural drift has been to avoid engaging the complex identity dimension of Roma politics and yield to a pervasive economism in approach, a return to the logics of socialist-era research and projects”; and 162: “These flawed analyses encourage a focus on the consequences of a given situation (such as health problems, poverty, illiteracy, etc., rather than on their root causes (rejection, inappropriate provision, etc.). Another perverse effect of the development and use of this kind of imagery: since it categorizes Roma/Gypsies in social rather than ethnic or cultural terms, it means that neither their authors, nor the law, consider the resulting measures are discriminatory”.

<sup>794</sup> Roma Civil Monitor, “March 2018 Roma Civil Monitor Report”, 24.

logic that harkens back to the communist times<sup>795</sup>, where authorities tackled socio-economic marginalization through race-blind measures which did not take into account the specificities of each minority<sup>796</sup>.

One might argue, of course, that nowadays Roma are indeed mentioned expressly and that we are not faced with racially blind measures. However, I contend that while Roma do appear explicitly, there still is a functional race-blindness, in the sense that the legislation and strategies mentioned are addressing the Roma community much less in terms of race or discrimination based on race and more in the light of socio-economic vulnerability, the probable thought behind this being that once Roma people escape social and economic precarity, other issues would simply fade away.

Ultimately, while there would be many aspects about Roma people's access to education which could merit discussion within the scope of this thesis, there is one specific phenomenon which I believe is particularly indicative of the type of racialization which we have already seen in the previous sections of this sub-section and which results in physical removal of Roma students from day to day interaction with the rest of Romanian society. I am referring, of course, to segregation in public schools<sup>797</sup>. Not only does racial segregation of Roma children mirror similar exclusionary governances as in access to healthcare and to housing but is sometimes even the result of residential segregation or "ghettoization"<sup>798</sup>, as presented in the previous section. It is often recorded that racial segregation in education occurs also due to non-Roma parents choosing to move their children to other schools to avoid what they perceive as the potential

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<sup>795</sup> Or, as a matter of fact, as we have seen in a previous section, the idea of identifying Roma with a socio-economic group is even older than the communist interpretation. See Section 2.1.

<sup>796</sup> Zoltan Barany, *The East European Gypsies: Regime Change, Marginality, and Ethnopolitics* (Cambridge University Press, 2012), 115.

<sup>797</sup> In this sub-section, I am referring mostly to pre-university educational units, as racial segregation at an early age is not only much more damaging to young students, but it is also the only phenomenon about which some data exists.

<sup>798</sup> Fernando Varga, "Roma children's school segregation as a persistent public educational system issue in Romania", in *Research and Education*, No. 7 (2023), 85, DOI:[10.13140/RG.2.2.12194.50888/1](https://doi.org/10.13140/RG.2.2.12194.50888/1).

negative impact of having them study alongside Roma children<sup>799</sup>. Teachers or school management would even create classrooms just for Roma students so as to prevent non-Roma parents from taking their children to other schools<sup>800</sup>. Ultimately, as might be expected, segregated schools suffer from bad infrastructure, belated renovations, poor quality of teaching and demotivated instructors which lead to a flight of teachers to other schools as well as improper learning experiences for the students involved and, in the end, increased absenteeism and many Roma students dropping from school altogether<sup>801</sup>.

Racial segregation of Roma in Romanian schools follows patterns similar to neighboring countries. As a phenomenon, it can be traced back to the communist regime, which nominally tried to engage with the education of Roma, yet again from a paternalistic perspective and by sending Roma students to special schools for those with mental disabilities, a trend which can still be identified in the region to this day<sup>802</sup>. Presently, the percentage of Roma children in Romania aged 6 to 15 who claim to attend schools where all or almost all students are Roma is again one of the highest in the European Union, with 51% of Roma students reporting as such in 2021<sup>803</sup>, an increase from 28% in 2016. Schools where this segregation occurs have also increased from 12% in 1998 to 20% in 2016<sup>804</sup>. Of particular interest is the fact that these increases in racial segregation have occurred despite the passing of Government Order no. 1540/2007<sup>805</sup> which expressly aimed to prevent and eliminate segregation of Roma students. Although the order expressly defined segregation and identified the negative effects it has on

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<sup>799</sup> *Id.*, 89.

