

Inter-Cultural Roma Non-Roma Avoidance and mistrust on the Local Level in Italy and its Legal Consequences

**Norm *Non*-Internalization of the International Right to Adequate Housing for Migrant
Roma in the Presence of Moral Anti-Gypsyism and Moral Anti-Gadjeism**

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Abstract

The main research question of this thesis has been formulated in the following way: *To what extent can we observe “social norm internalization” of the norm prescribing a right to adequate housing for migrant Roma in Italy, as predicted by TNLP theory, and what factors might be indicative in better understanding sub-optimal social norm internalization in the country?* By taking a closer look at Roma non-Roma (or minority - majority) tensions in Italy, this study aims to provide a minor contribution to the further development of Transnational Legal Process (TNLP) theory, as first articulated by Harold Koh (1996; 1997; 1998abc; 2004; 2006). It argues that indeed a partial TNLP can be observed to be at work in Italy, where an impressive collection of Agents of Internalization (AoI's), by actively making use of transnational legal regimes, have throughout the last 20 years, repeatedly been trying to persuade the Italian State into international norm obedience with regard to advancing the Roma right to adequate housing. The Paper concludes that full norm internalization, as predicted by TNLP theory has nonetheless not fully taken place in Italy up until this very day.¹ It furthermore closes ranks with that type of scholarly criticism, that is primarily concerned with contributing to a more accurate analysis of how complete norm internalization comes about (i.e. the way in which transnational legal norms are internalized legally, politically and socially, into domestic societies). Full blown internalization (or obedience), it is argued, does not always take place and sometimes international legal norms are only internalized in a *political* and/or *legal* sense, rather than broadly being accepted also *socially* by local populations.² The process of full norm internalization of the right to adequate housing, the author argues, is contextually sensitive and to an extent dependents on the level of resilience of underlying more powerful *social* norms in the form of pre-existing prejudicial ethno-moral attitudes. The paper argues that Italy can be considered to be clear example of a Case in which *socially* held norms (i.e. moral anti-gypsyism and moral anti-gadjeism) are in opposition to international *legal* norms (i.e. a right to adequate housing), precisely because they stimulate and promote mutual distrust and avoidance between the migrant Roma and the local Italian communities, making it difficult to allow for the normative internalization of the international norm. Directing more EU resources more cleverly therefore in better trying to understand and deconstruct the psychologically underpinnings of Roma non-Roma animosities, might therefore prove to be essential and ground-breaking in truly improving obedience to the international rights to adequate housing for Roma communities within the EU.

¹ On the contrary, Italy as well as other WEMSSs, being fuelled by substantial public resentment and fear for the “Roma outsider’ in the light of EU enlargements and its implicated migration flows, combined with the worsening of economic conditions in their home countries, have progressively found themselves willing to actively articulate, implement and enforce policies, which are said to constitute a severe breach of human rights norms. (like a right to adequate housing)

² TNLP theory goes a long way in helping to understand how norms come about (interaction) and by whom they are interpreted (by law declaring bodies, situated in a transnational space), but the theory is underdeveloped in trying to explain how and when norm *internalization* is achieved (i.e. the way in which transnational legal norms are internalized into domestic societies) This paper focuses on precisely that *internalization phase* of TNLP theory.

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I. Introduction

The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head ... Rather it should be seen as the right to live somewhere in security, peace and dignity.

(United Nations Committee on Economic Social and Cultural Rights 1991, point 7)

Our main concern in this Paper is to provide a minor contribution to the complex question, why nations-states sometimes obey international human rights norms, why sometimes they do not obey them and why sometimes they comply with them only partially. We will *not* ask ourselves the question ‘usually asked by first generations international law and international relations scholars, “Does international law matter?”’ but, ‘instead bring the microscope into sharper focus’ asking: ‘Given that international law matters, what are the social mechanisms that help make international law matter?’ (Koh, 2005, p. 977).

Becoming more specific, we have chosen to direct our focus towards the question, to what extent, in certain contextual situations in Western European Member States (WEMSs) sometimes fundamental human right norms are not fully being obeyed? How come, throughout the last two decades, also in relatively stable and consolidated Western European democracies, arguably rich, capable and sophisticated in solving complex policy issues, many migrant Roma have nevertheless often found themselves being subjected to highly substandard housing units and conditions.

This thesis more specifically chooses one WEMS (i.e. Italy) and asks the question how come in Italy throughout the last two decades many migrant Roma have had to life under unhealthy substandard housing conditions ³ (Sigona, 2011; Storia, 2009; Bonifazi 2006). It is this underlying curiosity concerned with trying to better understand the interplay between international legal norms and domestic social norms, that has resulted in the author’s interest in the theory of Transnational Legal Process (TNLP) (Koh, 1996; 1997; 1998a:1998b; 2004; 2005; 2006). A theory that asserts it has a comprehensive answer to why and how nation-states internalize international human rights norms.

TNLP inspired by the constructivist paradigm, predicts that international legal norms, whether pertaining to soft law regimes or hard law regimes will eventually be internalized into domestic social norm systems, if at least Agents of Internalization (AoI’s), making use of international legal fora, repeatedly manage to trigger a transnational legal process ⁴ (Abbott & Snidal, 2000).

According to Koh, “Transnational Legal Process describes the theory and practice of how public and private actors, nation-states, international organizations, multinational enterprises, non-governmental organizations and private individuals, *interact* in a variety of public and private, domestic and international fora, to make, interpret, enforce and ultimately, *internalize* rules of international law” into domestic societies ⁵ (1996, p. 184).

The *internalization phase* of the theory provides for 3 types of norm internalization (i.e. (1) political norm internalization, (2) legal norm internalization and (3) social norm internalization). In this paper we will explore all three types of norm internalization, however as will be put forward in following chapters, it will be social norm internalization that will receive most attention, because it is this form of internalization that seems to be lacking and is most problematic to realize locally.

³ According to the most recent figures there are approximately 150.000 Roma living in Italy. We are concerned with the non Italian migrant communities. 25% of the 150.000 (i.e. 37.000) are Roma migrants from other EU countries, like Romania and Bulgaria. (The Coalition, 2008) Rome is the city of Italy known to count the highest number of Roma inhabitants (between 7,200 and 15,000. (Marinero, 2010)

⁴ The term hard law refers to legally binding obligations that delegate judicial authority for interpreting and implementing the agreed upon law. Soft law legal arrangements are the opposite of hard law. Documents governed by soft law regimes have often provisions within them that are not legally binding, not precise and there is not judicial authority protecting whether the agreed on rules/provisions are actually obeyed to. International law prescribing a right to adequate housing, often occupies a middle position with regard to rule precision, the level of obligation and the type of delegation to external judicial bodies.

⁵ Koh can be considered to be the father of the theory of Transnational Legal Process, a term he himself introduced for the first time in his 1996 paper titled: Transnational Legal Process. At present Koh serves as Legal Adviser of the Department of State under the Obama administration. For his Curriculum Vitae, see his page at the Yale website at: <http://www.law.yale.edu/faculty/kohcurriculumvitae.htm>

Social norm internalization, according to Koh, “occurs when a norm acquires so much public legitimacy that there is widespread general adherence to it” (Koh, 1998 p. 1413). He further states that a country can be considered to be obedient, only when *all* three types of internalization have taken place⁶ (Koh, 1998, p. 1400).

In this study we will take Italy as our country under investigation with the aspiration of not only learning more about the migrant Roma housing problems in Italy, but also with the intention to contribute to sharper insights regarding similar contextual situations in other WEMSSs.

When we look at the Italian migrant Roma housing Case we indeed can observe a transnational legal process (TNLP), being ‘at work’ throughout the last 20 years, promoting among other things *a right to adequate housing* for migrant Roma communities in the country. However we have not yet seen (contrary to the theory’s predictions) overall *obedience* to this and other social rights.⁷ Therefore the Paper argues that theory seems not to be reflected in practice and as such might be in need of adaptation.⁸

More precisely, Koh’s theory explains that an international norm towards which a State has legally committed itself, will eventually, at least if that State *repeatedly* is subjected to a Transnational Legal Process (TNLP), lead to full domestic norm internalization (i.e. legally, politically and *socially*) of that particular international norm.⁹ A norm internalization process that is also envisioned by Vermeersch (2012, p. 1197) when he states that “international advocacy networks (consisting of NGOs that operate across state borders) can, in theory, reinforce the EU’s particular normative agenda on Roma inclusion by moral consciousness-raising and by monitoring domestic change”

However despite the presence of this normative agenda and the active promotion of international legal norms, many migrant Roma communities in Italy, (as well as in other WEMSSs) are still often living in highly substandard conditions in “camps” or squalid ghettos or in abandoned buildings, without basic infrastructure, sanitation, drinkable water or electricity, frequently located far away from city centres, often close to motorways, railways, or to industrial areas not inhabited by non-Roma groups” (FRA, 2009, p. 32).

Taking these persistent sub-standard housing conditions into account we argue that despite the presence of a TNLP at work, obedience to a *right to adequate housing* (i.e. our norm under investigation) as predicted by the theory, is not fully taking place in Italy.¹⁰ The theory must have some weaknesses, because it cannot adequately describe why many of the migrant Roma communities in Italy have not yet fully been able to enjoy the right to adequate housing, not even in the presence of a TNLP concerned with the issue.

As stated by Stevens (2012, p. 5), “transnational legal process is a powerful albeit, flawed theory for explaining the complex realities in which international legal compliance occurs”. The problem of TNLP theory is that it is not able to tell us in what circumstances full international norms internalization will *not* take place (Raustiala & Slaughter, 2002; Stevens, 2012).

