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Fighting Intersectional Violence Against Roma Women and Girls – The Case of Croatia*

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Abstract

This paper provides a comprehensive analysis of the complex challenges associated with intersectional discrimination experienced by Roma women and girls in Croatia, particularly within the context of gender-based violence. While Croatia ratified the Istanbul Convention and enacted various national strategies aimed at Roma inclusion, this paper argues that the detrimental effects of intersectional discrimination on gender-based violence remain insufficiently explored. Such detrimental effects can be identified in the *J.I. v. Croatia* case, despite the ECtHR's hesitancy to legally recognize discrimination in the absence of clear statistical evidence. The notion of intersectional discrimination also reveals the failures of Croatian judicial authorities to address forced and early marriages among Roma girls effectively. This paper emphasizes the advantages of looking at discrimination of Roma women and girls through an intersectional lens. It advocates for a holistic approach in line with the requirements of the Istanbul Convention, including the training of legal professionals, stronger policies for prevention and protection, and improved data disaggregation. It underscores the need for policies that specifically address the obstacles Roma women face and, equally importantly, for their active involvement in policymaking.

Keywords: gender-based violence against Roma women; intersectionality; discrimination; Croatia; Istanbul Convention; GREVIO Baseline Evaluation report

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Introduction

Various reports show that Roma women face discrimination and social exclusion on multiple grounds (ethnicity/race, gender, class, and education) in many countries, thus experiencing intersectional discrimination (de la Serna and Galusca, 2020). Intersectional discrimination takes place on the basis of several personal grounds or characteristics/identities, which operate and interact with each other in such a way as to be inseparable (European Institute for Gender Equality, 2016a; 2016b, hereinafter EIGE). Intersectional analysis aims to reveal the different types of intersectional and multiple discrimination and disadvantage that occur as a consequence of the combination of identities, notably the intersection of sex and gender with other grounds. However, the intersecting aspects of Roma women's marginalization have long been neglected "since the feminist women's movement lacked sensitivity to the specific concerns of Roma women, while Roma organizations lacked sensitivity to gender aspects" (Asztalos Morell, 2015, p. 34). This is a similar pattern to that identified concerning the reconstruction of violence against women of colour, and the failure of both feminists and antiracists to recognize that sexism and racism do not occur in mutually-exclusive terrains but rather intersect in the lives of people, producing synergic effects (Crenshaw, 1991, p. 1242). Roma women victims of domestic violence face difficulties obtaining support from most public service institutions (external discrimination) as well as from their own communities (internal discrimination), while they are at higher risk than non-Roma women victims of violence, notably domestic violence, trafficking and exploitation (Asztalos Morell, 2015). As a failure of state authorities to protect a young Roma woman from intimidation and threats by a family member, a finding of ECtHR in a recent landmark judgment (*J.I. v. Croatia*, 2022), illustrates both points well. A young Roma woman, deeply traumatized by the severe sexual violence previously inflicted by her father, reported death threats to the Croatian police three times and reached out to two different institutions. Despite her persistence, no official response followed. This case, which is further discussed below, highlights the dangerous impact of official prejudices towards intercommunal Roma violence. These prejudices result in the undermining of complaints and consequently lead to the distrust of victims and their secondary victimization. This paper argues that intersectional discrimination often plays an underlying role in such situations.

Even though Croatia has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence, the so-called Istanbul Convention, and enacted various national strategies to combat discrimination against Roma and to ensure their social inclusion (Munivrana and Bosak, 2022), the detrimental effects of intersectional discrimination on gender-based violence and official responses to it have neither been sufficiently explored nor effectively addressed. This was demonstrated by the already mentioned *J.I. v. Croatia* case, which however stopped short of a finding of institutional discrimination in an absence of clear statistical data or racial utterances.

Unfortunately, *J.I. v. Croatia* is not the only case showing the negative synergic effects of exposure to intersectional discrimination and gender-based violence which, if

unrecognized, may even result in implicit justifications of intercommunity violence and tendencies to normalize it. Other examples of such negative synergic effects of gender and ethnicity (and possibly also of social status and poverty) can be found in a domestic case also analysed in depth below, dealing with the forced and early marriage of a Roma girl which was not recognized as a form of gender-based violence by the judicial authorities. The impact of intersectionality on gender-based violence was, however, explicitly recognized in the recently-published first Group of Experts on Action against Violence against Women and Domestic Violence (hereinafter GREVIO) Baseline Evaluation Report for Croatia, and therefore relevant extracts from the Report will be consulted further in the paper.

This paper follows the methodology of policy analysis and a case study, using the concept of intersectionality as an analytical tool. The policy analysis is focused on analysing various relevant Croatian documents that address the position of Roma population and gender-based violence. These documents are assessed to identify if intersectional aspects of discrimination against Roma women are recognized as a genuine social issue. While “intersectionality” is increasingly becoming a ‘buzzword’ in academia and especially within the feminist movement (Davis, 2008), this paper aims to examine if (and how) this concept is addressed in national documents and regional and domestic court cases involving Roma women and girls who are victims of gender-based violence. The case study is conducted in two parts: First, the paper focuses on the aforementioned landmark judgment of the ECtHR against Croatia, and then critically assesses a national case related to Roma child marriages.