<sup>800</sup> *Ibid.*

<sup>801</sup> *Id.*, 85-86. See also Council of Europe (The Advisory Committee of the Framework Convention for the Protection of National Minorities), Fifth opinion on Romania, ACFC/OP/V(2022)5, 2023, 16-17, <https://rm.coe.int/5th-op-romania-en/1680ac3917>.

<sup>802</sup> Law, Zakharov, “Race and Racism in Eastern Europe: Becoming White, Becoming Western”, 120.

<sup>803</sup> European Union (Fundamental Rights Agency) “Roma in 10 European countries. Main results”, 40.

<sup>804</sup> Varga, 83.

<sup>805</sup> Government Order no. 1540/2007 regarding the prohibition of school segregation of Roma children and the approval of the Methodology for the prevention and elimination of school segregation of Roma children, published in the Official Gazette no. 692/11.10.2007.

Roma students<sup>806</sup>, it nevertheless was hampered in its implementation by a swarm of issues, including lack of funding for a clear desegregation program. Moreover, the desegregation framework was reported as lacking “teeth”, i.e. the sanctions provided (disciplinary, civil, criminal) were either not severe enough, did not define which sanction could be used for which offense or were not used at all, as some sources indicate the Ministry of Education limited itself to just reminding schools and inspectorates to apply the order, without issuing other sanctions<sup>807</sup>. According to the European Roma Rights Centre, in one study, 63% of schools surveyed were either not aware or did not implement the requirements of Order 1540/2007<sup>808</sup>. Today it still remains unclear the extent to which the order engaged effectively with desegregation due to a lack of a clear and public monitoring system. However, it is safe to say that it mostly failed to address its main target, since racial segregation of Roma has increased since it has been passed.

Again prompted by recommendations from the Council of Europe and the European Commission, a new desegregation strategy was passed in 2016, with Government Order no. 6134/2016<sup>809</sup>, now establishing the National Commission on Educational Desegregation and Inclusion (NCEDI), a specialized body whose main aim is to lead the plan for desegregating pre-university schools. However, besides the fact that this latter order was not yet implemented due to the lack of a methodology on prevention of and intervention in cases of segregation<sup>810</sup>, its focus was expanded to include other types of segregation in schools. In addition to segregation based on ethnicity, the new framework included segregation due to disabilities, mother language,

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<sup>806</sup> For example, in article 1 (1), it identifies segregation as “a serious form of discrimination and has as a consequence children’s unequal access to a quality education, violation of the equal exercise of the right to education, as well as human dignity”.

<sup>807</sup> European Roma Rights Centre, “Written comments of the European Roma Rights Centre concerning Romania. For Consideration by the Committee on the Rights of the Child at its Pre-session Working Group for the 75th Session (3-7 October 2016)”, 4, [https://www.errc.org/uploads/upload\\_en/file/romania-crc-submission-july-2016.pdf](https://www.errc.org/uploads/upload_en/file/romania-crc-submission-july-2016.pdf).

<sup>808</sup> *Id.*, 4.

<sup>809</sup> Government Order no. 6134/2016 regarding the prohibition of school segregation in pre-university education units, published in the Official Gazette no. 27/10.01.2017.