Why this norm is not fully internalized into Italy, nor into many other WEMSSs is arguably a complex question to answer.¹¹ In this Paper we therefore are not suggesting the inexistence of other important factors contributing to the current migrant Roma housing situation in Italy, however we do assert that one of the major undermining causes preventing the *full social norm internalization* of the international legal norm, “a right to adequate housing’ for Roma in the country is, to a great extent,

⁶ If only one or two types of internalization take place a country is merely complying, but eventually the theory predicts international norms will be fully internalised if at least countries repeatedly participate in a transnational legal process.

⁷ When referring to Roma we will use the definition also used by the Council of Europe as mentioned in the Strasbourg Declaration of 20th of October 2010 in which the term “Roma” is meant to refer: Roma, Sinti, Kale, and other related groups in Europe, including ethnic minorities that identify themselves as Romani Gypsies and Irish Travellers.

⁸ We find it important to note that non-obedience to the right to adequate housing is not merely or exclusive an Italian problem. In our methodological part we will briefly explain why we have chosen Italy instead of other arguably more persistent violators of migrant Roma human rights norms in Western Europe (e.g. France, Greece, Belgium or Germany to name a view)

⁹ *The right to adequate housing* is a norm that can be found in numerous international treaties to which the Italian State is also a party.

¹⁰ More about the relevance of the analytical distinction between on the one hand norm *compliance* and on the other hand norm *obedience*, will be provided for in our theoretical part.

¹¹ At present, the level of awareness concerning the detrimental living standards to which many Roma in CEE have said to have been subjected, can be considered to be extensive and detailed (Weyrauch & Bell, 2001; Barany, 1994; Henrard, 2004; ERRC, 2005; New & Merry, 2010; Nolan, 2011; Amnesty International 2012; Kymlicka, 2007). However, the author senses that among theory orientated scholars, there seems to be a lesser focus on what is happening in the lives of Western European Roma and argues that not yet scholars massively have shifted their attention towards attempts to theoretically explain why increasingly deteriorating relationships at the local level, between Roma and non-Roma communities in WEMSSs are taking place and why certain norms, like the one providing a right to adequate housing for the Roma, are still not fully being obeyed in WEMSSs.

caused by a mutually held special type of discrimination on the local level, between migrant Roma and non-Roma Italians. A type of discrimination for which this Paper has chosen the term *mutual ethno-moral discrimination* which consists of *moral anti-gypsyism* and *moral anti-gadjeism*.

Stated differently, we argue that broadly held morally charged attitudes and stereotypes towards migrant Roma in Italy, as well as isolating features of Romani culture, beliefs and attitudes are preventing the international legal norm prescribing *a right to adequate housing* for migrant Roma communities to trickle down locally.

A substantial part of the Italian electorate, especially those living in and around big cities, arguably being more frequently exposed to “il problema dei nomadi”, seem to be sympathetic towards political calls expressing the view that the migrant Roma influx of the last 20 years has not been beneficial to the country and therefore Roma housing assistance should not be extended and promoted beyond a minimum for these ‘nomads’, not because they look different but rather because they have a different set of moral codes partially perceived as being in conflict with local social norms.

Extensive housing rights are not entirely being upheld because of common sensual fears that if extensive housing programs will be provided, many more Roma migrants might choose Italy as a country of destination, which in their eyes will only worsen *il problema dei nomadi* (Sigona, 2011, p. 591).

This Paper argues that *moral anti-gypsyism* and *moral anti-gadjeism*, both can be considered to be deeply rooted *social norms* that together are more powerful than the internationally prescribed *legal norm* demanding ‘a right to adequate housing’. International human rights norms can therefore only successfully be internalized socially if and when those *legal norms*, aimed to be internalized into a domestic society, resonate and are supported by those local populations that are subject to them.

In the Italian case, the theory of TNLP seems not to be very helpful because in our particular case, it does not sufficiently take into account the presence of the ‘*social norms*’ of *moral anti-gypsyism* and *moral anti-gadjeism* that currently are, to a great extent, responsible for the non-obedience to the international *legal norm* prescribing a right to adequate housing for migrant Roma. TNLP is simply not specific enough, because it forgot to envision some of the obstacles AoI’s might face when attempting to *socially internalize international legal norms*.¹²

In line with the abovementioned, we set out to test Koh’s hypothesis in the Italian Case, which states that:

If a state repeatedly participates in a TNLP that champions and promotes an international legal norm (e.g. the right to adequate housing), it (the State) eventually will fully internalize and obey that same international legal norm (legally, politically and *socially*).

We confirm Steven’s assertion that the theory of TNLP is in need of improvements. A TNLP, as an independent variable like process, might not always be strong enough to insert an international *legal norm* into the value set of local populations and by doing so, successfully change deeply held pre-existing social stereotypes. We do see a TNLP “at work” in Italy, but this is often not accompanied by an extensive form of *social norm internalization*. Motivated by the abovementioned problem, the following research question will be addressed:

To what extent can we observe a “social norm internalization” of the legal norm prescribing a right to adequate housing for migrant Roma in Italy, as predicted by TNLP theory, and what factors might be indicative in better understanding sub-optimal social norm internalization in the country?

We have divided our research question into 2 sub-questions:

(1) *To what extent can we observe the presence of any of the 3 different types of norm internalization as predicted by TNLP theory?*

¹² But more broadly especially in the Western European, general populations have often been reluctant to accept the extension of social rights (like those prescribing housing rights) to foreigners in general. However more so they have shown reluctance towards groups believed to have a deviant set of negatively perceived moral codes and attitudes (i.e. like being lazy, unproductive, inadaptable, filthy, chanceless and even dangerous)

(2) *Why has the presence of a TNLP not resulted in a full blown social norm internalization in Italy, and what is the EU's role in this internalization attempt?*

In order to satisfactorily answer the main question we have organized the article into 6 sections. In Part II we will introduce Koh's theory of TNLP and explain the most relevant concepts of his theory.¹³ In part III we will methodologically substantiate our work. In Part IV we will provide 2 examples of a TNLP "at work" in Italy. Part V subsequently will look at the actual types of norm internalization we have been able to identify in Italy. Chapter VI introduces the concept of ethno-moral discrimination (consisting of *moral anti-gadjeism* and *moral anti-gypsyism*) while simultaneously also in this chapter we will turn our attention to the EU's role, as an important Agent of Internalization (AoI), active in Roma rights advocacy, by assessing whether within its *EU Roma strategy 2020*, we can find any policy propositions that might have as their aim to reduce ethno-moral tensions between Roma and non-Roma EU citizens locally. Finally in Part VII our main question will be answered and policy recommendations will be shared regarding possible ways forward.

I. Transnational Legal Process and its internalization phase

'There is such a thing as international legal scholarship. Committing it and being committed to it are worthwhile activities. International legal scholars do have an idea that has power, and that idea is Transnational Legal Process' (Koh, 1996, p. 182)

Before we can actually consider to what extent indeed TNLP theory, as an idea, has a kind of independently induced power to explain when and how a country will be (or will not be) sensitive to its internalizing pressure, we first deem it necessary to postulate what precisely that theory asserts, before we feel confident enough to proceed with investigating more empirical aspects supportive of the theory's notion of what constitutes a TNLP. This section therefore will function as one of the building blocks in our Paper. What follows is the theory as advanced by Harold Koh.¹⁴ We intend only to highlight those parts of the theory that will prove to be relevant in more empirical sections of the Thesis, where we will consider obstacles to the *internalization phase* of TNLP theory.

According to Koh (1996) TNLP theory has the potential to provide a better understanding of why, 'almost all nations observe almost all principles of international law and almost all of their obligations, almost all of the time'¹⁵ (Henkin, 1979, p. 47). As stated in the introduction, "Transnational Legal Process describes the theory and practice of how public and private actors, nation-states, international organizations, multinational enterprises, non-governmental organizations and private individuals, *interact* in a variety of public and private, domestic and international fora, to make, interpret, enforce and ultimately, *internalize* rules of international law" into a domestic society (Koh, 1996, p. 184). Like Koh, we will term the diverse group of colourful actors engaged in the process of trying to internalize certain international legal norms into domestic societies "Agents of Internalization" (1998a, p. 646).

TNLP theory has four distinguishable features that set it apart from other International Law and International Relations theories engaging equally in, and occupied with the same questions, i.e. why do nation-states obey international law?

The first distinction, setting TNLP theory apart from other approaches, is its *non-traditional* focus, in the sense that it breaks down the traditional dichotomies that have directed previous thoughts on the nature of international law, by not making distinctions analytically between public and private law or between domestic and international law, but by rather recognizing that, "transnational law is

¹³ We will only focus our attention on Koh's TNLP theory and on scholarly criticism regarding that same theory. What we will *not* do however is to provide a contextual account of competing explanations of international legal compliance theory, this, due to the limited scope of our Paper.

¹⁴ Important to realise before proceeding to the content of this second chapter, is that, as mentioned by Steinitz (2012, p. 2) there seems to exist even today a "theory deficit", where little has changed since 1996 when also Harold Koh (1996, p. 182) observed in one of his first papers on the topic that there existed a "void in legal scholarship" concerned with TNLP. It is this percent void that has resulted us to heavily focus on Koh's theoretical explanation simply because almost no other authors have been engaged with the topic as intensively and specifically as Harold Koh did.

