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The position and agency of the 'irregularized': Romani migrants as European semi-citizens

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Abstract
This article discusses the position and agency of Romani migrants. It argues that different states often irregularize the status of Romani migrants even in cases where it should be regularized due to their *de jure* citizenship. This irregularization is possible because of their position as semi-citizens in their 'states of origin'. Yet, Romani migrants are not mere passive observers of these practices, but react to their irregularized migrant statuses. In doing so, they redefine their national and European citizenships. This article centres around two case studies to analyse the position and agency of Romani migrants The first is Roma with European Union (EU) citizenship and the second is post-Yugoslav Roma without EU citizenship.

Keywords
agency, European semi-citizens, irregularization, migration, Roma

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Introduction

At a time when there is a proliferation of possibilities for geographic mobility and residence in countries other than one's own for most people with a regular status in Europe, the mobility of Romani minorities still remains a widely discussed and highly contested topic (Parker, 2012; Van Baar, 2015). Many politicians, not only those on the far right spectrum, collectively view Roma as abusers of their right to free movement – they often portray Romani migrants with European Union (EU) citizenship as potential 'welfare tourists' while also classifying those without EU citizenship coming from the post-Yugoslav space as potential 'bogus' asylum seekers (Kacarska, 2012). In this article, I present a twofold argument on Romani migrants that challenges these views on their status and political agency. First, I claim that different states use such reasoning about problematic

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Romani mobility to govern, control, and also collectively restrict the free movement and accompanied rights of Romani migrants. Second, Romani individuals are not passive observers of these processes, but react in response. I argue that their reaction can be understood as a form of latent protest to the restriction of their rights.

By investigating and comparing the position of Romani migrants with and without EU citizenship in two contexts, I claim that different states render Roma as 'unwanted migrants' by *irregularizing* their migrant status. The case studies in this article demonstrate that the position of many Romani migrants is specific when compared to the position of other irregular migrants. The irregularization of their migrant status and the restriction of accompanied rights occur even in cases when this status should be considered regular due to their *de jure* citizenship. The process that contributes to the *irregularization of migration*, to use the concept of (Jansen et al., 2015), positions Romani migrants in a legal limbo somewhere on a scale between regular and irregular migrant status, where they also fall into the regime of deportability (De Genova, 2002). This legal limbo points to the fact that there is a 'dialectical process' (De Genova, 2015: 6) between inclusion and exclusion rather than a binary opposition. I employ the theory developed by Elizabeth Cohen (2009) to argue that the creation of *irregularized* migrant statuses is made possible in the case of Roma because their own states position them as *semi-citizens* in the first place. In this article, I analyse how the *irregularization* of migration status is connected to the *semi-citizenship* status of Romani migrants, who either do not possess the rights that should be theirs by virtue of their citizenship or cannot access citizenship because they were migrants.

In the first part of the article, I examine the case of the Romani individuals with EU citizenship who are mobile between different EU states and how state authorities make them deportable, despite the restriction of deportability enshrined in the *Free Movement of Citizens Directive* 2004/38/EC. In the second part of the article, I focus on the position of non-EU Romani forced migrants residing in different post-Yugoslav states, who found themselves in a very particular predicament after the dissolution of the Yugoslav state. Armed conflicts and the subsequent redefinition of citizenship boundaries in newly established states left these migrants 'legally invisible' and de facto stateless – while unable to regularize their citizenship status in their country of residence. They also possessed an ineffective citizenship of another post-Yugoslav state due to their inability to access identification documents proving the latter citizenship (Sardelić, 2015: 164). The case of legally invisible persons, most of them are Romani migrants (PRAXIS, 2011), is to a certain extent unique to the post-conflict space. However, I will also highlight another case of post-Yugoslav Romani migrants whose status was also irregularized and whose movement was restricted while they were mobile between the EU and their own non-EU states.

Different international organizations (IOs) and activist non-governmental organizations (NGOs) have put the irregularized status position of EU, as well as non-EU, Romani migrants under scrutiny in order to improve their position. Yet, the reports of these IOs and NGOs only marginally mention the coping strategies which Romani migrants employ to deal with their *irregularized* migrant statuses. Scholarly literature has to a large extent ignored the issue until recently. Only a few scholars have discussed coping strategies in their work (cf. Aradau et al., 2013; Caglar and Mehling, 2013; Faure Atger, 2013). Many had previously focused on the activism of Romani individuals linked to civil society movements (McGarry, 2010; Vermeersch, 2006). The social movement's literature has paid less attention to how Romani migrants outside formal civil society movements