Following the introduction, the first section introduces the notion of intersectionality – which captures well the experience of many disadvantaged groups of women, including Roma women – and analyses the extent to which this phenomenon has been recognized by the Istanbul Convention. The following section explores efforts taken to ensure and promote gender equality and to tackle gender-based violence in Croatia at the policy level, with a particular focus on Roma women and their structural, institutional, and intersectional discrimination. The third section analyses information available about domestic violence in Roma communities. Although there are no official statistics regarding domestic violence against Roma women, limited data and comparative research show that Roma women are targeted disproportionately by different forms of domestic and gender-based violence and that, while domestic violence is underreported in general, domestic violence against Roma women more often goes unnoticed and unaddressed. The absence of clear statistical data on gender-based violence against Roma women and official responses to it is dealt with in section four, which focuses on the analysis of the aforementioned recent judgement of the ECtHR dealing with allegations of official discrimination of Roma women and girls by Croatian authorities. The last section sheds light on another issue of domestic and gender-based violence against Roma girls – their sale for early and/or forced marriages in violation of their rights as children and of basic human rights generally. The paper concludes that only through an intersectional approach can the magnitude of harm experienced by Roma women be unveiled and adequately addressed. Addressing the synergic effects of different discriminatory grounds and numerous

forms of discrimination Roma women and girls face (individual, structural, and institutional discrimination) requires a comprehensive set of measures, which if implemented together can improve the position of Roma women in Croatia.

1. Intersectionality and violence against Roma women – setting the framework

Recent studies on gender-based violence recognize that women and girls often face multiple and intersecting forms of discrimination and violence. When coupled with other forms of discrimination and inequality such as racism, xenophobia, transphobia, ageism, or discrimination based on social status or education, gender-based violence against women can have a more significant impact on women and require greater measures to address their subsequent needs (Sosa and Mestre, 2022, p. 5). The notion of intersectionality, as introduced in American academia by Kimberlé Crenshaw in 1989, has been used ever since to express the particular vulnerability of minority women and the multiple barriers they face in realizing their rights. Intersectionality represents the idea that discrimination on the basis of multiple grounds signifies a distinct disadvantage which is both similar to – yet different from – that based on individual grounds, thus making the comparison with another similarly-situated group difficult. In several examples, Crenshaw showcased that the unique experience of Black women cannot be captured by comparing it with the experience of either Black men or white women.¹

Intersectional perspectives have gained wide acceptance, in particular within the field of gender studies (Asztalos Morell, 2015). References to intersectionality are also increasing in official regional and international discourse, as well as policy documents dealing with gender discrimination and violence against women (Petričušić, 2024) such as: the 2023 Report on gender equality in the EU;² the 2023 Pay Transparency Directive; the 2024 Directive on combating violence against women and domestic violence; the 2022 European Parliament Resolution on Intersectional Discrimination in the EU; the 2021 European Parliament Resolution on socio-economic situation of women of African, Middle Eastern, Latin American and Asian descent; the 2021 Council Recommendation on Roma equality, inclusion and participation; and the UN Committee on the Elimination of Discrimination against Women (hereinafter, the CEDAW's Committee) General Recommendation No. 28 and, notably, General Recommendation No. 35. During the last two decades, various UN Special Rapporteurs and relevant UN Committees have also explicitly referred to intersectionality (Theilen, 2024), for example, the UN Committee on the Elimination of Racial Discrimination (e.g. in its General Recommendation No. 27 on Discrimination Against Roma). However, with the exception of the EU Directives, those documents listed are all soft law instruments, whereas legally-binding treaties such as the Istanbul Convention have so far refrained from explicitly using the term “intersectionality” and instead have opted for terms such as ‘multiple discrimination’ or ‘vulnerability’, as explained further in this article.

Even though the Istanbul Convention establishes a wide range of measures to approach and combat gender-based and domestic violence holistically, it falls short of giving full recognition to the notion of intersectionality, as criticized by Sosa (2017, pp. 134–135). Instead,

it prohibits discrimination in the implementation of the Convention. Article 4(3) of the Convention requires member states to implement the provisions of the Istanbul Convention, and in particular measures to protect the rights of victims,

without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

Furthermore, Article 12(3) requires any preventative measures taken to consider and address the specific needs of persons made vulnerable by particular circumstances, at the same time placing the human rights of all victims at the centre. Similarly, when it comes to protection and support, member states should ensure that all measures adopted address the specific needs of vulnerable persons, including child victims. Vulnerability is also recognized as an aggravating factor in the context of prosecution (Article 46(c)). Whereas the Convention itself does not define vulnerability, the Explanatory Report provides some guidance in para. 87, holding it to include

pregnant women and women with young children, persons with disabilities, including those with mental or cognitive impairments, persons living in rural or remote areas, substance abusers, prostitutes, persons of national or ethnic minority background, migrants – including undocumented migrants and refugees, gay men, lesbian women, bi-sexual and transgender persons as well as HIV-positive persons, homeless persons, children and the elderly.

The drafters of the Convention rightly recognized in para. 53. that “[p]erpetrators often choose to target such persons because they know that they are less likely to be able to defend themselves, or seek prosecution of the perpetrator and other forms of reparation, because of their situation.” The Explanatory Report further warns that “women tend to experience multiple forms of discrimination as may be the case of women with disabilities or/and women of ethnic minorities, *Roma*, or women with HIV/AIDS infection, to name a few.” (Emphasis added)

While recognizing multiple forms of discrimination is a fertile starting point, the notion of multiple discrimination does not fully convey the meaning of intersectionality. Therefore, it is commendable that GREVIO filled the gap by using the notion of intersectionality in its reports, including those to be assessed in Chapters 2 and 3 of this paper. The term ‘intersectionality’ expresses an overarching idea that individuals (and groups) are affected simultaneously by multiple inequalities based on various grounds of distinction, which are inseparable. This differs to multiple discrimination, which is based on different grounds either separately or one-at-a-time. Therefore, as warned by Sossa and Messe (2022, pp. 12–13), examining gender-based violence only in relation to gender – while precluding other categories such as race, class, age, disability, sexual orientation, or gender identity – is not sufficient, because social categories “intersect and interlock” in multiple systems of discrimination. Intersectionality

offers a “lens” to reveal “the interaction between gender and other social categories of distinction and the outcomes of these interactions in terms of power” (Sosa, 2017, p. 28). The intersection of different categories affects not just personal experiences of harm, but impacts communities and systems of social institutions, social practices, policies, and the law. This is why there must be a structural response to intersectional inequality, considering social and political dimensions as well (Sossa and Messe, 2022, pp. 12–13). Consequently, the next section considers whether Croatian policy documents understand and reflect this.