¹⁵ A sentence once verbalized by one of the first and most distinguished scholars engaging in and investigating international law, Professor Henkin, in his 1979 book, titled, *How Nations Behave*.

law that crosses boundaries, it is law that transcends the old dichotomies between domestic and international, public and private and perhaps most important, it is the kind of hybrid law not being purely domestic nor purely international, rather it is a blend of the two” (Koh, 2008b UN Video Lecture at 12.30min).¹⁶

Secondly, Koh argues, alongside Benhabib (2009, p. 692) that postulating a picture of the world as being one consisting of “discrete nation-states, at whose borders foreign and international law stops, is radically out of step with legal, economic, administrative, military, and cultural reality and practice”. TNLP is *non-statist*, and strongly emphasizes the influence of non-state actors, in the process of norm internalization, by their ability of co-creating, adapting and enforcing international normative principles in domestic national settings.¹⁷ By observing the originating influences of international law, “a stronger case can be made, that much of the transnationalizing world of law is “transnational law” in the sense of not being statist in any strong way as well as in the sense of involving multiple actors (who admittedly may owe their legal existence to state and interstate legal orders but who are nonetheless neither states nor interstate entities)”¹⁸ (Scott, 2004 p. 875).

Koh states that “transnational law” is utilized by so-called “Agents of Internalization” who use formal and informal laws and regimes to address norm violations e.g. the lack of adequate housing for migrant Roma in Italy (1998a, p. 646). And despite the fact that such laws are often not legally binding, are imprecise and have weak enforcement mechanisms or monitoring systems, Koh nevertheless argues that once those laws are used by AoI’s, these laws will have a considerable effect across borders and have the ability to influence nation-states¹⁹ (Snidal & Abbott, 2000). In following chapters we will highlight a few factors that we believe influence the internalization phase of TNLP in Italy and show that to a great extent we agree with Koh, but that we are nevertheless less optimistic about the “social” internalization abilities of AoI’s (in a TNLP), in the presence of conflicting majority-minority relations.

The third major characteristic of TNLP is its *dynamic* nature as opposed to being static, where norms are mobile in the sense that they transform, mutate and penetrate into domestic societies, horizontally and vertically, “from the private to the public, from the domestic to the international and back again” (Koh, 1996, p. 184). “Law is to a certain extent, being denationalized, since the legal norms may not be formally part of international or national law as conventionally construed”²⁰ (Shaffer, 2012, p. 232). Reoccurring in Koh’s work is the emphasis that transnational norms do not transform, mutate and penetrate into nation-states by themselves, but they are rather utilized by Agents of Internalization (AoI’s), to pressure nation-states to internalize international norms.²¹

Finally the last uniquely distinguishable characteristic of TNLP which Koh (1996, p. 203) mentions, is its “*normatively*” or stated differently the ability of Agents of Internalization (in a TNLP) to domestically acquire the insertion of norms into a country’s internal value set, previously not

¹⁶ This lecture can be found at: http://untreaty.un.org/cod/avl/ls/Koh_IL.html

¹⁷ A good examples of *transnational* law, is that of *lex mercatoria*, consisting of trade related rules and procedures not made, interpreted and enforced, by nation-states but by private actors. Another example is the phenomenon in which, purely national legal and regulatory problems occurring nationally, are being approached by purely national judges with transnational solutions in mind. Transnational solutions and approaches arrived at as a result of informal private trans-judicial and trans-regulatory dialogues, from which cross border insights are then subsequently utilized and applied nationally.

¹⁸ A view strongly opposed by realist thinkers who mainly work with 5 simplifying assumptions, arguing that (1) nation-states are the primal players in international affairs (and not NGO’s private individuals etc.) (2) that the international system is in a state of anarchy (and norms are selectively upheld), (3) self-interest prevents cooperation in such cases where there is no gain to be made, (in essence denying the ‘normativity’ inducing ability, emerging from repeated interactions and suggested by Koh), (4) that states primal is to seek and maintain power and security and (5) that states can never be sure with regards to the intentions of other states. Abbott & Snidal (1998, p.15) state that, “realist theory finds both legal and regime scholarship naive in treating IOs as serious political entities. Realists believe states would never cede to supranational institutions the strong enforcement capacities necessary to overcome international anarchy. Consequently, IOs and similar institutions are of little interest; they merely reflect national interests and power and do not constrain powerful states”.

¹⁹ This believe that soft regimes are influential, fully contradicts realists notions regarding international law in that realists are highly pessimistic about the power of international law. Because there is no such thing as a World Court, which can interpret and enforce international law. Nations, they assert, will always put their self interests and security before international law and states will follow international rules only occasionally when those rules align with their self interest.

²⁰ This means that for example international legal norm, *traditionally* believed to have no real influence on the domestic level, due to their regime characteristics (i.e. soft law regimes) in fact on the contrary, according to TNLP theory, do have persuasive potential and are very well capable of provoking complete (legal, political and social) norm internalization. Often nation-states once interacting in transnational norm creation (whether soft law of hard law), find themselves trapped in obeying international rules, they actually never fully wanted to obey.

²¹ To refresh your memory for our part we identify Agents of Internalization to be a group of public and private actors, nation-states, international organizations, multinational enterprises, non-governmental organizations and private individuals, who *interact* in a variety of public and private, domestic and international fora, to make, interpret, enforce and ultimately, *internalize* Roma rights norms into Italy ”

deemed to be part of that same country's "internal value set" (Koh, 1998, p. 1400). What he means by this, is perhaps the most enlightened and creative part of his scholarly contribution to the body of literature engaged with the question why nations obey international law.

He acknowledges that there are more than one complementary explications for domestic internalization of international law, contributing to answering the complex question why nations obey international law, and in no way he asserts that TNLP is the only explanation (Koh, 2004). Nevertheless what he does assert is that TNLP is a crucial but overlooked, and a missing part in fully explaining the phenomenon of state *obedience* (Koh, 1996). Without insights from TNLP theory, he asserts, alternative causes of domestic obedience are not sufficiently powerful in explaining why nations obey international human rights law. Koh argues that there are five mutually complementing reasons why nations obey international law. Of those five, he considers TNLP or "reasons of process" to be the missing link, as once eloquently explained in the form of an analogy:

If you are faced here in Berkeley with persistent litterers or traffic violators you *first* threaten them with coercion: reasons of power. You threaten them with sanctions like ticket, or jail time, or you deny them benefits, (no Peet's coffee for you!) *Second* you tell them that it is in their long term self-interest to obey the law: reasons of self-interest. *Third*, you invoke liberal Kantian ideals. You tell them that they should obey the littering and traffic rules because the rules are fair ("rule legitimacy") and because they should see themselves as law abiding individuals ("political identity"). *Fourth*, you make appeals to community. You tell them, "We are part of the same community," and you ask them to act in the communal interest. *Finally*, visitors can be encouraged to obey for reasons we lawyers understand best which I call "reasons of process". We try to enmesh law violators in processes, institutions and regimes that force them to internalize the rules we want them to obey into their internal value set.

(Koh, 2004, p. 338)

As will be shown in chapter IV, in Italy we indeed see a TNLP at work, however we do not see the expected *social norm internalization* of a right to adequate housing taking place, despite a substantially powerful enmeshment of the Italian state into "processes, institutions and regimes".

Types of norm internalization

As stated in the introduction, Koh (1998, p. 1414) mentions that there are three types of norm internalization: (1) *Political* norm internalization, (2) *legal* norm internalization and (3) *social* norm internalization. *Political norm internalization* can be observed to take place "when the political elites accept an international norm, and advocate its adoption as a matter of government policy". *Legal norm internalization* takes place when an international norm is incorporated into the domestic legal system and becomes domestic law through executive action, legislative action, judicial interpretations, or some combination of the three" (Koh, 1998, p. 623). And lastly, *social norm internalization*, he argues, "occurs when a norm acquires so much public legitimacy that there is widespread general adherence to it". It is mostly this third type of norm internalization that seems to be the most problematic in the Italian Case.²²

A country according to Koh, is obedient when *all* three types of internalization have taken place. If only one or two types of internalization take place, a country is merely complying. What he essentially asserts is that rules and norms, previously only complied with *externally*, due to a combination of the first four mentioned considerations (i.e. coercion, self-interest, identity or communal appeals), eventually will be complied with, due to *an internal drive*, or as he himself states, due to insertion of those norms into a country's "internal value set". Where according to Koh, over time *repeatedly interacting* states involved in processes, institutions and regimes, will, due to their participation in it, display a rise in what one might call "normativity".

If you see someone driving 100 mph, and then suddenly they see a police car and slow dramatically to 60 mph, you might say they are *complying* with; but not really *obeying* the speed limit. But, if one

²² But also in other WEMSSs, although not extensively studied by the author, one can arguably see the same or even harsher domestic reactions towards migrant Roma communities.

witnesses people routinely driving at the speed limit (without witnesses around), or routinely disposing of litter, or recycling without being told, we are seeing an *internalized normative form of behaviour*—an increase in normativity, if you will—which derives from the incorporation of external norms or values into a person’s or organization’s internal value set.

(Koh, 1998, p. 1401)

We argue that when it comes to the right to adequate housing for the migrant Roma, on a local level, we barely see an *internalized normative form of behaviour* within majority society in Italy with respect to the Roma right to adequate housing and Italy (but also other WEMSSs arguably) drive somewhat to fast to put it mildly, and the speed often is only lowered when the police is seen to be approaching.

From compliance to obedience

To better clarify himself Koh (1996) makes an analytical distinction between state *compliance* to international law (e.g. following a rule for fear of a ticket) on the one hand, and state *obedience* to international norms on the other (e.g. behaviour caused by an internal motivation or norm believed by one self to be the right thing to do). State compliance precedes state obedience to norms, but for Koh the aimed for objective, is not merely compliance, but rather autonomous obedience.