addressed their own position (Grill, 2012) as this was not understood as a form of activism. I aim to show that it is crucial to explore the agency of irregularized Romani migrants for two reasons. First, similar to other marginalized populations, Romani migrants possess their own agency to address their position. Second, by addressing their irregularized statuses, Romani migrants use their own agency to redefine the existing content of their national citizenship (and its related rights) as well as that of European citizenship, from both inside and outside of these frameworks (Isin, 2013: 20). I claim that their specific agency manifesting itself in day-to-day coping strategies is in fact how these migrants *enact* their citizenship (Isin, 2015: 23) and are thus *activist citizens* (Isin, 2013: 24), even in such cases where they do not possess even the most basic identification documents such as birth certificates. On the basis of selected case studies, this article points to some of the *enactments* of citizenship that state authorities usually interpret as the collective anti-social behaviour and practices of Roma as a group. However, I argue that these are in fact counter-agency practices which Romani migrants use to subvert discrimination against them both as migrants and as citizens.

Theoretical premises: Irregularization of migration, semi-citizenship, and its enactment from the margins

This article is in dialogue with three theoretical strands. Through the analysis of the selected case studies on the position of EU and non-EU Romani migrants, the article will show the intertwinement of these theoretical strands. First, I examine how 'destination' states *irregularize* the legal status of Romani migrants, in order to govern their mobility more easily and to restrict the right of free movement these migrants have by virtue of their citizenship status. According to the understanding of Jansen et al. (2015), the growing complexities of borders also bring more possibilities for the 'irregularization of migration'. This gives different states more manoeuvring space to control the presence of unwanted populations in their territory by redefining previously regular migration as irregular. States use this manoeuvring space to prevent these populations from crossing the border or to make them subject to a regime of deportability (De Genova, 2002).

However, the positions of many Romani migrants are specific within processes of irregularization. According to Huub Van Baar (2015: 77), even when Romani migrants who possess EU citizenship travel between two EU member states, they often end up being treated as third-country nationals (TNCs). I argue that by *irregularizing* their migration status, states effectively strip Romani EU migrants of their rights granted to them by the *Free Movement of Citizens Directive* (2004/38/EC). In my second case study, I demonstrate how the retroactive *irregularization* of their migration status in the post-Yugoslav space has left many Romani individuals legally invisible and without access to citizenship (Sardelić, 2015) or without the right to leave their own country, despite having the proper documents to do so (Kacarska, 2012). Following the argument by Jansen et al. (2015: ix), which draws from the theory of Étienne Balibar, the irregularization of migration is paradoxically possible due to the ubiquity of borders, which are no longer physically present (as in the case of the Schengen area), but enter the everyday lives of 'unwanted migrants'. This is especially visible in the case of 'poor migrants' (Jansen et al., 2015: ix) who are seen as contributing neither to the formal labour market nor to the informal economy of the recipient state.

The statuses of Romani migrants are usually collectively *bordered* (De Genova, 2015: 3) within a state territory and hence collectively irregularized. The irregularization does

not exclude and expel Romani migrants per se, but positions them in a legal limbo between regular and irregular status in the never-ending chain of selective 'illegality' production (De Genova, 2002, 2015: 8). Hence, while building upon their theoretical approach, in contrast to Jansen et al. (2015), I investigate the approaches states apply to *irregularize* the statuses of Romani migrants once they are already present in the state, and how Romani are 'differentially included when residing on the territory' (Anderson and Hughes, 2015: 1). I use the term *irregularized* migrant statuses instead of *irregular* migrant statuses to highlight the fact that state actions redefine their position from regular to irregularized and produce their *illegality* (De Genova, 2002).

Second, on the basis of the case studies analysed, I claim that the irregularization of migrant statuses is possible because the Romani migrants in question are *semi-citizens* of their own states. Romani migrants are not full citizens of their states, but semi-citizens because they do not possess all the rights their citizenship should grant them. As Cohen (2009: 2) argues:

> the statuses held by this group do not fully confirm to the standard definition of citizenship. Nonetheless, all of them have some of the political characteristics associated with citizenship. They hold some rights and receive political recognition consistent with that accorded to citizens. This places them in political categories between citizens and non-citizens. (Cohen, 2009: 2)