2. (Non-)Recognition of intersectionality and measures to address gender-based violence against Roma women in Croatian policy documents

The newest National Plan for Gender Equality until 2027, drafted by the national Office for Gender Equality, mentions Roma women only incidentally; recognizing not just the general social disadvantage of all women, but also the importance of improving the position of certain sensitive and vulnerable groups such as women with disabilities, members of national minorities (especially Roma women), women in rural areas, young women, victims of human trafficking, migrants, refugees, and seekers of international protection, as well as LGBTIQ persons. As recognized by the Plan, these groups can be exposed to various forms of multiple discrimination. On page 10, it then goes on to recognize that

even though the Council for National Minorities of the Government of the Republic of Croatia annually increased funds for financing their projects, there are still challenges in solving the position above all of members of the Roma national minority in view of the need for a greater degree of their integration in the field of education, the labour market, as well as *the suppression of violence against women and children*. (Emphasis added).

Nevertheless, the Plan omits any priority or objective targeting Roma women specifically. Within Priority 1, titled *Promoting human rights of women and gender equality*, multiple discrimination is mentioned, however without reference to Roma women. Similarly, Priority 3: *Fighting violence against women*, should be achieved through a set of measures including stronger statistical monitoring, but fails to reference the disaggregation of data according to grounds of discrimination, such as (Roma) ethnicity and/or the specific position of Roma women.

Interestingly, the Gender Equality Action Plan, in force until the end of 2024, further foresees several measures designed to increase public awareness of gender equality and multiple discrimination. One of these measures is the education of police officers about multiple discrimination. Yet, on page 5, where the Plan provides Priority measurables, it only mentions the number of border police officers educated in matters concerning the rights of migrants, refugees, and asylum seekers, and not on the rights and particular needs of Roma women. Finally, in the last National Strategy for Protection from Domestic Violence 2017 to 2022, Roma women are not even mentioned, let alone singled out as a target group. Therefore, GREVIO noted “with regret” in its Baseline Report that the National Strategy lacks specific measures

targeting different groups of victims of violence who are or may be exposed to intersectional discrimination, such as Roma women. (2023, p. 14). Neither do other relevant policy documents in the field of gender-based violence identify Roma women as a target group, such as the Rules of Procedure in cases of Sexual Violence, which entered into force in September 2023.

The only two official national strategic documents to explicitly recognize and address violence against Roma women (to the extent as an intersectional problem) are the National Plan for Roma Inclusion (hereinafter the NPRI) 2021 to 2027, and the accompanying Action Plans for Roma Inclusion, first from 2021–2022 and then for 2023–2025. Yet, as will be described below, these documents do not include any specific measures or allocate any funds to address this problem efficiently. The prevalence of domestic and gender-based violence against Roma women in the NPRI is, perhaps surprisingly, discussed in both Action Plans under the heading of ‘health’. An unfavourable family environment is perceived to negatively impact health “and in this sense indicators that touch on the problems of domestic violence and violence in partner relationships are important” (Action Plan for Roma Inclusion, 2021, p. 32). This categorization is itself concerning because it fails to treat domestic and gender-based violence as a form of discrimination or an autonomous social problem, deserving of dedicated attention or resourcing. Funding from the European Social Fund and limited funds from the state budget are allocated to raising the awareness of Roma communities about gender-based violence only in the context of a general health goal to *Improve Roma health and efficient, equal access of Roma population to high quality health services*. Certain funds, approximately 1 million euro, have been allocated to the Office for Human Rights and Rights of National Minorities (hereinafter the OHRRNM) for this purpose, but under an overarching goal in which raising awareness of gender-based violence among the Roma population is just one measure. Other measures include monitoring the health of the Roma population and enhancing the reproductive health of Roma women (Action Plan for Roma Inclusion, 2021, p. 47). The latest Action Plan from October 2023 also strives to increase awareness about gender-based violence through “regional and local educational activities aimed at members of the Roma national minority on the topic of gender-based violence, including the repercussions of domestic violence on other family members, particularly children” (p. 75). While the adoption of a child-sensitive approach is commendable, the cited action remains overly broad, insufficiently developed, and fails to acknowledge women victims as individuals themselves requiring empowerment and specialized protective measures. Initiatives by the OHRRNM aiming to increase knowledge about gender-based violence and its consequences in the Roma community were explicitly welcomed by the GREVIO in its Baseline Report for Croatia (2023, p. 14). GREVIO, however, failed to address the issue of inadequate framing, which undoubtedly requires further consideration.

The earlier National Strategy for Roma Inclusion, in force from 2013 until 2020, devoted considerably more attention to the issue of violence against Roma women *per se*. One of its specific goals was “to empower the local Roma community to recognize the dangers of risks exposure to phenomena of human trafficking, sexual exploitation and other forms of

violence with an emphasis on women and children” (p. 82). The fourth specific goal was to reduce violence towards the Roma population generally, including violence within the Roma communities. Even though domestic violence was not specifically mentioned within this goal, it is clear that it comprised misdemeanours and criminal offences committed by Roma, thereby encompassing domestic and other forms of gender-based violence. The accompanying Action Plan, however, did not include enough measures to achieve these goals and the measures it did include were predominantly pre-existing activities of relevant authorities.³

Looking at the totality of relevant policy documents, GREVIO observed that “such a fragmented approach, combined with the lack of an overarching strategic framework covering all forms of violence against women, may risk making the challenges of women who are subject to intersectional discrimination invisible and prevent the delivery of holistic services to victims of domestic violence belonging to such groups” (GREVIO’s Baseline Report for Croatia, 2023, pp. 13–14). The relatively modest objectives set forth in the Action Plan for Roma Inclusion suggest a lack of genuine commitment to eliminating violence against Roma women and a potential failure to fully comprehend the scope of this societal issue. It is also imperative to establish strict monitoring of the realization of those measures.