<sup>810</sup> United Nations (UNICEF), “Enhancing the equity of education through preventing and combating school segregation” (2024), <https://www.unicef.org/eca/reports/enhancing-equity-education-through-preventing-and-combating-school-segregation>.



socio-economic status of families, residence or school performance<sup>811</sup>. While a concern for other forms of segregation is a welcomed “upgrade”, considering how previous attempts at desegregation have failed in part due to underfunding and non-cooperation between actors involved in its implementation, this expansion of scope might lead to even less impactful changes. In any case, in 2019, the NCEDI (renamed the National Commission for School Desegregation/NCSD in 2023<sup>812</sup>) was established via Government Order no. 3141/2019<sup>813</sup>, which also listed its members. Its work does not appear to be public, yet it apparently produced<sup>814</sup> a new methodology for monitoring school segregation by the end of 2019 and the Ministry of Education approved it soon after<sup>815</sup>.

Despite these measures, it still remains unclear to what extent the new body proved to be effective in at least monitoring the development of school segregation since there are no official reports. The most recent report on racial segregation of Roma in Romania comes not from the NCSD, but from an NGO, CADO – Centrul de Advocacy și Drepturile Omului (Centre for Advocacy and Human Rights). According to CADO, in 2022, in almost 160 rural schools from 10 counties where Roma constituted at least 2% of the population based on the 2011 census, more than 66% of the schools had segregated classrooms, while more than 27% had segregated school buildings<sup>816</sup>. The slew of recent recommendations from the Council of Europe<sup>817</sup>, the

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<sup>811</sup> Government Order no. 6134/2016, art. 1 (1).

<sup>812</sup> Government Order no. 6831/2023 for the approval of the Regulation on the organization and operation of the National Commission for School Desegregation, published in the Official Gazette no. 73/26.01.2024.

<sup>813</sup> Government Order no. 3141/2019 regarding the establishment, organization and functioning of the National Commission for Educational Desegregation and Inclusion, published in the Official Gazette no. 154/27.02.2019.

<sup>814</sup> Romanița Iordache, “Romania. Country Report” (2020), *Equality Law*, <https://www.equalitylaw.eu/downloads/5716-romania-country-report-non-discrimination-2022-1-40-mb>.

<sup>815</sup> Government Order no. 5633/2019 for the approval of the Methodology for monitoring school segregation in pre-university education, published in the Official Gazette no. 1056/31.12.2019.

<sup>816</sup> CADO, “Raport privind segregarea școlară în România” [Report regarding school segregation in Romania] (2022), 63-64, [https://cado.org.ro/wp-content/uploads/2023/03/18112022RaportMonitorizareEvaluareSegregareScolara\\_Ro.pdf](https://cado.org.ro/wp-content/uploads/2023/03/18112022RaportMonitorizareEvaluareSegregareScolara_Ro.pdf).

<sup>817</sup> Council of Europe (Advisory Committee of the Framework Convention for the Protection of National Minorities) Fifth opinion on Romania.

European Commission<sup>818</sup>, the European Commission against Racism and Intolerance<sup>819</sup> and the European Union's Fundamental Rights Agency<sup>820</sup> seem to signal that racial segregation is still one of the major concerns regarding Romania's Roma integration policies. On the other hand, in 2019 the Ministry of Education replied to an official request for information stating that "Following the centralization and analysis of the annual reports of the school inspectorates to prevent/combat school segregation, ... it was found, according to what was declared by the representatives of the school inspectorates, that all measures to prevent school segregation were taken, and no case of school segregation was recorded"<sup>821</sup>.

In the background of the inability of successive Romanian governments to even fully assess the extent of racial segregation in schools, the NCCD has built up a substantial case law on segregation of Roma, deciding in at least 14 cases to date. After analyzing the case law, it would appear that the NCCD has taken racial segregation (or, to use its own terminology, segregation based on Roma ethnicity) fairly seriously and issued a few fines: in 5 cases<sup>822</sup> it fined schools for segregating Roma students in specific classes or separate buildings and in 4<sup>823</sup> it also fined the respective county school inspectorates. Fines usually amount to between RON 2000 and RON 4000. Despite their inefficiency, the NCCD chose to "sanction" schools engaging in segregation of Roma students with only a warning in 2 cases<sup>824</sup>. Thus, some form of sanction was applied in a total of 6 cases out of 14. In 2 other decisions<sup>825</sup>, although finding cases of segregation, the NCCD established that no sanctions should be applied because desegregation measures were

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<sup>818</sup> European Union (European Commission), "Report on the implementation of national Roma integration strategies" COM (2019) 406 final (2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0406>.