In the case of Romani migrants, such an *in-between* position brings with it many constraints. Applying Cohen's theory to two case studies, I investigate how Romani migrants can be categorized as *fourth-order* semi-citizens with weak relative and autonomous rights (Cohen, 2009:72), bearing in mind that their statuses are quite diverse. While some lack access to certain rights, others lack access to citizenship, but all have their free movement restricted. I also adhere to Cohen's claim that semi-citizenship is an in-between political category that reflects the conflicts and vulnerabilities of full citizenship status. Additionally, it gives state authorities more flexibility to accord different sets of rights to residents on their territory (Cohen, 2009: 95–140). However, stemming from Cohen's reasoning, *semi-citizenship* is also a possible place of invention from where semi-citizens can readdress and also redefine the content of full citizenship. Here, I shift the understanding of semi-citizenship from mere *arrangements* to *enactment*, following the theory of Engin Isin (2013: 21). Romani migrants readdress their own position as semi-citizens and irregularized migrants through their agency and a specific kind of the enactment of citizenship (Isin, 2015). However, this does not mean that this specific enactment stems from any kind of ethnic exceptionalism, but reflects state practices of irregularization.

The last strand of the theory upon which I base my analysis is the enactment of European citizenship (Isin, 2013). Romani migrants, both within the EU and on its margins, enact European citizenship from their position as semi-citizens and irregularized migrants. As Isin (2013: 20) argues, '… European citizenship becomes most productive precisely when it manifests as citizenship-to-come, as enacted by those who constitute themselves as claimants to a Europe-to-come'. Therefore, it is not only Romani EU citizens who are enacting European citizenship, but similar to Kurds in Turkey (Rumelili and Keyman, 2013: 66–83), the Roma in the post-Yugoslav space without EU citizenship enact it as well. They enact European citizenship by virtue of being *citizens-to-come*. I will describe how IOs, Romani, and non-Romani human rights activists put the position of the legal invisibility of Roma at the forefront of debates on visa liberalization as well as on EU membership conditionality in the Western Balkans. However, I also highlight the agency of *irregularized* Romani migrants. There have been many different European

Commission (EC)-funded programmes aimed at including Roma as 'active' citizens in the belief that such engagement would bring to an end their discrimination and marginalization. Such programmes often portrayed Roma as passive observers of their situation who need to activate themselves in order to change their position. These programmes prescribed what *acts of citizenship* should be (Isin, 2015: 24); however, in doing so, that Roma already challenged their current marginalization through their own acts of citizenship was completely ignored. This is both a conceptual and political shortcoming for as Isin (2015: 24) notes, acts of citizenship:

> … immediately evokes such acts as voting, taxpaying and service in the military. But these are routine social actions that are already instituted. By contrast, following the earlier discussion, acts introduce a rupture in the given by being creative, unauthorized and unconventional. (Isin, 2015: 24)

On the basis of the case studies, I also examine the position of irregularized Romani migrants who are not involved in Romani rights social movements. However, they enact their citizenship through their everyday practices and coping strategies, which are usually not perceived as acts of citizenship, but rather as the anti-social behaviour of Roma as a specific ethnic group. I aim to show that their coping strategies reveal ruptures in the system that, for example, hinder access to health care and employment for some while rendering their movement problematic. Romani individuals in this context should be understood as activist citizens because they creatively, unconventionally, and without authorization, subvert the logic of the system that discriminates against them (Isin, 2015: 24).

Methodology

The research of this article was primarily based on two qualitative approaches. First, I conducted a socio-legal analysis of the documents and reports produced by think tanks and human rights advocacy NGOs dealing with the position of Romani migrants. While critically analysing these documents, I was particularly interested in identifying approaches applied by states to irregularize Romani migrants and seeing whether certain enactments of citizenship by Romani migrants have been noted as subverting the system. Second, I used a socio-cognitive approach to critical discourse analysis (CDA) developed by Teun Van Dijk (1993) to highlight how media discourses on Romani migrants portray their *acts of citizenship*. While the findings of this article are based mostly on these two approaches, I also conducted field interviews with the representatives of IOs, national governments, and Romani NGOs in the post-Yugoslav space. I also conducted fieldwork with participant observation in several Romani communities and refugee camps, such as Konik on the outskirts of Podgorica, where many Romani individuals displaced by the Kosovo conflict still live as irregularized migrants. This was important so as to confirm that irregularized migrants create parallel spaces to gain access to rights which are formally not granted to them (Sigona, 2015). However, due to ethical considerations (possible identification of individuals and sensitive data), I did not use the interview transcripts in this article.