To conclude, Croatian policies aimed at Roma women are still lacking a gender-sensitive and/or intersectional perspective as envisaged by Kóczé

Roma policies have to integrate the goal of gender equality and consciously work against gender stereotypes. Secondly, gender equality policies have to become more inclusive and integrate anti-racism and diversity among their goals. Finally, specific [...] policies are also necessary to address some of the most pronounced disadvantages, such as those that Romani women face in employment and health. The last of these requires an understanding of the specificities of Romani women’s situation, which lie at the intersection of ethnic, gender, and economic disadvantages (Oprea and Silverman, 2020, p. 261).

3. Intimate partner violence and other forms of gender-based violence in Roma communities

According to the current NPRI, the level of violence currently faced by Roma in marital or other relationships does not significantly differ from that of the general population. The findings about the level of the violence in general population, however, rely on a single study dating back to 2007 (Klasnić, 2011, pp. 345–346). Different methodologies, and the fact that studies in this field are generally scarce and very infrequent, make the comparison difficult. In any event, the NPRI established that 35% of Roma women had experienced physical violence, 21% psychological violence, 18% economic violence, and almost 9% sexual violence or rape. In this research, young women are defined as those aged 14 to 29; middle-aged women between 30 and 55; and the older group are considered those aged 56 and above (Klasnić, Kunac, & Rodik, 2020, p. 38). In all four forms of violence against women, significant differences were found in the experiences of women in different age ranges, with all forms of violence being more present in the lives of older Roma women. Middle-aged women experienced all forms of violence at

a lower rate than older women, but more than young women (p. 32). From this data, it could be inferred that the new generations are less and less exposed to gender-based and domestic violence. GREVIO welcomed data and research regarding the specific experiences of gender-based violence by Roma women, particularly the work of the Ombudsperson for Children and the OHRRNM (GREVIO's Baseline Report for Croatia, 2023, p. 14). Unfortunately, GREVIO did not question the comparison between the levels of violence against women in the general population to Roma communities, and neither has it delved into the structural reasons behind it. However, it did notice that "it is unclear to what extent research conducted so far has been used for the purpose of evidence-based policy making" (p. 26).

Concerning rates of violence experienced by Roma women, the NPRI based its findings solely on research based on a sample of 420 Roma women, conducted by three independent researchers under the auspices of the OHRRNM. In the absence of any official statistics, this is not surprising. The OHRRNM research, however, itself recognized that "[e]xperiences of violence against women by their intimate partners are not easy to measure, and it is particularly difficult to estimate its prevalence" (Klasnić, Kunac, & Rodik, 2020, p. 88). The research further emphasizes that although domestic violence, and sexual violence in particular, is often unreported in the general population, it is not "unreasonable to assume that such ratios of reported and unreported violent events are even less favorable for Roma women than for women in the general population". It was, however, not possible to verify this assumption from the available data (Klasnić, Kunac, & Rodik, 2020, pp. 92–93). In addition to the issues raised above, there is also a possibility that Roma women perceive domestic violence differently and that their tolerance to such violence is higher compared to the general population.

The majority of further research and media reports available emphasize a higher percentage of violence against women in Roma communities.⁴ Comparative research conducted in southeastern European countries shows that a large number of Roma women (for example, in Serbia, more than 47%) were exposed to domestic violence, and in most cases, children were either witnesses or victims (UNICEF, 2007, p. 43). Higher rates of violence were also recognized by the previous National Strategy for Roma Inclusion (2013–2020), which referred to various studies showing that a large number of Roma women suffer sexual and physical violence from their partners and that there is also a large number of women who suffer domestic violence from their husbands, fathers-in-law, mothers-in-law, or other family members over long periods. Very often, they do not report this violence. This is predominantly due to cultural reasons, fear of stigmatization in the community, and distrust in institutions (National Strategy for Roma Inclusion, 2012, p. 73).

Distrust in institutions was further recognized by the regional non-governmental human rights organization, the European Roma Rights Centre (hereafter the ERRC), in *J.I. v. Croatia* as analysed below, in which the ERRC emphasized that when Roma girls and women were victims of gender-based violence, they received an inadequate or no response at all from the police. Such a poor response was directly related to their race or ethnicity, and it was particularly destructive to their fundamental rights and dignity because it made the harm

those girls and women faced invisible; it silenced them, and it made it especially unlikely that they – and others like them – would seek protection in the future (*J.I. v. Croatia*, para. 76). Inadequate responses from the state authorities perpetuate and exacerbate the level of gender-based violence within Roma communities, demonstrating well that the issue of gender-based violence is not connected with Roma culture *per se* but, on the contrary, is deeply connected with their structural and institutional marginalization.

Roma women activists highlight that it is very difficult to talk about violence and violence against women and children in Roma communities since those topics are still perceived as taboo. A Roma woman who reports violence faces the possibility of being excluded from the community due to taking private family problems outside the community, damaging not just her husband's reputation but also the image of the whole community as a legal charge is seen as a violation of group solidarity (Corradi, 2018, p. 3). Furthermore, Roma women may be reluctant to share their experience of victimization with interviewers who are perceived as outsiders – not coming from Roma communities themselves – and may also strive to present themselves in a better light (as discussed in *Izveštaj o nasilju u porodici nad Romkinjama u Bosni i Hercegovini* (the Report on domestic violence against Roma women in Bosnia and Herzegovina), 2012). As explained in the introductory remarks, while going public about gendered forms of violence was considered an important political step for the white feminist movement, in many cases this has proved not to be the way for women of colour and oppressed communities (Corradi, 2018, p. 4).