<sup>819</sup> European Commission against Racism and Intolerance, "ECRI Report on Romania (fifth monitoring cycle)".

<sup>820</sup> European Union (Fundamental Rights Agency), "A persisting concern: anti-Gypsyism as a barrier to Roma inclusion" (2018), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf).

<sup>821</sup> Ana M. Ciobanu, "Cum monitorizăm segregarea școlară?" [How do we monitor school segregation?], *Scena9*, October 23, 2019, <https://www.scoala9.ro/cum-monitorizam-segregarea-scolara-/487/>.

<sup>822</sup> NCCD Decisions nos. 438/2023, case no. 2A/2023; 504/2020, case no. 721/2019; 769/2016, case no. 265/2016; and 559/2012, case no. 52/2012.

<sup>823</sup> All decisions in the previous note, except for Decision 438/2023 and with the addition of Decision 770/2016, Case no. 300/2016.

<sup>824</sup> NCCD Decisions nos. 770/2016 and 234/2011, case no. 65/2007.

<sup>825</sup> NCCD Decisions nos. 540/2009, case no. 10A/2009 and 306/2008, case no. 3A/2007.

already taken or were on-going, while in a further 6, it did not find any form of discrimination. From the latter, in 3 cases, the NCCD took notice that the situations initially complained of by their respective applicants were resolved – in one case<sup>826</sup>, through merging two segregated classes into one and in another case<sup>827</sup> through accepting transfer requests from a segregated school to a non-segregated one – while in one case<sup>828</sup> the situation could not be proven.

However, there are a few cases that present problems. In one case<sup>829</sup>, the NCCD was faced with Roma students from a top school in Iași County being sent to another, less prestigious school, where 41% of the students were already Roma<sup>830</sup>. These facts were later confirmed by the NCCD's investigation team<sup>831</sup>. Despite this, the NCCD dismissed the case because the applicant withdrew the petition following a settlement, without further inquiring whether the situation was resolved or if any measure was taken. A similar situation arose in another decision<sup>832</sup>, where a teacher from Buzău County complained of being discriminated herself by her school's management when the latter allocated her a substantial number of Roma students. She also stated that working with Roma students "is extremely hard because they are lazy and she has to buy them from her own funds various materials necessary and useful for the educational process"<sup>833</sup>. Notwithstanding the racist remarks of the applicant, the NCCD did not find any form of discrimination against her, but neither did it inquire further into the suspicious distribution of Roma students in the defendant school. Finally, in another case<sup>834</sup>, the NCCD was presented with another situation involving the segregation of Roma students in another school in Iași County into separate classes. Nevertheless, it chose to filter the facts through the requirements for direct discrimination, despite most cases of segregation being catalogued as

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<sup>826</sup> NCCD Decision no. 505/2016, case no. 596/2015.

<sup>827</sup> NCCD Decision no. 501/2015, case no. 128/2015.

<sup>828</sup> NCCD Decision no. 107/2011, case no. 443/2009.

<sup>829</sup> NCCD Decision no. 172/2021, case no. 324/2019.

<sup>830</sup> *Id.*, para. 3.

<sup>831</sup> *Id.*, paras. 23, 24.

<sup>832</sup> NCCD Decision no. 624/2016, case no. 319/2016.

<sup>833</sup> *Id.*, para. 5.3.