When states *comply* with international law, they are aware of an international norm and subsequently accept that norm for a variety of *external* reasons. Like individuals, states in this phase of norm internalization, accept to follow certain norms merely because of instrumental reasons. States “are both aware of the rules and consciously accept their influence”, i.e. because doing as such gives them an opportunity to acquire “specific rewards, to receive insurance benefits or to avoid all kinds of bad results” (Koh, 1996, p. 1400; Koh, 1998a, p. 628). In this internalization phase, states are exogenously motivated and stimulated to act in a certain way. In our Case Study we argue that Italy is in this very stage of *compliance*, in which it is not fully committed to truly improving the housing conditions of many of their migrant Roma communities, but instead is arguably only doing some minimal efforts to uphold the international right to adequate housing for Roma.²³ The transition from a phase of *compliance* to a phase of *obedience*, it is argued, is achieved by an overlooked essentiality, previously not made explicit by other scholars namely, *repeated interactions* by a State in international regimes.

Obedience is different from *compliance* and is according to Koh, the fourth and final internalization phase. It is in this fourth and final phase, that states become internally motivated, self-sustaining and self-regulating. In this phase norms have fully been internalized, legally, politically and *socially*. Here full internalization equals obedience. In other words, obedience occurs when norms once complied with solely because of external stimuli, no longer primarily are followed through because of external stimuli but rather because they have started to function as normative imperatives, which induce states to fully obey norms (politically, legally and *socially*) at the national, regional and local level. But how does Koh think full norm internalization or obedience works in practice? Well, according to him;

Normally one or more transnational actors provokes an *interaction* or series of interactions with another in a law declaring forum.²⁴ This forces an *interpretation* or enunciation of the global norm applicable to the situation. By doing so, the moving party seeks not simply to coerce the other party, but to force the other party to *internalize* the new interpretation of the international norm into its normative system. The provoking actor’s aim is to “bind” the other party to *obey* the new interpretation as part of its internal value set. (...) The coerced party’s perception that it now has an internal obligation to follow the international norm leads it to step four: *obedience* to the newly interpreted norm.

(Koh, 1998a, p. 644)

As mentioned, Koh (1997) highlights the significance of *repeated interactions* in obeying international law whereby, through *interactions* by Agents of Internalization (e.g. the EC, the ERRC, the COHRE

²³ Arguments substantiating this claim will follow in subsequent sections.

²⁴ Or, “Agents of Internalization”, as he also calls them

and ECSR) norms are *interpreted* by utilizing and provoking courts, commissions or committees to interpret norms in the form of Opinions, Resolutions and Recommendations, believed to be violated against in specific cases (like the Roma right to adequate housing in Italy).²⁵ These legal advices subsequently carry with them persuasive authority and as such when consistently issued against a country, often are believed to reconstitute, adapt and/ or transform domestic norms. They are applied by AoI's as persuading tools to pressure a country into obedience.²⁶

As soon as norm violations are detected, one or more AoI's start mobilizing other AoI's , some of which then start demanding change of state practices before interpretative fora (e.g. before the ECtHR, the ECJ, ECSR), while others lobby at political institutions and civil society for change.²⁷

²⁸ These legal instruments from which those norms derive “whether or not formally binding or backed by a dispute settlement or other enforcement mechanism” become tools for them (AoI's) in their fight against domestic norm non-compliance (Shaffer, 2012, p. 234). The theory hypothesizes that WEMSS like Italy, in time will not only instrumentally and self-interestedly *comply* with international housing rights norms, but eventually they will *obey* those norms too, *if* at least transnational legal processes are successfully triggered (by AoI's) in a way that forces repeated interaction in forums capable of generating, interpreting and reinforcing legal norms.

However if we assume that Koh's optimistic “obedience” hypothesis is correct, we cannot help but wonder why then it is possible that, in a country that has extensively participated in TNLP, for more than 20 years now, we still observe only *partial* internalization, but no extensive obedience to the international human right norm prescribing a right to adequate housing.²⁹ A right that until this very day has not (yet) been fully guaranteed by the Italian State, as evidenced by the many ghetto-like migrant Roma camp sites that have consistently been present at least since the early 90s, when (between 1990 and 1993) the first wave of Roma asylum seekers started to arrive in the country mainly coming from the Balkans and Romania (OSCE, 2000; Szente, 1997).

It is during this period that makeshift settlements of huts and shacks began to appear under motorway and rail junctions, near garbage dumps, and along dangerous river banks often in the most neglected, least wealthy and least controlled areas of cities. These makeshift settlements were soon given the label of ‘nomad camps (..).

(Sigona, 2011, p. 600)

If Koh's prediction was true, and Roma rights norms were fully obeyed by Italy as part of its internal value set than Italian society (as well as other WE societies) would have accepted already many years ago the responsibility to actively and substantially improve the housing situation of its migrant Roma population because they would have felt they had, as Koh states, an internal obligation to follow that international norm as part of its “internal value set” (Koh, 1998a, p. 644).

Nevertheless, even after many years of repeated interactions in a TNLP and despite the presence of numerous AoI's trying to “bind” the Italian State and Italian society as a whole to *obey* an international rule (i.e. a right to adequate housing for migrant Roma), still the norm prescribing this

²⁵ ERRC stands for European Roma Right Centre. COHRE stands for Centre on Housing Rights and Evictions. ECSR stands for the Committee of Social Rights as prescribed for in the Revised European Social Charter.

²⁶ Interpretation mostly takes place in (quasi)judicial fora e.g the ECtHR, the ECJ, the Advisory Committee of the FCNM or the European Committee of Social Rights established by the Revised European Social Charter. The important thing to see here is that by this process in which multiple agents are trying to convince a State to uphold a legal norm, authority is added to these norms, simple because they have been interpreted and upheld in a judicial interpretive body, strengthening and reinforcing those norms, eventually leading to more pressure to comply domestically and completely internalize a given norm.

²⁷ The task of the European Committee of Social Rights (ECSR) is to judge whether States party abides, in law and in practice with the provisions of the Revised European Social Charter.

²⁸ Agents will used as a synonym in this paper, referring to a group of *transnational legal actors* united in their goals, however not necessarily in their methods, to oblige a nation to internalize a certain norm domestically.

²⁹E.g. The right to adequate housing has been inserted in numerous international treaties to which also Italy has been a party many of which prescribe regime types that provide obligations to repeatedly participate transnationally . Important international treaties to which Italy is a party and which subsequently include within them a right to adequate housing and have regimes similar to the one in our example, prescribing regular reporting and judicial deliberations, are : Universal Declaration of Human Rights (1948, Art. 25) International Covenant on Economic, Social and Cultural Rights (1966, Art. 2,3,11) Convention on the Elimination of All Forms of Racial Discrimination (1965, Art. 5e) Convention on the Elimination of All Forms of Discrimination against Women (1979) (Art. 14) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, Art. 43) Convention on the Rights of the Child (1989, Art. 27)

right is not fully being respected in the country, contradicting the theory's predictions. As will be shown in subsequent sections, we observe that Italy is *complying* with international law by internalizing the right to adequate housing (in the *political* sense and partially in the *legal* sense) however it nevertheless is not really *obeying* this norm *socially* yet.³⁰

If it did, we argue it would have been far less likely to be able to identify so many migrant Roma living in ghetto's at the outskirts of major Italian cities. Nor would it have been likely that we would see such high levels of local opposition and mistrust between local migrant Roma and local populations. If the norm protective to Roma housing rights would have been successfully inserted into the hearts and minds of the majority of local Italians, local opposition to Roma housing rights would have been far less likely to be as strong as it is today in the country. Social norms opposing the international housing norm (in the form of moral anti-gadjeism and moral anti-gypsyism), we argue, reasonably might very well be an important reason why this particular international human right norm has not yet been able to transform substandard housing arrangements. One cannot uphold a right to adequate housing for Roma and simultaneously express and harbour feelings of moral anti-gypsyism. The 2 norms are in competition and cannot be present in the heart and mind of a single individual, nor can broadly held anti-gypsyism go hand in hand with extensive regional and local initiatives to promote and extend the right to adequate housing for migrant Roma in the country.

Obedience is not fully taking place in Italy, leaving the country stuck in a third stage of internalization. More about the reasons why in Italy (but most likely also in other WEMSSs) the fourth internalization phase (i.e. obedience to a right to adequate housing for Roma) is not (yet) occurring will be put forward in subsequent chapters.

Conclusion

We assert that despite the fact that Koh's hypothesis is hopeful and insightful, our empirical observations in Italy do not fully support Koh's expectations and they are in part different from those predicted by Koh's theory of TNLP. The rationale for this will be shown to lie in the observation that AoI's have been encountering strong opposition from a diverse group of actors in the form of mostly private citizens and regional and local authorities, taking control of the regional and local democratic institutions, opposing full Roma housing rights obedience. On the one hand we see attempts by AoI's to internalize Roma rights norms into Italian society, while on the other hand we see stronger, more successful groups (i.e. a subparts of the Italian electorate) partially opposing extensive social housing norm internalization on the local level.

Being entangled in a TNLP, as a party to numerous international legal instruments / regimes, characterized by repeatedly interactions, is not a guarantee for complete norm obedience and does not automatically result in *social norm internalization* into the normative value set of *local* audiences and society. In chapter IV we will explore to what extent we are able to observe a TNLP taking place in Italy and how this process relates to the level of obedience to a right to adequate housing (in a legal, political and social sense), however first we would like to elaborate on the methodological approach we have chosen to take.