A UNDP report of a field study of Roma communities in Albania, Montenegro, and the Former Yugoslav Republic of Macedonia conducted by Milenković (2018) revealed that Roma women who experience domestic violence face more difficulties due to poverty, social exclusion, and the lack of social services in the areas where they live. Although there is no recent similar report for Croatia, the same conclusion most likely applies to Roma women in Croatia also. Recently-published research, conducted in the spring of 2020 on a sample of 350 Roma women from 12 so-called Roma settlements in Međimurje county – a county in which approximately one-third of the Croatian Roma population lives in conditions of significant geographical (Šlezak, 2023) and educational segregation (a finding also confirmed by the ECtHR in *Oršuš and Others v. Croatia*, 2010) – showed a high level of acceptance of prejudices about violence against women in the family, including the acceptance of stereotypes and gender roles about the right of men to use violence against women in various circumstances (Racz, 2022b, pp. 107–111). Data shows that approximately a third of Roma women hold that battered women deserve to be beaten for provoking violence (Racz, 2022b, p. 109). 37.4% of the women surveyed believe that a man beating his wife is justified by certain circumstances. Less than half of surveyed Roma women fully rejected the statement that violence against women can be a form of discipline (Racz, 2022b, p. 109). Another research study conducted by the same author confirmed there is a high acceptance of gender-based violence in Roma communities, with this violence being justified by the use of alcohol or drugs. Victims expressed feelings of helplessness, in the sense that not much can be done about it, since men are understood to be

violent by nature (Racz, 2022a, p. 644). Comparable research has also been conducted in the Balkan region, with similar results (Racz, Rončević, & Milošević, 2023, pp. 511–512).

In addition to internalized stereotypes and justification of violence, underreporting of gender-based violence is also a corollary of the fact that Roma women are expected to keep silent about the violence they face because it is considered “their shame and their problem” (Memedi, 2019). It follows that, within Roma communities, gender-based violence is still mostly perceived as a private problem. It is believed that women are responsible for maintaining and caring for the family and that they should suffer and endure marital ‘problems’ and stay married for the sake of the children. The most often-cited reasons by Roma women for not reporting violence are fear of their abusers, followed by feelings of shame because they live with them and have children together, and thirdly, lack of financial resources (Memedi, 2019).

The decision not to report may also be driven by previous negative experiences, lack of (meaningful) official responses and sufficient support services, together with poor educational backgrounds and low socioeconomic status, all of which hinder Roma women from breaking the cycle of violence and securing a sustainable life outside of their community (*Izveštaj o nasilju u porodici nad Romkinjama u Bosni i Hercegovini*, 2012). Recent research conducted by the Fundamental Rights Agency (hereinafter FRA) supports these findings: the Roma population in general tend to significantly under-report discrimination. In 2021, of 10 EU countries (including Croatia), only 5% of all victims reported or made a complaint about their most recent incident of discrimination based on their Roma ethnicity (FRA, 2022, p. 29). The subsequent ECtHR case (*J.I. v. Croatia*) illustrates well the obstacles victims – and in particular Roma women – face when they decide to report domestic violence. It also emphasizes the rarely-discussed issue of inadequate statistical monitoring.

4. Analysis of *J. I. v Croatia* through intersectional lenses

Some aspects of the European Court on Human Rights’ (ECtHR) case law on violence against women are progressively recognizing intersectionality (e.g., when it comes to the forced sterilization of Roma women, as seen in *N.B. v. Slovakia*, Application No. 29518/10, 12 June 2012, para. 96). However, the ECtHR is still reluctant to apply intersectional lenses (and consequently to use the term) even in cases where intersectionality is a clear issue. Instead, the ECtHR refers to certain categories of victims as ‘a particularly vulnerable group’. Roma were recognized as a vulnerable social group in a number of the ECtHR cases, despite academic criticism of such practice (Schoentjes, 2022, pp. 385–388; Sjöholm, 2017, pp. 182–185). After the Slovakian Roma sterilization cases, *J.I. v. Croatia* presented an opportunity for the ECtHR to take a further step and recognize intersectional discrimination.

This case, based on the statement of the facts presented in the ECtHR’s judgment, concerns the failure of Croatian authorities, namely the police, to effectively investigate allegations of serious threats made by a young Roma woman, the applicant in this case. According to the allegations, the threat was made by the applicant’s father B.S., who previously raped his daughter, J.I., on multiple occasions. In 2009, B.S. was convicted and sentenced to

eight years of imprisonment, in addition to being found guilty in minor-offence proceedings for domestic violence. In June 2015, he was granted leave to his habitual place of residence. The applicant learned from her relatives that her father had been granted prison leave, was looking for her and had threatened to kill her because he deemed her responsible for his imprisonment. She complained to the police and the judge about her fear of the threats made by her father. She requested the authorities to deny her father prison leave, without success. The applicant also contacted the Ministry of Interior complaining about the conduct of police officers (i.e. their failure to act upon her calls), asking them to forward her criminal complaint to the competent State Attorney. When the Ministry of Interior failed to do so and found no omissions or misconduct, the applicant lodged a constitutional complaint with the Croatian Constitutional Court alleging a failure of the domestic authorities to protect her from intimidation and repeat victimization by B.S., and of a failure to effectively investigate serious threats against her life. She also complained that she had been discriminated against as a woman of Roma origin. The applicant relied on Articles 3, 8, and 14 of the Convention. Her complaint was found inadmissible at the domestic level on the grounds that the response of the police internal control unit was not a decision amenable to constitutional review.

As previously stated, the ERRC intervened in the case as a third party. It submitted that while indeed stereotypical views about women and violence against women were pervasive in some Romani communities, the idea that gender-based violence was inherent to Roma culture or Roma tradition was a dangerous stereotype, and ultimately a form of antigypsism (para. 74 of the judgment).⁵ An important issue stressed by the ERRC is that Roma victims of gender-based violence experience not just gender/sex discrimination, but – due to police refusal to protect them – also intersectional harm. Therefore, the ERRC insisted that the Court should use the term “intersectionality” to describe the particular kind of harm faced by people caught in such an intersection which is, as already emphasized, often well-hidden, but highly destructive for fundamental rights (para. 79).