Irregularized statuses and counter-agency of Romani migrants with EU citizenship

The Free Movement of Citizens Directive (2004/38/EC) enshrines the right of EU nationals to move and reside in an EU country other than their own as one of the EU

fundamental principles. Yet this right comes with certain restrictions: EU citizens can reside in another EU member state with a valid passport for a period of 3 months, after which they need to prove their economic activity, or sufficient resources to sustain themselves and valid health insurance. Moreover, according to Article 15 of the Directive, there are also *procedural safeguards* stipulating when this fundamental right of free movement can be restricted. Restrictions are permitted in the interest of *public policy, public health, and public safety*. But even when EU citizens face expulsion, they cannot be banned from reentering the country they were removed from (Article 27).

The principle of free movement had already been defined in the European Community by the Treaty of Rome as 'freedom of movement of persons, services, and capital' (Article 48). However, all these freedoms were directly linked to economic needs in the European Community, including the free movement of persons, which in fact referred to the movement of workers. With the Free Movement of Citizens Directive, this was transformed so that such a direct link to the economy was at least partially decoupled from the right to free movement (Carrera, 2005). Yet, the restrictions after the initial 3-month period make it clear that the Free Movement of Citizens Directive was not envisioned to solve, by way of migration, economic disparities within the EU, or to be 'taken advantage' of by 'poor migrants' (Jansen et al., 2015: ix) who seek to move from less 'prosperous' parts of the EU to the more 'prosperous' ones. The old EU Member States usually portrayed such migrants as the 'undeserving poor' (Anderson, 2013: 50). However, the problematization of the free movement of poor migrants, such as many Romani individuals, was no longer framed directly in economic terms, but rather in terms of security, as argued by Huub Van Baar (2015: 75). This particular framing was used because the Free Movement of Citizens Directive does not allow for the expulsion of poor migrants on economic grounds (Article 27).

Many politicians, especially those from France, Italy, and the United Kingdom, have questioned whether free movement as a fundamental right of EU citizens should apply unconditionally to all because, as they argue, some EU citizens abuse this right and become an *unreasonable burden* for the host state (Faure Atger, 2013: 182; Ram, 2014: 207). Such politicians expressed apprehension regarding the (potential) free movement of Romani individuals with citizenship in post-socialist states, which had just joined the EU with the 2004 and 2007 enlargements. Of particular concern were Romania and Bulgaria, which according to some estimates are home to almost 3 million Roma (Liégeois, 2007). The main cause for this concern was the belief that with the right to free movement, coupled by their 'nomadic culture', Roma would migrate *en masse* towards Western Europe after EU Enlargement. Previous socialist governments had severely controlled and impeded the movement of Roma. These governments portrayed mobility as one of the misconducts of Roma as a social group (Barany, 2002; McGarry, 2010). During EU membership negotiations with post-socialist states, one of the most prominent topics was the protection of Roma minority rights on the basis of the 1993 Copenhagen Criteria (Ram, 2014; Spirova and Budd, 2008; Vermeersch, 2012). But this was not merely out of humanitarian concern for Roma but also precisely because of the expressed fear of Romani mass migration (Kymlicka, 2007: 77). According to the limited quantitative data available, mass migration of Roma did not occur after the 2004 and 2007 enlargements (Guild and Cahn, 2010; Pantea, 2013). Most Roma living on the verge of absolute poverty in Eastern Europe do not have resources or networks to migrate. Therefore, poverty cannot be considered as one of the main 'push factors' (Pantea, 2013; Vlase and Voicu, 2013). Neither can the 'Romani culture' (Grill, 2012). Yet, despite its low numbers, the movement of

Romani migrants remains the most visible form of intra-EU migration. Similarly, as with other unwanted migrant groups, different state representatives have used the 'politics of fear' (Furedi, 2007; Huysmans, 2006; Wodak, 2015), to frame Romani migration as a securitization concern (Van Baar, 2015) in order to legitimize the irregularization of their status.

The free movement of Romani migrants became one of the most contentiously debated issues not only on the subject of the Roma writ large (Grill, 2012; Pantea, 2013; Ram, 2014; Vermeersch, 2012) but also in the context of the Free Movement of Citizens Directive (Carrera and Faure Atger, 2010; Faure Atger, 2013; Parker and Toke, 2013). It also became a source of discord between some EU member states and the European Commission. This was especially visible during the intense debates in the European Parliament in the wake of the 2010 collective expulsions and demolition of Romani migrant camps in France, which became known as *L'Affaire des Roms.*

In the summer of 2010, Nicolas Sarkozy, then the French President, called for the dismantling of informal settlements. According to him, they posed a threat to *public order* and *public health* (Faure Atger, 2013: 183). In the case of Bulgarian and Romanian citizens, such reinterpretation of informal settlements as a security threat (Van Baar, 2015: 75) *irregularized* their migrant status as EU citizens and gave grounds for their expulsion from France (Faure Atger, 2013: 183). At that time, their right to work in some other EU countries was restricted until 2013. Thus, Romani migrants from Bulgaria and Romania could be considered EU semi-citizens (Faure Atger, 2013: 184). Although they could not be expelled on economic grounds, when their initial EU semi-citizenship status was coupled with their *irregularized* migrant status, they fell under the regime of deportability (De Genova, 2002).