II. Methodological Part

Research design is "a plan by which you will be able to reason, step by step, from the observations you intend to make to logically sound conclusions about problems or questions you are trying to resolve"

(Runkel and McGrath, 1972, p. 36)

In our case the problem was that the theory of TNLP seemed to be unable to correctly predict why throughout the last two decades, a TNLP promoting, advancing and protecting a *right to adequate housing* for migrant Roma in Italy has, to this very day not (yet) resulted in sufficient provision of adequate housing for this particular group of people. The main purpose of this Chapter is to provide a

³⁰ Remember that obedience = full (legal political and social) norm internalization

clear insight into the methodological approach we have chosen to pursue in order to answer our main question:

To what extent can we observe a “social norm internalization” of the legal norm prescribing a right to adequate housing for migrant Roma in Italy, as predicted by TNLP theory, and what factors might be indicative in better understanding sub-optimal social norm internalization in the country?

We will start by explaining why we have chosen to investigate the migrant Roma communities in a Western European Member State (WEMS) as opposed to focussing on Roma communities in CEE MSs. We will explain why we chose to investigate the *Italian* migrant Roma situation in particular, instead of choosing to study their situation in any other WEMS (like for example that in France, the UK or Germany). This will be followed by a provision of explicit definitions of the most important variables used in this Paper (included our independent and dependent variable).

The Chapter subsequently will finish by discussing the type of data we have collected, the research weaknesses and strengths and the kind of logic we used while analyzing the data in an attempt to answer our main question.

Case selection

We have chosen to study a WEMS instead of focussing on a Central or Eastern (CEE) MS, because as suggested by evidence, human rights laws seem to be most effective in stable or consolidating democracies and the weaker a state is, institutionally and financially, the more likely it will be that human rights norms are not being properly observed and implemented due to a general lack of capacity to do so (Englehart, 2009; Hafner-Burton & Tsustui, 2007). By choosing an old, rich and relatively stable WEMS, like Italy (and e.g. not Romania or Bulgaria) we intended to limit the likelihood that causes of non-internalization to a right to adequate housing might be related to a general weakness or lack of capacity of a State to uphold its international commitments.

Our choice to identify Italy as the county considered most ideal for our socio-legal theory testing exercise has nevertheless not been an easy choice to make, nor an obvious one, in the sense that allegations regarding violations of Roma rights, (including violations to the right of adequate housing) have not directly or automatically led us to consider Italy as a usual suspect, as if the country would be the only WEMS that has been accused of not respecting the international human right to adequate housing of individuals belonging to Roma communities³¹ (Kropp & Striethorst 2010; ERRC, 2010; HRW, On the contrary, if the gravity of violations would have been our driving criterion, as easily we could have chosen other WEMSs (like for example France, Germany or the U.K.) arguably being accused by the international community of similar or even more severe Roma rights violations including the one prescribing a right adequate housing (Bennett, 2011; Chomsky 1994; Hajradi, 2010; Mail Online, 2011; Gunther, 2012).

Furthermore a decisive factor (from a theoretical perspective) that has led us to choose Italy and not another WEMS as our country of investigation, has to do with our perception that a *transnational legal process*, as described by Koh, has been mobilized more fervently and aggressively against Italy (by AoI's) than against any other WEMS, making the country a particularly ideal testing ground for the theory of TNLP³² (Aradau, 2009). Also additionally from a pragmatic point of view, the somewhat richer variety of data available on the migrant Roma housing situation in Italy was indicative in deciding to investigate Italy and not another WEMS.

The choice to focus mostly on the category “migrant Roma communities” was based on the fact that, as shown by the literature, it is mostly this category of Roma in particular, towards whom a right

³¹ On the contrary, although it is difficult to argue that Italy is among those WEMS displaying the most positive records when considering allegations of Roma rights violations or negative attitudes towards Roma, the country is arguably far from being the biggest Roma rights violator or the most frequent one. Also many other WEMSs have repeatedly been accused of violating international human rights norms of individuals belonging to domestic Roma communities. Allegations of international norm violations (i.e. Roma discrimination, collective expulsions and camp site demolitions) have been reported in many other WEMSs besides Italy. To name a few; France, Belgium, Denmark, Sweden, Finland, The United Kingdom Germany, Spain and Greece all have been accused, at one point or another, of demolishing Roma campsites without previous warning, of collectively deport groups of Roma to their respective Central and Eastern European home countries or / and failing to respect the housing rights of Roma communities.

³² Where many AoI can be found, aiming to persuade the Italian State to increase efforts to improve the right to adequate housing of their Roma communities

to adequate housing has not been sufficiently extended and enforced up until this very day (Sigona, 2011).³³

Lastly to mention is that we have mainly turned our attention towards the migrant Roma communities living in and around major Italian cities (e.g. Rome and Milan), because those are the places where most migrant Roma have chosen to settle throughout the last two decades (Marinaro & Daniele, 2011).³⁴

Data collection and operational definitions

The approach taken in our research is that of a Case Study and can best be characterized as being a secondary research analysis (or desk research) collecting legal and policy data as well as academic articles mostly qualitative in nature. It can best be described as socio-legal theory testing study. Our work incorporates conclusions derived mostly from unobtrusive research methods.³⁵ For example we made use of (1) content analysis, (2) publicised statistics and (3) insights derived from qualitative field research.³⁶

Our *units of observation* have been the legal and policy texts of the EU, the RESC and the Italian state, anthropological and sociological literature, as well as data with regard of the current housing situation in the country. Our unit of analysis has been the *norm internalization phase of TNLP theory*, in which we tried to see to what extent the independent variable (a TNLP) might be said to be correlating with the dependent variable (the extent of norm internalization of the norm prescribing a right to adequate housing for migrant Roma communities).

In order to highlight Italy's participation in a TNLP we have chosen to *only* investigate two (of the many) international treaty regimes, to which Italy is a party, *and* which subsequently also have inscribed within them provisions obliging or encouraging contracting states to provide a legal or quasi-legal *right to adequate housing* to their territorial subjects.³⁷ More specifically we examined the regimes within:

- The Revised European Social Charter (Art. 31 (1))
- The new EU Framework for National Roma Integration Strategies 2020

Besides analysing these regimes, we have subsequently also analysed 2 judgments that have been issued by the European Committee of Social Rights, as part of the Revised European Social Charter, namely:

- (1) A 2004 judgment: European Roma Rights Centre (ERRC) v. Italy
- (2) A 2009 judgment : Centre on Housing Rights and Evictions (COHRE) v. Italy³⁸

Additionally we also have made use of data throughout the last two decades consisting of:

- (1) Research findings on Roma housing arrangements provided for by civil society institutions / organization (e.g. work done by the ERRC, Amnesty International, Human Rights Watch but

³³ Research shows that the initial genesis (or coming into being) of favela-like campsites structures, became visible in, and especially around the major cities of Italy approximately 20 years ago, as a consequence of the Balkan wars of the 1990s³³ (The Coalition, 2008; Uccellini, 2010; Sigona, 2011).

³⁴ According to Amnesty International (2010) and ORSM (2010) Rome is the city with the largest Roma population, estimates range from 6,000 to 15,000, whereas the next biggest city is Milan, having about 3,000 Romani individuals living in its territory.

³⁵ Unobtrusive research methods allow researchers to study social life "from afar" (Babbie, 2007, p. 318) without actually influencing it in the process.

³⁶ This type of research distinguishes itself by an observation of social life in its natural habitat and can produce a richer understanding of social phenomena than can be achieved by other methods.

³⁷ By highlighting these process obligations that result from being a party to treaties and by showing the possibilities many treaty regimes provide for AoI's to *name and shame* the Italian state into obedience, we substantiated the claim that indeed Italy is *repeatedly interacting* with, and participating in international treaty regimes, that are specially designed to persuade the country into norm obedience by *monitoring* and provoking *interpretations* by (quasi) judicial bodies (i.e. ECSRs and the European Commission)

³⁸ The task of the European Committee of Social Rights (ECSR) is to judge whether States party abides, in law and in practice with the provisions of the Revised European Social Charter. Both judgments have been provoked by 2 different Agents of Internalization (i.e. the ERRC and the COHRE), interacting with a judicial body, in their attempt to internalize the right to adequate housing into Italian society.

also by the EU's Fundamental Rights Agency, the Council of Europe and the European Commission's Eurobarometer)

- (2) Academic data produced by (mostly) sociological and anthropological research of a qualitative nature concerned with internal Roma culture, traditions and beliefs, as well as with Roma non-Roma relations.

In order to convincingly argue that indeed we have been able to observe a TNLP "at work" in Italy (i.e. our independent variable) in accordance with Koh's definition of what constitutes an TNLP, while simultaneously making the case that we nevertheless despite its presence, have *not* been able to find any clear correlative evidence for the occurrence of (especially) *social norm internalization* in Italy (i.e. our dependent variable), we took great care in defining our independent variable as well as our dependent variable in the same way as Koh did in his work. By doing so, these operational definitions helped us to efficiently scan through data necessary that eventually led to our conclusions.

Our independent variable "a transnational legal process", we have defined as a process that constitutes the coming together of a variety of actors, repeatedly *interacting* in a variety of public and private, domestic and international fora, to make, *interpret*, enforce and ultimately, *internalize* rules of international law" (Koh, 1996, p. 184).

Political norm internalization we have defined as an occurrence that takes place "when the political elites accept an international norm, and advocate its adoption as a matter of government policy". *Legal norm internalization* we defined in accordance to Koh's terminology, as a phenomenon that takes place "when an international norm is incorporated into the domestic legal system and becomes domestic law through executive action, legislative action, judicial interpretations, or some combination of the three" (Koh, 1998, p. 642). And lastly, the term we have been most interested in, *social norm internalization*, we defined as the societal phenomenon wherein "a norm acquires so much public legitimacy that there is widespread general adherence to it".