The ECtHR started its assessment by emphasizing that the applicant in the present case was “a highly traumatized young woman of Roma origin, who had been the victim of appalling sexual abuse by a close family member at a very early age and suicidal. Following B.S.’s conviction, she changed her name, hairstyle and place of residence, underwent extensive therapy and started a new life” (para. 86). The Court further found that the applicant contacted the police on three separate occasions informing them about a serious threat made by B.S, yet at no point did the police start a proper criminal investigation as obligated to do under domestic law. The police should have begun criminal inquiries concerning the applicant’s allegations, not least by conducting interviews with the relatives mentioned by the applicant (paras. 91–94). Consequently, the Court found that the Croatian authorities’ failure to effectively investigate a particularly vulnerable rape victim’s allegation of a serious threat to her life (para. 100) amounted to a procedural violation of Article 3 of the Convention.

With respect to allegations of discrimination by Croatian authorities as a result of her Roma ethnic origin, however, the Court did not find a separate issue under Article 14

of the Convention. According to the Court, “neither the circumstances as submitted, nor any relevant evidence such as statistical data, substantiated the allegation of discrimination on grounds of the applicant’s Roma origin” (para. 97). Although the Court stopped short of finding intersectional discrimination, it recognized the applicant’s “particular vulnerability on account of her sex, ethnic origin and past traumas”, all of which the authorities were aware of and hence should have reacted promptly and efficiently to protect her from realization of that threat and further intimidation, retaliation, and repeat victimization (para. 97).

Clearly, the judgment is positive in many aspects: it is victim-responsive and gender-sensitive to repeat victimization, and importantly, it acknowledges that threats can amount to psychological violence despite being mediated (Ilieva, 2022). In reaching that conclusion, the Court relied on the UN CEDAW’s Committee which indicated that, to be treated as such, gender-based violence does not need to involve a “direct and immediate threat to the life or health of the victim” and that an indirect threat may suffice (para. 88). The Court, in addition to the procedural breach, should have also found a substantive violation of Article 3 due to the applicant’s “exposure to non-protection by the authorities”, as eloquently argued elsewhere (Ilieva, 2022). This part focuses on the failure of the Court to address covert discrimination, in the absence of a racist utterance (“neither the circumstances as submitted [...] substantiate the allegation”) and/or statistics on police neglect of such victims. According to at least one commentator, data submitted by the ERRC providing context of police neglect of victims like the applicant, together with the case fitting the inequality pattern, the victim’s vulnerability, the police omission’s blatant unlawfulness and the lack of explanation for it, would suffice for the application of Article 14, if not for a *prima facie* case (Ilieva, 2022). In situations such as this one, the expectation is on the State to refute discrimination by showing a race-neutral reason for the failure, rather than expecting the victim to prove bias. In comparative jurisprudence, it has been settled for decades that differential treatment (compared to how another would be treated) indicates possible racial discrimination. In such circumstances, the burden of proof should shift and adjudicators should expect the respondent to convincingly explain the different treatment, but this has still not been recognized by the ECtHR (Ilieva, 2022).

In *J.I.*, the Court drew no conclusions from the officials’ tendencies to normalize, rather than investigate, intracommunity Roma girls’ abuse and attribute it to Roma culture; the ECtHR did not reflect on the issue raised concerning the underlying stereotypes (para. 78; Željko, 2022, p. 347) that, as a result, hindered the applicant’s access to justice. This case therefore represents a missed opportunity for the Court to draw a conclusion on the tacit but persistent “presence of prejudice and discrimination in the justice system where crimes committed against Roma women are left uninvestigated and unprosecuted as ‘gypsy’ matters and/or private matters” (Ravnøhl, 2010, p. 10). Despite the profound personal impact of her traumatic experience (that led to her changing her name and appearance), the applicant showed persistence and agency to report her father on multiple occasions, even at the cost of potential backlash from the community and her immediate family. Her reports were consistently downplayed and/or ignored by the authorities, a reaction that might not have occurred if her ethnicity was that

of the majority of the population. Her case emphasizes structural barriers which members of minority groups face when they seek the institutional support they are entitled to. This lack of institutional response is apparent from the list of failures – foremost to initiate an investigation, but also from the failure to inform her, as a vulnerable victim, about her father's prison leave. Despite the legal framework requiring it, she was not asked for her opinion about the prison leave. J.I.'s experience clearly shows that marginalized groups are "less likely to receive services after victimization experiences" (Bates *et al.*, 2019, p. 39). In addition to the institutional scepticism, a risk assessment was also absent (as warned by Judge Derenčinović in para. 11 of his partly dissenting opinion). Overall, this case serves as a good example of how "consequences of intersectionality are manifested in institutions" (Niemi *et al.*, 2020, p. 16). Had the Court delved into the structural causes of institutional unresponsiveness to the applicant's multiple complaints, it could have found a violation of Article 14 of the Convention as well. The absence of this crucial linkage is especially unfortunate given the ECtHR declared this case one of its key decisions of 2022 (Jovanović Karajić, 2023, p. 198). Nevertheless, with this judgement the Court expressed "... an acknowledgement of intersectional marginalization through the proxy of vulnerability (Yoshida, 2013) ... Expanding this line of reasoning... to vulnerable groups and not just a vulnerable individual... could therefore be a practical avenue towards implementing intersectionality." (Schoentjes, 2022, p. 388).

This case also shows that collecting disaggregated data on minorities, as well as police/official responses to violence experienced by victims belonging to minority groups, is a necessary tool to successfully combat structural inequality. A multi-dimensional approach to the collection of data is an important facet of designing policies and programs to combat institutional discrimination against Roma women (Oprea, 2009). The paramount importance of collecting disaggregated data is recognized and well explained by a Roma activist

If we ask the competent institutions how many cases of violence against Roma women in the family have been reported, we will get the answer that the institutions do not handle cases by nationality. Competent institutions have no statistics or research on the problem of violence against Roma women or domestic violence. Roma women are particularly threatened due to the widespread prejudice that violence against women is part of Roma culture, which is acceptable to many, especially state institutions that do not take this issue seriously. The relevant institutions have failed to establish adequate cooperation and a system of support and assistance, so that Roma women who have survived violence, especially domestic violence, feel encouraged and empowered to understand and seek their rights to a life without violence through existing institutions and laws (Memedi, 2019).