While French authorities denied this, the dismantling of informal camps targeted Romanian or Bulgarian citizens who were Roma (Faure Atger, 2013: 183). Such disproportionate, and even discriminatory, practices against Roma by the French authorities elicited responses from various human rights activists and advocacy NGOs in France and beyond (Ram, 2014: 208). These civil society actors advocated the rights of Romani migrants at the EU level and raised this issue in a discussion with Viviane Reding, who at the time was the European Commissioner for Justice, Fundamental Rights, and Citizenship. Faure Atger (2013: 191) interpreted such a campaign for Roma rights by many different NGOs as *acts of citizenship*:

> the French Roma affair demonstrated that the right to claim rights is enacted not only by those whose rights are denied, but also by those who can declare solidarity with them. In this case, it is the acts of NGOs that dismantled the barriers standing in the way of the enjoyment of rights of EU citizens, which had been erected by French policies. (Faure Atger, 2013: 191)

As a result of these acts of citizenship performed by many different pro-Roma NGOs, the French authorities changed their treatment of Romani migrants with EU citizenship. Mass collective expulsions stopped and to a certain extent, the demolitions of informal settlements. Still, what the existing analysis lacks is the nature of acts of citizenship performed in the course of these events by Romani migrants themselves. Several anthropological studies (Grill, 2012; Nacu, 2012; Pantea, 2013; Vlase and Voicu, 2013) offered perspectives of Romani migrants on their reasons for migration, but these studies did not frame their perspectives as acts of citizenship or as the enactment of European citizenship (Isin, 2013).

Owing to the fact that different civil society organizations and advocacy groups criticized such practices as discriminatory, the French authorities no longer conduct such extensive demolitions of Roma settlements and expulsions of Roma to other EU countries. Nevertheless, they 'invented' new approaches for expelling Romani migrants with EU citizenship, such as facilitated voluntary return and 'humanitarian' aid (Balkaninsight, 2011). France in particular, but also some other EU countries, decided to simply adopt different strategies to irregularize their migrant status. One strategy was even co-funded by the EC. The French Office for Immigration and Integration (FOII) received EUR 34,760,077 for 'voluntary return' activities. In exchange for voluntary return to their country of citizenship, the FOII offered cash bursaries that covered a one-way flight but also added an additional 'developmental' or 'humanitarian' amount so that returnees could start a business in their countries of origin. The EC (2011) argued that:

> the Project has had a positive impact: it facilitated return on a voluntary basis, ensuring the rights of migrants and initiating both sustainable return and reintegration in the individuals' country of origin. With the financial allowance, migrants were able to establish a new economic activity in their home country.

Although this project did not only target Romani migrants, many beneficiaries were identified as Roma. The outcome of this new strategy was, however, unexpected. As reported by Balkaninsight, even more Romani migrants with EU citizenship started coming to France despite the knowledge that they would be expelled through the method of 'voluntary return' (Balkaninsight, 2011). Many more decided to migrate to France, not because of their 'nomadic culture', but because of their semi-citizenship position at the national and EU level. It was clear to these Romani migrants that they would be expelled, and they were also aware that the financial allowance would not be sufficient to help them start their own micro-business, for example, in agriculture. What the French authorities failed to realize in this case was that discrimination against Roma in their own countries is far more multi-layered and cannot be unravelled by this type of a 'quick fix' approach. Romani individuals who decided to migrate from Bulgaria and Romania to France were themselves aware of this. However, for many of them this was one of the coping strategies to deal with their marginalized position due to discrimination closely connected to socio-economic inequalities. Nevertheless, this was neither merely a coping strategy nor the manifestation of Romani anti-social behaviour to abuse certain benefits, as some authorities claimed. It was in fact the means by which Romani individuals, who were not part of civil society organizations, manifested their own agency in order to warn that such programmes are not sustainable and hence *enacted* their European citizenship.