We furthermore defined *regimes* as special arrangements inscribed in treaties 'possessing norms, decision rules, and procedures', which by their very nature promote *repeated interactions* among states, and as such "facilitate a convergence of expectations" (Krasner, 1983, p 2).

Data Analysis

Subsequently after providing empirical examples of the presence of a TNLP "at work", while also providing substantive empirical evidence showing inadequate housing conditions for many migrant Roma in the country, the question arose why these sub-optimal housing arrangements have persisted throughout the last 20 years without having been sufficiently addressed. Provoked by the data we asked the question, what factors might have been contributing to this particular breach of international law.

We deduced that if the norm prescribing a right to adequate housing would have been inserted into the internal value set of mainstream society in Italy, (or stated differently, if the norm would have been *socially internalized*) on the local level, this naturally would have resulted in much better housing arrangements than currently is the case for many migrant Roma, because according to Koh, when a country *socially internalizes* an international norm, it means that that particular norm has been inserted into the hearts and minds of the general population *society wide*.

Supported by findings derived from sociological and anthropological research, statistical survey finding and insights derived from research conducted by NGO's and IGO's, this Paper found convincing evidence supportive to the view that deeply held inter-cultural psychological complexes have been opposing cooperation and mutual understanding between Roma and non-Roma on the local level, often effectively preventing (through majority use of local democracy) the materialization of adequate housing for migrant Roma in the country.

While analysing the data it became clear to us that (besides other possible causes), there arguably was one influential cause that could be seen as being in opposition the international legal norm demanding a right to adequate housing for migrant Roma to fully trickle down locally. This cause or phenomenon, in part so utterly underemphasised in academic debates about Roma social exclusion, we constructed in accordance with anthropological and sociological data. We chose to term the indirectly observed phenomenon, *mutual ethno-moral discrimination*. A phenomenon that mainly

could be observed on the local level and was characterized by two opposing psychological forces, namely: *moral anti-gadjeism* and *moral anti-gypsyism* between Roma and non-Roma.³⁹

Supported by survey data, we have constructed and defined *moral anti-gypsyism* as a special type of Roma dislike, made visible in attitudes, ideas and behaviours, shared by a substantial subpart of non-Roma majority populations towards the Roma. We perceived it to be discrimination, based on ethno-moral stereotypical allegations that find their root in the perception that parts of Roma behaviour are immoral and unethical. It is different than normal discrimination in the sense that it primarily morally charged.

Moral Anti-Gadjeism on the other hand, we have constructed and defined as a typical ethno-central dislike of non-Roma (or Gadje), shared by a substantial part of the migrant Roma communities in Italy, based on ethno-moral stereotypical belief that the Gadje (or non-Roma Italians) are impure, marime (polluted) exploitative and overindulgent.

As abovementioned, the concept of moral anti-gadjeism we developed and constructed mainly by making use of insights derived from a selection of anthropological and sociological studies conducted by leading Roma and non-Roma scholars like for example Walther O. Weyrauch (1997), offering important insights into Roma oral legal traditions and culture, highlighting the dilemma's faced by the Roma when interacting with non-Roma.

Data analysis related to the EU's role as an important AoI have partially been based a content analysis of EU policy documents prior to the new EU Roma Strategy 2020, however most of our findings regarding the EU's role in protecting the international right to adequate housing for Roma have been inspired by this 2011 policy document officially called "The EU Roma Strategies up to 2020" which has been adopted by all EU MSs. It is mainly in this policy document that we searched for clues to find out how influential the EU, has been and how influential it can be in the future, as an AoI, in mitigating and reducing mutually held tensions (i.e. mutual ethno-moral discrimination).

Strength and weakness of our approach

The weakness of our research methodology (desk research/secondary research), we paradoxically also consider to be its major strength, i.e. it's interdisciplinary approach consisting of data found in the fields of law, sociology, psychology, anthropology and political science studies. The fact that our research is dependent upon the acquisition of data that had to be derived from data coming from studies conducted in different academic disciplines, each utilizing a different methodology, makes it tempting to not fully assess methodological weaknesses in referred-to papers, with regard to their validity and reliability. Furthermore interdisciplinary research approaches, risk becoming superficial lacking in-depth knowledge acquisition because of limited familiarity with specific academic disciplines.

On the other hand our interdisciplinary approach, we believe, has the potential to creatively unite aspects of different disciplines in order to produce more desirable and useful perceptions of reality. Also we tried to prevent superficiality, by limiting our units of observation and analysis to only one legal provision, only one country, and only three inter-related main possible causes of social norm *non*-internalization. Furthermore, because the validity and reliability of our assumptions and conclusions are partially a function of the reliability and validity of the data we chose to collect, we have taken careful notice regarding the quality of our sources.

Conclusion

In summary, our approach has been that of a Case Study examining in depth the internalization phase of the theory of TNLP in Italy, regarding migrant Roma rights to adequate housing. Our method used was that of a secondary data analysis (desk research), roughly covering the period of 1990 to 2012 and making use of a collection of existent data, mostly qualitative in nature.

We have shown what kind of data we have collected, what kind of logic we used while analysing the data and how the data led us to the observation that the theory developed by Harold Koh was not conform empirical reality in Italy. We have described how we chose to define and measure our

³⁹ Important to note is that we do not argue that ethno-moral tensions (i.e. Moral Anti-Gadjeism and Moral Anti-Gypsyism) are the *only* cause of norm non-obedience to the right to adequate housing in Italy. However this paper does suggest that these two interrelated phenomena are often overlooked and that they are among the most important causes of non-internalization of international law, not taken into consideration by Harold Koh's version of TNLP theory.

independent variable (i.e. a TNLP), our dependent variable (i.e. extent of norm internalization of the norm prescribing a right to adequate housing) but also other additionally important concepts have been introduced. Aided by a variety of data sources, we have managed to substantiate the claim that Koh's hypotheses: *If states repeatedly participate in a TNLP, they will eventually fully internalize international legal norms*, is not conform reality in the migrant Roma housing Case in Italy. While legal and policy data convincingly asserted the presence of a TNLP in the country, anthropological and legal data sources led to the construction of the notions of moral anti-gypsyism and moral anti-gadjeism, partially being held responsible for blocking the internalization of international law.

III. A transnational legal process "at work" and Italy's migrant Roma Housing problems

"So again using interactions, seeking a legal interpretation that internalizes a global standard into domestic law, ... that is the moment that we are looking for, the moment of norm internalization, when domestic compliance becomes international obedience"
(Koh, 2008b UN Video Lecture)

In this section we aim to examine empirically to what extent the independent variable (a transnational legal process) can be observed to be active in Italy, concerning the right to adequate housing for migrant Roma in the country. We will furthermore provide data arguing in line with Koh suggesting that indeed a TNLP has a real influence on countries, and that we undeniably identify forms of *political* and *legal* norm internalization. We will show only a few of the many moments in the last two decade in which we have seen Italy repeatedly interact in the international arena, where AoI's have repeatedly been provoking international judicial or quasi-judicial bodies (i.e. the ESC and the European Commission) to issue Decisions or Recommendations with regard to the housing situation of migrant Roma in Italy. Additionally we will introduce the EU as a clear example of a transnational legal actor. Also we will show that precisely by being a party to the RESC (and many other international treaties), as well as being an active participant within the EU Roma framework, Italy has been enmeshed into a TNLP. However despite the identification of a TNLP "at work", we nevertheless will also argue that hardly yet we have been able to identify forms of *social norm internalization* of the right to adequate housing for migrant Roma, (as opposed to only legal and political norm internalization), a form of internalization that according to Koh (1998, p. 623) occurs when a legal international norm, "acquires so much public legitimacy that there exists a widespread adherence" to that norm. Therefore, when remembering that according to Koh obedience to international norms requires *all* three forms of internalization to occur, this section argues that full internalization is not taking place in Italy.

Transnational legal process "at work"

According to Koh's theory the main aim of AoI's is to "enmesh law violators in processes and institutions and regimes, that force them to internalize the rules", with the purpose of eventually inducing these norms into the "internal value set" of the target States (Koh, 2008b UN Video Lecture). He also argues that everyone can participate in a TNLP by for example writing a critical reports or by writing a public letter to a State or by simply posting pictures and video's about human right violations on social media like Facebook⁴⁰ (Speech Nov. 10, 2009).

Italy is party to an impressive number of international treaties, conventions and declarations that have provided within them provisions promoting and protecting the right to adequate housing of their subjects.⁴¹ Although not always, very often, being party to such human rights treaties results in

⁴⁰ In Tunisia, when the fruit-seller, Mohamed Bouazizi resorted to self-immolation to protest the price hike and political repression, the event became national and eventually international news thanks to the combined effects of conventional media and the new media. Television networks such as Al Jazeera and Facebook both played a significant role in disseminating information and mobilizing the masses of protestors in Tunisia. Both virtual and real revolutionaries came out in droves to protest. (Khondker, 2011, p.6)

⁴¹ Examples of treaties to which Italy is a Party and that subsequently provide for a right to adequate housing, are: Universal Declaration of Human Rights (1948, Art. 25) International Covenant on Economic, Social and Cultural Rights (1966, Art. 2.3,11) Convention on the Elimination of All Forms of Racial Discrimination (1965, Art. 5e) Convention on the Elimination of All Forms of Discrimination against

State obligations to draft and submit periodic reports, requiring States to repeatedly interact with international legal institutions, through summits, conferences and commissions. Sometimes even these international obligations provide for a possibility for domestic and international, non-state and state actors, to bring alleged violators before judicial or quasi-judicial bodies. Koh's theory is special because it does not focus so much on whether regimes are of a soft law type or a hard law type. He believes that even weak soft law regimes have the potential to hold states accountable, if at least they prescribe regimes, making it possible for states to *repeatedly interact* with other transnational legal actors (Koh, 1997, pp. 2646-2647; Koh, 2004, p. 339).