5. Roma child marriages as a form of human trafficking

There is no exact official data on the prevalence and other characteristics of child marriages within the Roma community in Croatia. Yet this phenomenon is discussed relatively often in the media, with highlighted examples of Roma girls giving birth as young as 14.⁶ Child marriages were recognized as a serious problem in GREVIO's Baseline Report, since early marriage may indicate a widespread – yet unreported – prevalence of forced marriage (2023, p. 67).

Limited primary academic research shows that more than half of Roma women entered into marriage between the ages of 15 and 18, and 7% got married before the age of 14.⁷ Of course, such marriages are against the law and do not constitute marriages in the legal sense, since the minimum age for marriage in Croatia is 16;⁸ however, customary forms of marriage are the dominant form of married life in the Roma community and have an even greater significance than a formal marriage concluded in front of a registrar (Kutnjak Vrtarić & Družić Ljubotina, 2021, p. 74). Not only do girls get married underage, but they are often sold by their families into the families of the groom (Jurasić, 2021).

The former National Strategy for Roma Inclusion recognized that child marriages and the practice of arranging marriages for underage girls for monetary or other compensation – a tradition still present in parts of the Roma community – represents child trafficking and a serious violation of rights of the child (Elijaš & Laklija, 2014, p. 120). While this is widely known, it seems that Croatian society is not actively trying to deal with these harmful practices. Even the judiciary has failed to enforce Croatian criminal legislation to cases concerning sold Roma girls, justifying these clear violations of criminal law and, more generally, of the rights of the child, with Roma tradition. The omission of the Croatian judicial authorities to react constitutes a form of institutional discrimination.

Even after this Strategy was enacted, the Croatian courts have failed to recognize the specific dynamics of child trafficking within the Roma community and label them as human trafficking. In the case of KMP-33/2011 of the County Court in Sisak, two of the defendants were the parents of the fourteen-year-old victim who arranged for their daughter to move to the household of another Roma family and marry the grandson/nephew of the third and fourth defendants. In return, the third and fourth defendant forgave the parents a debt of HRK 5,000.00 and gave them another HRK 3,000.00 (altogether, slightly more than 1,000.00 EUR). Notwithstanding the fact that at the time of these events the age of consent for all sexual conduct was 14 (whereas today the threshold is 15), the victim was openly against the ‘arrangement’ and she confided in her schoolmates, which is how the matter was quickly brought to the police and later to the judiciary. According to the judgment, as confirmed by the Supreme Court of the Republic of Croatia in 2015, the “arranged marriage” between the victim’s parents and the other defendants for material benefit, leading to the victim’s joint life with the accused’s non-consensual marriage in the accused’s home, does not constitute “intentional and bestial exploitation” of another human being, and therefore does not meet the definition of the criminal offense of human trafficking from Article 106, paragraphs 1 and 3 of the Criminal Code (VSRH, I Kž 274/13, 2015). This is contrary to the practice of the ECtHR, according to which the fact that it is a “Roma marriage” does not exclude the state’s obligation to effectively investigate all allegations of trafficking (*M. and others v. Italy and Bulgaria*, 2012, para. 106). The interpretation of Croatian courts also disregards the very definition of the offence.

Trafficking in children is defined in Article 106(2) of the Criminal Code as recruiting, transporting, transferring, harbouring or receiving a child, or exchanging or transferring control over a child for the purpose of exploiting his or her labour by means of forced labour

or services, slavery or a relationship similar thereto, or for the purpose of exploitation for prostitution of the child or of other forms of sexual exploitation, including pornography, or of contracting an illicit or forced marriage, or of illegal adoption, or of taking parts of a child's body, or of using the child in armed conflicts.

The new Criminal Code explicitly included forced marriages as a form of exploitation. According to a working group's Commentary on the Criminal Code, minor girls, most often no older than 15, are "bought" to get married and often against their will; they have to marry a man chosen by their parents, so such "arranged 'underage marriages'... represent a form of human trafficking" (Turković *et al.*, 2013, p. 156). Unfortunately, this has still not been consistently recognized by the Croatian criminal courts, as this case shows. Another institutional failure in this case was 'recognition' of and the implicit normalization of child marriages as part of the Roma custom. The interpretation of the first-instance court, according to which there is no exploitation of minors but merely an established (subcultural) Roma custom of early cohabitation, which the Supreme Court implicitly endorsed, represents a form of structural, institutional, and intersectional discrimination against Roma girls.

If a forced marriage was determined to actually be a traditional marriage to which at least the bride's family (if not the bride herself) consented, it might be seen as a 'simple forced marriage'. As such, it might be downplayed or disqualified by courts because victims are not seen as "real victims" of a 'real forced marriage'.... Regional human rights courts and treaty bodies and those operating within them have lessons to learn in this regard to avoid ill-considered cultural relativism that leads to impunity and a lack of support for survivors (Baumeister, 2023).

Such an impermissible attitude not only leads to the marginalization and exclusion of Roma girls but also indirectly legitimizes the cycle of violence that often follows such unwanted marriages.

Even though child marriages still do take place, certain improvements have been made regarding the legal treatment of sexual intercourses *per se*. Case law reveals that Roma men are now regularly prosecuted for sexual exploitation and abuse of underaged Roma girls. According to Article 158 of the Croatian Criminal Code, valid consent cannot be given below the age of 15. In recent cases, such as VSRH Kžm-6/2016, the court refused the defence of a mistake of law, as invoked by the defendants who unsuccessfully argued that due to custom in Roma communities, they were unaware of such prohibitions.