The irregularized position and coping strategies of de facto *stateless* and legally invisible Roma in the non-EU post-Yugoslav contexts

Romani minorities in the post-Yugoslav space found themselves in a certain *in-betweenness* (Bhabha, 1994; Vidmar Horvat, 2009) not only due to the legacy of the physical conflict but also as a result of a symbolic conflict, whereby the boundaries of citizenry were redefined in each individual state (Sardelić, 2015: 166–167). However, the dynamics in the post-Yugoslav space remained to a large extent distinctive from constellations within the EU. While Roma in the EU context were clearly defined as the unwanted Other

(Okely, 1994), Roma in the non-EU post-Yugoslav space remained mostly *invisible*, both during and post-conflict (Krasniqi, 2015: 210). In this space, the position of the defining unwanted Other was reserved for the more dominant minorities with destabilizing territorial demands (Sardelić, 2015: 163; Vermeersch, 2006: 6). This was especially visible in the case of Romani minorities from Kosovo. During the Kosovo conflicts in the late 1990s, almost 90% of the Romani population of Kosovo became forcibly displaced (Perić and Demirovski, 2000), either internally (European Roma Rights Centre (ERRC), 2011: 58; Krasniqi, 2015: 211) or as refugees in neighbouring post-Yugoslav countries such as Montenegro (Džankić, 2012: 347) and Macedonia (Spaskovska, 2012: 387) as well as in the EU countries such as Italy (Sigona, 2003; Solimene, 2011). While other Kosovar populations were also displaced, Romani minorities belong to the ones with the lowest rates of return to their previous homes (Đorđević, 2015: 134). Thus, they remain in the position of long-term forced migrants, and hence long-term displaced.

Several scholars including Sigona (2015) have described the dynamics between the position and agency of post-Yugoslav Romani forced migrants living in EU countries such as Italy. In contrast to Sigona, I highlight the position of those Romani forced migrants who remained in the post-Yugoslav space. Their position is especially thought-provoking as the evidence suggests how 'borders cross everyone, including those who never crossed borders' (De Genova, 2015: 12). It also exemplifies how 'borders are deployed strategically but always operate tactically' (De Genova, 2015: 7). The largest share of Romani minorities from Kosovo is still displaced within different post-Yugoslav states (Sardelić, 2015; United Nations High Commissioner for Refugees (UNHCR), 2011). When these minorities were compelled to flee their homes at the end of the 1990s, future international borders had not yet been completely defined since new post-Yugoslav states were still in the process of emergence. Many Romani individuals fled from Kosovo to Montenegro. At that time, these were two different parts of the same Federal Republic of Yugoslavia (FRY). With subsequent proclamations of independence, the FRY was later divided into three separate parts: Serbia, Montenegro, and Kosovo. When Romani individuals from Kosovo came to Montenegro, they were categorized as internally displaced (UNHCR, 2011: 13). However, after the new borders between Serbia, Montenegro (2006), and Kosovo (2008) had been drawn, the UNHCR insisted that internally displaced Romani individuals should be re-categorized as refugees (UNHCR, 2011: 13) due to the fact that they were no longer displaced within the territory of their country of citizenship. On the contrary, the Montenegrin authorities insisted that because they did not cross the international border at the time when they fled their homes, they should continue to be categorized as internally displaced persons. Since the Montenegrin authorities did not classify these Romani individuals from Kosovo as refugees, they were not eligible for international protection granted by the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967). Having the status of an internally displaced person rather than that of a refugee, made it easier to categorize them as irregular and potentially rendered them illegal. Romani individuals found themselves held hostage to the debate on the political redefinition of who will be entitled to Montenegrin citizenship after independence in 2006 (Džankić, 2012). Montenegro does not allow dual citizenship (Džankić, 2012: 344) due to the prospect of extensive overlap between Montenegrin and Serbian citizenship. Although this policy was not intended to specifically target Romani individuals, it presented many obstacles for them in regularizing their position by becoming citizens of the state in which they had been de facto living (Sardelić, 2015: 167). While fleeing their homes in Kosovo, many of them left

without their personal identification documents, which they did not need at the time since they were not crossing any international borders. At the same time, citizen registries were destroyed in Kosovo (UNHCR, 2011), and these individuals found themselves de facto stateless; they had Serbian citizenship, yet they could not prove it (Sardelić, 2015: 171). In order to regularize their alien status and permanent residence in Montenegro, in accordance with the 'Strategy for durable solutions of issues regarding displaced and internally displaced persons in Montenegro with a special emphasis on the Konik area' (Montenegro Ministry of Labour and Social Welfare, 2011) and the *Act on Amendment of the Act on Aliens*, they needed documents to prove their citizenship, otherwise they could be irregularized, labelled as 'illegally residing' in Montenegro, and deported (Sardelić, 2015: 171). However, as the international border between Serbia, Kosovo, and Montenegro had been created after they left, they could not obtain these documents on their own since they could not cross the border to enter their country of citizenship (Sardelić, 2015). Due to these obstacles, the final act of the irregularization of Romani migrant statuses has until now been constantly put 'on hold' by decisions of the Montenegrin Government to prolong the period during which the status of displaced persons needs to be regularized.