Nations do not simply obey international norms, "because of sophisticated calculations about how compliance or non-compliance will affect their interest, but because a repeated habit of obedience within a societal setting socializes them and remakes their interests" (Koh, 2005, p. 978). Considering the many treaties to which Italy is a party, it can be said the country is heavily "enmeshed" in transnational legal processes.⁴² A textbook example, besides the EU treaty, discussed in this section making more explicit Italy's subjection to a TNLP, is the Revised European Social Charter (RESC).

The Revised European Social Charter

One of the most important international human rights treaties prescribing the right to adequate housing is the Revised European Social Charter (RESC⁴³).⁴⁴ Article 31§1 of the Charter states that: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed, to promote access to housing of an adequate standard". Furthermore the Charter's jurisprudence has defined the meaning of an adequate standard of housing to consist of, "a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law."⁴⁵

As stated previously, one of the characteristics of a TNLP is the fact that AoI's have the ability to provoke interactions at law declaring bodies. Precisely this opportunity has been made available under the RESC as well. The Treaty provides for a so-called Complaint Procedure, through which AoI's have the possibility to drag any contracting State before the European Social Committee (ESC).

Twice in the last decade as a result of this Complaint Procedure two AoI's (i.e. the ERRC and the COHRE) have brought forward a complaint against Italy. After the initiation of the Complaint Procedure by the ERRC in 2004, the Committee concluded that there was a violation of Article 31§1 because⁴⁶:

"(...) by persisting with the practice of placing Roma in camps, the Government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all".

The Committee therefore found that:

- Italy failed to show that it has taken adequate steps to ensure that Roma are offered housing of a sufficient quantity and quality to meet their particular needs;

Women (1979) (Art. 14) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, Art. 43) Convention on the Rights of the Child (1989, Art. 27)

⁴² Examples of treaties to which Italy is a Party and that subsequently provide for a right to adequate housing, are: Universal Declaration of Human Rights (1948, Art. 25) International Covenant on Economic, Social and Cultural Rights (1966, Art. 2,3,11) Convention on the Elimination of All Forms of Racial Discrimination (1965, Art. 5e) Convention on the Elimination of All Forms of Discrimination against Women (1979) (Art. 14) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, Art. 43) Convention on the Rights of the Child (1989, Art. 27)

⁴³ Italy ratified the European Social Charter on 22/10/1965 and the Revised European Social Charter on 05/07/1999, accepting 97 of its 98 paragraphs. See: http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Italy_en.pdf

⁴⁴ However as important as our chosen example may be, fact is that besides the given example, many more examples of a TNLP "at work", could be given that further would substantiate our claim, however due to words limit imposed on this Thesis, we will only identify the main workings of a TNLP as epitomized by Italy's involvement with the Revised European Social Charter (RESC)

⁴⁵ (see Conclusions 2003, Article 31§1 France, European Federation of National Organisations Working with the Homeless, FEANTSA v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, § 76 and Defence of Children International, DCI v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

⁴⁶ European Roma Right Center

- Italy failed to show that it has ensured or has taken steps to ensure that local authorities are fulfilling their responsibilities in this area.

(ERRC v. Italy No. 27/2004, § 36 and § 37)

Five years later, another AoI, this time COHRE, provoked an *interaction* before the Committee, again accusing the Italian State of failing to comply with Article 31§1.⁴⁷ As a result the Committee issued its second *Decision* regarding the right to adequate housing of Roma against Italy in which Italy (in that Decision), was accused of failing to comply with Article 31§1. Again we observe that interactions with a quasi-judicial body provoked an interpretation (before the ESC, by the Committee) aiming to internalize the norm prescribing a right to adequate housing for migrant Roma in Italy. In this second complaint, COHRE in 2009, made the accusation towards the Italian state that:

- authorities had not ensured a proper follow-up to the decision on the merits of 7 December 2005 in respect of ERRC v. Italy, Complaint No. 27/2004,

(COHRE v. Italy No. 58/2009, p.17)

Taking note of the Complaint made by COHRE, in its 2010 Decision, the Committee for a second time made very clear that:⁴⁸

With regard to the right to housing “implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein”.

In this situation, the realization of the rights recognized by the Revised Charter is guided by the principle of progressiveness established in the Preamble, in the aims to facilitate the “economic and social progress” and to secure to (...) populations “the social rights specified therein in order to improve their standard of living and their social well-being”.

The Committee holds that the situation of the living conditions of Roma and Sinti in camps or similar settlements in Italy constitutes a violation of Article (...) 31§1 of the Revised Charter.

(COHRE v. Italy No. 58/2009, p. 17, p. 20, § 59)

A TNLP is characterized not only by the possibility to provoke interactions before law declaring bodies, but also it is characterized by a country’s obligation and commitment to *repeatedly* participate in a process. Besides having decided twice in the last decade that Italy was in breach of providing a right to adequate housing for many of their migrant Roma communities, furthermore in the that same period (between 2005 and 2012) on a periodic basis Italy also has been obliged to submit National Reports in which it has to explain how it is facilitating obedience to the norms codified in the RESC.

The Committee recalls that in its previous conclusion (Conclusions 2007) it reiterated that the housing situation of Roma, which it had assessed in European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, continued to be in breach of Article 31§1.

(RESC Conclusions, 2011, p.39)

The Committee after reviewing the Italian State Reports, reaffirmed twice in the form of annual Conclusions (once in 2007 and once in 2011) that the country was in breach of providing a right to adequate housing. Those Conclusions were based mostly on data received from AoI’s.

Therefore in total 4 times in the last decade (twice a Decision, and twice a Conclusion) the Committee was provoked to interpret Italy’s conduct to be negative and by doing as such, it used

⁴⁷ Centre on Housing Rights and Evictions

⁴⁸ The Complaint by COHRE was in 2009 but the Decision of the Committee was derived in 2010

international law to persuade Italy into obedience. According to the Committee Italy has showed no signs of progress in those 7 years and therefore arguably a TNLP although present, has not really helped to reconstitute Italy's interests with regard to the Roma housing right provision in the Charter, rather on the contrary the Committee stated in its Decision of 2010 that:

As highlighted by several international monitoring bodies, a growing number of Roma and Sinti live in socially excluded locations characterized by substandard conditions on the edges of towns, segregated from the rest of the population. Moreover the respondent Government provided no evidence to demonstrate that the numerous examples of substandard living conditions of Roma and Sinti have improved rather than deteriorated (..).

(COHRE v. Italy No. 58/2009, p. 23, § 77)

The EU and its facilitation of a TNLP

Besides being party to the RESC and many other international treaty regimes not discussed in this Paper, concerned with improving rights to adequate housing of Roma, Italy is also one of the founders of the European Union, an institution that can be considered to be unique in the sense that it allows, in its institutional structure, the possibility to approach policy topics, through hard law legal regimes as well as through soft law legal regimes, depending on the nature of the policy field at hand, in order to reach its agreed upon objectives.

In this section we will discuss the EU's main approaches and role in advancing the housing rights of the EU Roma, as a way of showing that also here again we can find AoI's making use of EU infrastructure to induce Italy into what Koh calls an enmeshment "in processes, institutions and regimes with the purpose of internalizing international housing norms into Italy's "internal value set" (Koh, 2004, p. 338).

When it comes to the Roma housing policy, in our analysis it is interesting to observe how well equipped the EU's legal and semi-legal frameworks are, in supporting and facilitating a TNLP to make use of its institutions and procedural regimes. As with the RESC, again we can see a variety of AoI's concerned with Roma housing rights, being active within the EU, where the European Parliament, Roma INGO's and to a lesser extent the European Commission are highly committed in advancing the overall Roma housing situation.

We will look at the type of institutional processes that have been set up by the Union, with the aim to ensure that the norm prescribing a right to adequate housing will be promoted and observed by its MSs. We will introduce and distinguish between two main EU procedural approaches towards the Roma housing rights problem, and their characteristics: (1) a *soft law OMC approach* and (2) a *hard law non-discrimination approach*, but first we will briefly provide a summary of the EU's policy activity of the last 10 years.

EU Roma policy activity

The policy activity and data gathering within the EU concerned with the housing and living situation of the EU Roma has been, to say the least, quite impressive. In the last 10 years, all major EU institutions have extensively engaged themselves with the question what exactly should be the role and influence of the Union in improving the overall living situation of its Roma minorities (Ram, 2007, Guy, 2010)

In a 2004 report the European Commission (2004, p. 6) acknowledged that since the end of communism, issues facing Roma "have come to be viewed as among Europe's most pressing human rights and social inclusion priorities". Numerous reports have been produced by the European Commission, all indicating a rapid increase in awareness connected to Roma issues since the end of the 1990s.⁴⁹ An extra boost, to a sense of urgency already present in the EU, was provided by first time ever made remarks by the EU heads of State and heads of Government at the December 2007 European Council meeting in Brussels, asserting that it (the European Council) was, "conscious of the

⁴⁹ Some of which are: Review of the European Union PHARE assistance to Roma minorities (2004), EU Support for Roma Communities (2002), Situation of Roma in an Enlarged Europe (2004), , Thematic Comment No 3: The Protection of Minorities in the EU, Equality and Non-Discrimination – Annual Report, 'Improving the situation of Roma in the EU', European Roma Grassroots Organisations (ERGO) Network and Community Instruments and Policies for Roma Inclusion (2008)

very specific situation the Roma were facing across the Union”⁵⁰ In its Conclusions it invited the MSs and the Union to make “use of all disposable means to improve their inclusion” (p.15).