<sup>834</sup> NCCD Decision no. 851/2020, case no. 149/2020.

indirect discrimination. It concluded that no discrimination could be established because “there was no causality between the criterion invoked by the petitioner (ethnicity) and the reported facts”<sup>835</sup>. It is unclear why the NCCD ignored its previous case law, where it had no difficulty in finding segregation as a form of indirect discrimination and even distinguishing between direct and indirect discrimination in one case where it detected segregation of Roma students<sup>836</sup>. Some of the NCCD’s case law would thus go against established ECtHR principles, such as those in the landmark decision of *D.H. and Others v. the Czech Republic*<sup>837</sup>, where the Court not only recognized that discrimination in access to education for Roma persisted in all countries member of the Council of Europe<sup>838</sup> and that Roma should be given special consideration for their needs in light of their vulnerable position<sup>839</sup>, but also clearly marked racial segregation of Roma students as a form of systemic discrimination<sup>840</sup>.

Although we see that the NCCD has provided much needed case law on the issue of racial segregation, there are still a substantial number of decisions that are either ineffective due to no sanctions being taken, the NCCD choosing a warning as the only sanction or because the decisions failed to assess facts or contained legal errors. Much of the Council’s work is rendered ineffective also by its reluctance to require schools and county school inspectorates found segregating Roma students to implement desegregation programs and report back. In only 2 cases did the NCCD mandate schools and their respective county school inspectorates to provide it with desegregation plans and report until a given date on their results<sup>841</sup>, while in one it only asked for the former, without mentioning any reporting or monitoring system<sup>842</sup>. In these circumstances, it becomes apparent that the NCCD’s case law cannot mitigate the gaps left by the faulty or ineffective policies we have already seen.

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<sup>835</sup> *Id.*, para. 37.

<sup>836</sup> NCCD Decision no. 234/2011.

<sup>837</sup> *D.H. and Others v. Czech Republic*.

<sup>838</sup> *Id.*, para. 143.

<sup>839</sup> *Id.*, para. 181.

<sup>840</sup> *Id.*, para. 210.

<sup>841</sup> NCCD Decisions nos. 769/2016 and 770/2016.

<sup>842</sup> NCCD Decision no. 559/2012.

## CONCLUSION

The principal aim of this thesis was to offer a context-sensitive and race-conscious analysis of Romanian law's impact on Romani communities by using tools and methods inspired by Critical Race Theory literature. In particular, this constitutes a way of reading race into Romanian law, especially with regard to Roma. In fact, what this thesis demonstrates is how, on the contrary, important areas of Romanian law which target or affect Roma in particular tend to avoid the thorny issue of race, despite the concept nominally existing in the Romanian legal landscape as a result of its implementation of EU *acquis* and the acknowledgment that racism does occur in the country. Ultimately, however, these areas of law, from the present Constitution to the body of law guaranteeing access to social rights, either have built-in mechanisms which silence race or are implemented in a way that avoids race. Put differently, race is being read out of Romanian law and this occurs in a variety of ways.

The framing of Roma as a national minority by way of political representation in the Romanian Parliament or as a socio-economic category by the NRISs or certain laws on education or through the functioning of laws protecting housing rights all fit into the first category. In these cases, race is selectively read out of situations in which Roma find themselves and as a consequence, whether as a national minority or as a vulnerable socio-economic category, existing systemic racism is left untouched. Despite much of the pressure for creating a system for political representation of minorities centering on the situation of the Roma communities in Romania, the actual system put in place ended up underrepresenting and essentializing Roma voices. Although it remains unclear to what extent this effect was predicted by those who drafted it, it nevertheless operates to the exclusion of Roma from effective political participation and thus preserves existing racial inequality. Other bodies of law, such as certain NRISs or some laws on education and housing rights see Roma as a vulnerable socio-economic category, but at the

same time rely on racial stereotypes, as in the case of all Romanian NRISs except the present one, or disparately impact Roma people, as in the cases of segregation and forced eviction discussed, which occur in part due to incomplete, inexistent or ineffective laws in those areas.