In Montenegro, as well as in other states of the former Yugoslavia, Romani migrants have faced problems in access to their personal identification documents, which has impeded their access to citizenship. The fact that access to citizenship was impeded also prevented them from obtaining official residency in the state in which they actually resided. As a result, the migrant status of these individuals went through a three-stage sequence of irregularization as they neither enjoyed protection accorded to citizens and/or residents nor international protection afforded to stateless persons. The affected individuals were left without international protection while becoming de facto stateless and legally invisible (Sardelić, 2015: 169). However, in contrast to the irregularization of the migrant status of Romani individuals with EU citizenship exercising mobility within the EU, the irregularized status of Romani migrants in the post-Yugoslav states cannot be directly seen as an outcome of intentional targeting. The irregularization of their status was in fact a product of their invisibility and the initial lack of consideration for their uniquely marginalized position.

The position of legally invisible and de facto stateless Romani minorities in the non-EU post-Yugoslav states only became much more prominent during the 'Europeanization' period. Before the accession negotiations and the resulting conditionality, the 'Europeanization' element was also present in the processes of Schengen visa policy liberalization for the Western Balkan countries (Kacarska, 2012). The visa liberalization processes also included benchmarks (Block 4) for ensuring freedom of movement to all citizens of the country in question through the unhindered provision of access to identity documents and protection of minority rights (Kacarska, 2012: 6). It soon emerged that the main group suffering from a lack of access to documents are individuals identified as belonging to different Romani minorities, especially those who have been forcibly displaced during the post-Yugoslav wars. The European Commission also clearly put strong emphasis on access to personal documents because they envisioned the potential problems associated with having a large group of de facto stateless EU citizens in the future. When combined with the rights of free movement afforded by the Free Movement of Citizens Directive, this situation was also perceived as a potential security issue (Van Baar, 2015: 75), since such populations could not be properly identified and thus efficiently controlled. Different IOs (primarily UNHCR, but also the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe) and human

rights advocacy NGOs, especially in the non-EU post-Yugoslav countries, became involved in bureaucratic procedures for acquiring the most basic documents, such as birth certificates, for legally invisible persons. A birth certificate, which until that time had not been available, was the basic document needed by legally invisible persons to subsequently prove their citizenship. While conducting my fieldwork in all of the non-EU post-Yugoslav countries, I interviewed several IOs as well as human right advocacy NGO representatives who joined forces in the Western Balkans Legal Aid Network – WeBLAN (Kostić, 2013): PRAXIS from Serbia, Your Rights from Bosnia and Herzegovina, Civil Rights Programme from Kosovo, Legal Centre from Montenegro, Macedonian Young Lawyers Association from Macedonia, and Legal Centre from Croatia. WeBLAN was created because the problems faced by legally invisible persons without any identity documents go beyond the boundaries of more than one state. WeBLAN was connected to the UNHCR in the region, on one hand, and to grass-root Romani NGOs, on the other. While providing assistance with securing identity documents to many individuals, they also ensured sustained awareness-raising campaigns. Through these campaigns, WeBLAN made sure that legally invisible Romani individuals would not remain invisible to the general public in the region and also in the EU. WeBLAN has continued these campaigns to the present day, although the visa liberalization process for most of the Western Balkan countries has now been concluded. Visa-free regimes have been introduced despite the failure by the states in question to meet all Block 4 conditions (Kacarska, 2012: 6). Many Romani individuals remain undocumented and continue to be legally invisible. These campaign activities by WeBLAN can be compared to the activities of civil society organizations, who advocated against discrimination of Romani migrants in the EU in the area of the freedom of movement. They were, namely, all enacting their citizenship in solidarity with the rights of their co-citizens (Faure Atger, 2013: 189).

As I interviewed representatives of these NGOs, all of them pointed out what being legally invisible entails: a legally invisible individual has no access to health care, employment, or education. In other words, such a person is not entitled to any of the rights an individual would be entitled to not only as a citizen but also as a resident. In addition, one of my informants from WeBLAN revealed that many legally invisible persons were also vulnerable to becoming victims of human trafficking and trafficking in human organs (interview, 3 December 2012).