Finally, in its Baseline Report for Croatia, GREVIO reflected on the issue of forced marriages within Roma communities. While it applauded the national criminal law normative framework, it nevertheless issued a set of recommendations. GREVIO expects proper data collection and requires authorities to track trends on early and forced marriages. If early and forced marriages occur, there should be thorough investigations, prosecutions, and appropriate punishments, along with specialized training for relevant professionals such as prosecutors, judges, and social workers (GREVIO's Baseline Report for Croatia, 2023, p. 58).

Conclusion

This paper demonstrates that there is a need to ensure that national (and international) judges, other legal practitioners, and police officers are trained not only in gender-based violence but also in discrimination and particularly in intersectionality. Further education is essential not only to empower them to recognize that all women deserve protection from all forms of violence, but also to ensure that they themselves do not discriminate, as recognized by GREVIO (Baseline Report for Croatia, 2023, p. 32). In addition to strengthening the criminal justice response, stronger integrated and coordinated policies focusing on prevention and protection are needed to provide a transformative conceptual framework for addressing intersectional and structural inequalities and to effectively combat gender-based violence against Roma women in Croatia.

One of these policies should focus on the disaggregation of data, not just with respect to victimization but also concerning state responses to allegations of different form of gender-based violence. When advocating for disaggregation of data, one has to be aware of data protection rules and the fact that processing personal data, including that revealing racial or ethnic origin, should be allowed only where strictly necessary, subject to appropriate safeguards for the rights and freedoms of the data subject and only where authorized by Union or Member State law; to protect the vital interests of the data subject or of another natural person; or where such processing relates to data which are manifestly made public by the data subject.⁹ At the same time, developing disaggregated data is crucial for meeting the obligations of non-discrimination and equality. A human rights approach to data disaggregation requires reaching the most vulnerable and marginalized groups, the populations most at risk of not enjoying their rights, and at the same time ensuring that human rights safeguards are in place for the collection, processing, analysis, and dissemination of that data (SDGs Indicator Framework, 2015). Interestingly, the Istanbul Convention does not explicitly require states to include disaggregated data according to ethnic or racial origin but only includes a general obligation to regularly collect relevant disaggregated data (Article 11). This is probably the result of the fact that the Istanbul Convention does not sufficiently focus on intersectionality yet, as explained in the first Chapter, it does recognize especially vulnerable categories of victims. Furthermore, as has been already mentioned *supra*, Article 4(3) of the Istanbul Convention requires states parties to implement the Convention without discrimination on any grounds. To be able to do this, official statistics should reflect multiple factors of discrimination (Sosa and Messe, 2022, p. 50), which was also highlighted by GREVIO as one of its recommendations for Croatia (2023, p. 15, p. 86).

Finally, to effectively respond to domestic and gender-based violence against Roma women, it is not sufficient to only address it from the viewpoint of gender. This paper has recognized gaps in national policies which do not reflect the needs of Roma women. The analysis of the *J.I.* case, as well as the practice of Croatian courts concerning Roma child marriages, has highlighted the structural barriers and institutional discrimination when

approaching institutions whose task is to protect them. Responding to the needs of Roma women requires a multifaceted approach and greater inclusion of Roma women and their representatives (in line with a 'bottom-up' approach) in the design and implementation of measures aimed at fighting intersectional violence against them. Many intersecting grounds of discrimination and oppression must be taken into account in order not to leave the experience of Roma women, and the specific discrimination that they face not just as women, but as Roma women, in the margins (Fundación Secretariado Gitano, 2019).

Endnotes

- 1 For example, in *DeGraffenreid v General Motors*, General Motors had already been hiring both white women and black men, yet not a single Black women had been hired (Crenshaw, 1989, pp. 141-142).
- 2 See in particular p. 4. and the analysis under the chapter 'Ending gender-based violence'.
- 3 See for example the Action Plan for implementation of the National Strategy for Roma Inclusion for 2013-2020, for 2019-2020, which hardly even mentions violence against Roma women and children, <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Akcijски%20plan%20za%20provedbu%20Nacionalne%20strategije%20za%20uklju%C4%8Divanje%20Roma%20za%20razdoblje%20od%202013.%20do%202020.%20godine,%20za%202019.%20i%202020.%20godinu.pdf>
- 4 <https://www.ombudsman.hr/hr/ukljucivanje-roma-u-drustvo-kljucno-je-za-prevenciju-nasilja-2/>, https://www.index.hr/vijesti/clanak/zasto-se-svi-prave-da-ne-postoji-ozbiljan-problem-s-romskim-naseljima/232702_0.aspx
- 5 The whole intervention by the *amicus curiae* ERRC can be accessed here: http://www.errc.org/uploads/upload_en/file/errc-third-party-intervention-ji-v-croatia.pdf.
- 6 (2009, March 26). Maloljetnički brakovi romska su tradicija, <https://www.tportal.hr/vijesti/clanak/maloljetnicki-brakovi-su-romska-tradicija-20090326>, Pavić, F. (2021, May 15), Istina o dječjim brakovima u RH: Kako žive djevojčice koje se udaju prije 17. godine, <https://www.jutarnji.hr/vijesti/hrvatska/istina-o-djecjim-brakovima-u-hrvatskoj-kako-zive-djevojke-koje-se-udaju-prije-17-godine-15073330> (accessed 27 April 2023)
- 7 Baranović (2009), according to Kutnjak Vrtarić and Družić Ljubotina (2021). According to another research referenced in the same article, 30.9% of Roma girls and 15% of Roma boys aged 14 to 19 already live in a marriage or an extramarital union. Furthermore, 50% of Roma women gave birth to their first child as a minor and 17 % under the age of 16.
- 8 It is argued that this too is low and that the minimum age should be raised to 18. See UN Committee on the Rights of the Child (2016). General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20. CEDAW Committee and the Council of Europe also consider marriages under the age of 18 as forced marriages and a violation of the human rights of women and children. FRA (2019). Second European Union Minorities and Discrimination Survey Roma women in nine EU Member States, p. 23.
- 9 See Article 10 of the Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016. on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

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