On the other hand, antidiscrimination legislation specifically allows for race to be used as a ground for discrimination. Thus, formally, race can be used as a tool and Romanian courts or equality bodies such as the NCCD are not prevented from engaging with it. In practice, however, we have seen that Romanian courts, police officers and prosecutors, all involved in judicial proceedings at different points in a legal case, are not only blind to racial violence against Roma, but even condone or participate in it or employ racial stereotypes themselves. The NCCD, however, while engaged with racial discrimination against Roma through its case law, its documentation of racism and its programs, nevertheless hesitates in associating Roma with race-based discrimination, instead in effect banishing race to other territories outside Romania.

It would nevertheless be too easy to summarize the findings in such a binary way. In fact, the picture tends to be more nuanced. To our first proposed research question, we answer that Romanian law simultaneously racializes and deracializes Roma. In the first instance, Roma receive differential treatment based on racial stereotypes that are carried into law, such as the association of Roma with criminality, violence and disrespect for social norms. At the same time, Romanian law also strips Roma of their “badge of race” by disconnecting their experiences from any racial element and instead frames them as a national minority or a socio-economic category and discrimination against them as based on ethnicity, thus eliminating the specificities of structural racism.

As to the second research question which pondered on the functioning of race within the Romanian legal landscape, we have seen that race has been historically avoided, both by wider society and historiography, as well as by various authorities. A certain acknowledgment of the salience of racism does exist, yet race is not given much operability. Roma are rarely associated

with discrimination based on race, while their history of racialization at the hands of successive Romanian regimes is downplayed or, again, disconnected from any racial issues that might be relevant today. Race is instead routinely associated with countries having a more prominently known past of racial violence, imperialism and colonialism, such as the United States, which are generally perceived and presented as dealing with a polarized society where race is indeed salient and a central focus of political and social debates. This hesitancy to acknowledge race is due in part to the belief that Romania not only had a racially neutral or non-racial past, but also because Romanians see themselves as continuously oppressed by external forces, which means that any racial violence towards Roma cannot be attributed to their society and authorities. This trend appears to occur in other neighboring countries as well. Being on the periphery from a western point of view, countries from Central and Eastern Europe such as Romania do not see themselves as directly engaged in empire-building or colonial practices and wish to extricate themselves from any past actions which might be construed in those terms. Thus, race and racialization of groups of people are phenomena that are perceived as pertaining to imperial or colonial powers, not to the local context.

Finally, in answering the third research question, we have empirically seen a few ways to explain Romanian law's understanding of race when referring to Roma. There is firstly a historical predilection of Romanian elites for legal transplantation, which, combined with the equally ubiquitous feeling of urgency has made Romanian lawmaking a rather disingenuous affair, in particular when dealing with areas of law of perceived low importance or which do not garner much society-wide interest. Unfortunately, Roma rights have never been a priority in Romania's strive for modernization through legal reform and transplantation.

What can explain to a certain extent the progress that did occur are the temporary bouts of interest convergence which have led to Romanian governments adopting antidiscrimination law, constitutional provisions on minorities, as well as more targeted positive action measures aimed

at improving the situation for Roma people. Importantly, one might say that this interest convergence did not really die out following Romania's accession to the EU, but that its power waned. We still see considerable progress even after accession, albeit far from ideal and with external pressure from regional organizations and the European Commission in particular playing a decisive role in keeping Roma rights in the attention of Romanian governments. In this context, it is not surprising that while formal legal instruments targeting or affecting Roma do exist, they are on many occasions ineffective and mere instances of mimetic compliance with external standards. Following the adoption of these formal instruments, their implementation is almost always lacking or even completely missing their intended aims. As such, race formally became a legal tool following Romania's adoption of EU directives on antidiscrimination. However, due to the above-mentioned context, it was never fully operationalized, since doing this would entail a wider recognition and coming to terms with past historical injustices towards Roma, as well as an acknowledgement of systemic racism. Both of these processes are difficult and may require the Romanian white majority relinquishing some of its race-related privileges, to paraphrase Derrick Bell<sup>843</sup>.

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<sup>843</sup> Bell, "Brown v. Board of Education and the Interest Convergence Dilemma", 22.



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