The question arises as to how any of these individuals cope and survive with their *irregularized* statuses and legal invisibility. The irregularization of their status represents one of the severest severances of the 'social contract' between an individual and the state (De Genova, 2015: 194). Yet as Sigona (2015: 276) argued in his analysis of everyday stateless Roma individual in Italy, these individuals are 'neither rightless nor agencyless'. This was also confirmed during my fieldwork in the post-Yugoslav space. I conducted participant observation in Romani communities and refugee camps, where I encountered, and had informal talks with many Romani legally invisible persons. However, instead of highlighting their individual life stories, I will focus on three particular practices undertaken by legally invisible Roma that were noted in official documents of IOs and national governments, as they were seen as disruptive for the state system. These were also described by the NGO activists whom I interviewed during my fieldwork. I argue that the practices in question are in fact the enactment of citizenship by legally invisible Romani individuals and not just personal coping strategies to gain access to certain rights. For example, without formal access to the labour market or

social benefits, they create their own alternative economic niches (such as collection of scrap metal) and in so doing produce their own sources of income. However, with their own invisibility, their labour is invisible as well. Another even more telling case reveals how legally invisible people access health care without having the right to access. As it has been highlighted in certain documents (UNHCR, 2011), but also confirmed by my interlocutors from WebLAN and Romani communities, many pregnant, legally invisible women borrow health insurance cards from other women when they are about to give birth. This wide-spread practice in the Romani community ensures access to health care for those who would otherwise not be eligible for it. However, it also causes difficulties for birth registration since the identity of the real parents of a child becomes obscured. An activist shared a story with me about the leader of a Roma NGO, who used to proudly pronounce that his wife had given birth 15 times in 1 year. Although this practice is mostly interpreted as a problematic behaviour by Roma, it can also be understood as the enactment of their citizenship. Through these actions, Roma individuals raise awareness about being compelled to engage in these alternative practices, in order to access rights which their co-citizens take for granted. Legally invisible individuals can in this way gain access to these basic rights by subverting the system. As a result, their agency and their practices can be understood as the acts of (semi)citizenship and as acts of their European 'citizenship-to-come' (Isin, 2015: 20). Through this behaviour, these individuals demonstrate that once their post-Yugoslav countries become full EU members, they will also have to be granted legitimate access to these basic rights. In one interview (conducted on 3 December 2012), a human rights activist said that many legally invisible persons wanted to regularize their status and gain identification documents including birth certificates. However, they still do not see prospects of better access to health care, education, or labour markets in their own country because they remain semi-citizens. Instead, they exercise the right to free movement gained with documents to migrate from their own country. This coping strategy is yet another enactment of citizenship showing that simply having *de jure* access to rights does not necessarily mean de facto access in everyday life. Many Romani individuals are aware of this difference and thus choose to exercise alternative forms of agency to introduce ruptures into a system that otherwise discriminates against them.

Conclusion

This article sets out to comparatively investigate the position and agency of Romani migrants with, and without, EU citizenship. I argued that precisely because of Romani semi-citizenship position, EU states can easily irregularize their migrant statuses and render them unwanted migrants, who can be expelled. However, this is only a part of the story on semi-citizenship, which does not completely explain how the position of Romani migrants is shaped, reshaped, and transformed. First, discriminatory practices towards Romani migrants attracted a lot of attention from civil society organizations while also catalysing the establishment of the Romani movement (Vermeersch, 2006). However, the Romani migrants themselves *enact their citizenship* in ways that are consistent neither with the expectations of state authorities nor with civil society organizations advocating for their rights. As long as their status is irregularized by the state, they remain invisible in global politics. They become visible as soon as they enact their semi-citizenship position and irregularized migrant status. These acts of citizenship open new spaces of existence beyond mere legal existence. They show creative and innovative practices by those located on the margins of formal citizenship. With their agency they

do not just demonstrate how they are discriminated against; they also reveal ruptures within the system of rights that should be granted to all citizens and migrants alike. Despite their irregularized status, Romani migrants become global players in international politics by virtue of their agency – they point to discrepancies among the rules set to govern in this space. While this article only allowed me to analyse two case studies, I think similar patterns would be confirmed by analysing the position of Romani asylum seekers from Hungary in Canada and many other cases, where the position of Romani migrants has been irregularized. By analysing additional cases, we will be able to witness further ways that Romani individuals react to irregularization through unconventional practices. It is this creative agency that precisely demonstrates that there are possibilities to move beyond the limitations set by those who position Romani migrants on the margins of European citizenship.

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