A year later, (as had been requested by the European Council) the European Commission (2008a) presented a research that provide a more accurate picture of the actual community policies and instruments already in place, that could be used by MSs to improve the Roma overall living situation, including their substandard housing problems. In that same year for the first time ever, a high level EU Roma summit was organised and hosted by the European Commission after which again all MSs were urged to make use of “all means possible to improve the inclusion of the Roma people” (Villarreal & Walek, 2008, p. 2).

Furthermore in April 2009, Ten Common Basic Principles of Roma Inclusion were presented at the first ever held meeting of the European Platform for Roma Inclusion (EPRI).^{51 52} The ten chosen principles (or norms) testify to a gathering of transnational legal actors interacting with one and other with the aim of interpreting and creating norms applicable to the EU Roma situation.

As the urgency of the matter became ever more pressing due to the widely shared perception that no real improvements had been achieved in the last decade, finally, after many years of EU involvement with the Roma issue, on the 5th of April 2011, the European Commission, pressured mostly by international non-governmental organisations (INGOs), Roma advocacy groups, civil society and the European Parliament (2010, p. 13), adopted a EU Framework for National Roma Integration Strategies (NRISs) up to 2020, (Hereafter referred to as the *EU Roma Strategy 2020*) ‘calling on member states to prepare National Roma Integration Strategies in order to address more effectively the challenges to Roma inclusion, by the end of the current decade’ (European Commission, 2012, p.3).

Additionally, MSs were asked to set up National Roma Contact Points (NRCPs) in order “to coordinate the development, implementation and monitoring of the strategy” (p.14). One year later, in March 2012, all MSs (including Italy) facilitated the establishment of National Roma Contact Points and subsequently also did as asked for, and presented their own National Roma Integration Strategy (NRIS) related to Roma substandard housing problem to the European Commission.⁵³ After the European Commission had evaluated all the NRISs for the first time in April 2012, it reported its findings back to the MSs as well as to the European Parliament and the Council of Ministers.

A two-way street: A soft law approach and a hard law approach on Roma

As abovementioned, finally in April 2011, following increased efforts made since the end of the 1990s especially initiated by a sustained pressure on the EU institutions by INGOs (like the ERRC)⁵⁴, the European Commission adopted the EU Roma Strategy 2020 (Guy, 2008; Ram, 2010). In it we find clues with respect to the process by which the EU believes it can best improve the overall socio-economic situation of the EU Roma.

However before we go into this newly initiated EU *soft law approach*, we would first like to stress that this approach constitutes a second of two main EU approaches towards protecting Roma rights to adequate housing in the EU. The first approach aiming for Roma social inclusion, which is a hard law legally binding non-discrimination approach, is much older than the second soft law social OMC approach. Both the EU as well as the CoE legal infrastructures have facilitated and supported the possibility for Roma individually to access legal remedies when confronted with violations to a right to adequate housing as a consequence of racism or / and discrimination. They can mostly be

⁵⁰ Consisting of the heads of State and Heads of Government of the all EU MSs

⁵¹ “The European Platform for Roma inclusion (or European Roma Platform) was created to help coordinate and develop policies for Roma integration and stimulate exchanges among EU Member States, international organisations and Roma civil society. It aims to make existing policy processes more coherent and facilitate synergies”. Retrieved from: http://europa.eu/rapid/press-release_MEMO-11-795_en.htm, on 5th of August 2012

⁵² The 10 principles comprise: 1) constructive, pragmatic and non-discriminatory policies 2) explicit but not exclusive targeting 3) intercultural approach 4) aiming for the mainstream 5) awareness of the gender dimension 6) transfer of evidence-based policies 7) use of EU instruments 8) involvement of regional and local authorities 9) involvement of civil society 10) active participation of Roma.

⁵³ In this EU Framework, housing was one of the 4 key areas in which the EU, through the social OMC is attempting to fight poverty and social exclusion among EU Roma. The other main areas are: employment, health care and education.

⁵⁴ For an highly insightful exploration into the question, *why*, so suddenly the EU, at the end of the 90s found itself willing to actively listen to INGOs promoting the Roma cause, we recommend reading; Melanie H. Ram, (2010): *Interests, Norms and Advocacy: Explaining the Emergence of the Roma onto the EU's Agenda*, California State University, Fresno, USA.

found to be inscribed in the Treaty on the EU, The EU Charter of Fundamental Rights, the Racial Equality 2000/43/EC and European Convention of Human Rights.⁵⁵

The ECHR, not the least in importance “contains many civil and political rights provisions which are being indirectly interpreted in the development of housing rights across Europe, especially within Articles 3, 6, 8, 13 and 14. Those rights are important and legally binding and “can also be applied in national courts since the Convention has been incorporated into national law in all member States” (Guet, 2011).

What distinguishes these hard legal litigation possibilities from the soft law OMC approach (to which we will come back in a subsequent section of the Paper), is the presence of an arbiter (ECJ or the ECtHRs) to whom has been granted the authority to have the final say on legal HRs disputes between MSs and their subjects. Instead of only recommending things, both Courts can also fine law violating MSs and provide legal financial remedies to *individual* victims or complainants, caused by state actions or omissions related to discrimination.⁵⁶

A leading, optimistic but rather flawed idea up until recently was that the problem of Roma discrimination and the connected social exclusion, was believed to basically get solved by itself. If at least better Roma access to the EU’s non-discrimination legislation would be provided. In which Roma, also in the field of housing, would be able to invoke non-discrimination principles before national and international courts just like all other EU citizen. If for example an EU Roma would find him or herself confronted with a violation of one of his/ her basic housing rights, that individual was expected to find a lawyer and proceed all the way up to Strasbourg in the hope for a legal remedy.⁵⁷ Similar to Koh’s predictions, sooner than later this approach, it was believed, would facilitate full Roma social inclusion, suggesting that a legal approach was basically all that was needed to combat discrimination and to improve the living situation of the Roma *collectively*.

However after the passing of more than a decade, and despite many legal successes for *individual* Roma, (mainly due to the initiation of legal proceedings before the ECtHRs by AoI’s) still their *collective* socio-economic situation as a minority group, did not improve much and by some accounts even deteriorated in the first decade of the 21st century⁵⁸ (Goldston, 2002; Gehring, 2012; FRA, 2011). Even after many *individual* hard law litigation struggles, before law declaring bodies, trying to provoke norm internalization, *collective* socio-economic improvements for Roma , also in the field of housing ,remained not to be seen and could be considered to be almost totally absent and non-present.⁵⁹

EU soft law Roma approach

It is in the light of these depressing facts that the European Commission in 2008, acknowledged that a non-discrimination legal infrastructure alone was not sufficient “to combat the social exclusion of Roma”, and therefore it asked the EU institutions to endorse a “EU Framework for National Roma Integration Strategies”, mentioning that it was “a means to complement and reinforce the EU’s

⁵⁵ “The accession of the EU to the European Convention on Human Rights (ECHR) became a legal obligation under the Treaty of Lisbon and constitutes a major step in the protection of human rights in Europe, although the process is not yet finalised. The ECHR offers protection of fundamental civil and political rights and provides for enforcement machinery through the European Court of Human Rights”.(EC, 2011, p. 49)

⁴⁹ One of the most famous proceedings dealing with housing discrimination that was initiated at the ECtHR is that of

⁵⁶ According to Ram (2010) one of the major reasons why the EU got on board so unexpectedly fast at the end of the 90s with promoting legally binding hard law human rights of the Roma, was besides the firm belief that human rights should form a fundamental part of the EU’s *acquis communautaire*, that their legalization would also come in particularly handy as a way of promoting a better life for Roma in CEE, by improving and creating better living conditions for Roma in their countries of origin, hoping to de-motivate as much as possible, a much feared East to West Roma mass migration.

Eventually being convinced that the conditions of Roma in CEE countries could not be ignored from a human rights perspective, and that improving the conditions of Roma might reduce their migration to

‘old’ member states, the EU responded with both critical statements and reports and direct pressure on the government of CEE states. Ultimately, the EU’s policy on the Roma merged with the push for anti-discrimination legislation, and EU rules were adopted affecting the rights of ethnic minorities in long-time as well as new EU member states (Ram, 2010, p. 209).

⁵⁷ This EU non-discrimination legislation can more concretely be found in (1) Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive). (2) Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.(3) Charter of Fundamental Rights of the European Union of 7 December 2000 and lastly but not the least of instruments promoted by the EU in order to combat discrimination was the utilization of the ECHR Treaty as part of the Council of Europe.

⁵⁸ See Factsheet Roma Travellers 2012: http://www.echr.coe.int/NR/rdonlyres/CD15340B-0D22-4D4D-A3E2-6AF949B96F26/0/FICHES_Roms_EN.pdf

⁵⁹ For an extensive overview of some of the most successful hard law litigation cases, we recommend Anstead, A. (2004) *Housing rights Litigation*.

equality legislation and policies by addressing, at national, regional and local level, the specific needs of Roma, regarding equal access to employment, education, *housing* and healthcare' (p.3).

Additionally in 2009 president of the European Commission Barroso asserted that to remove obstacles for a group as disadvantaged as the Roma, "more than just non-discrimination" was needed.

These people have been so excluded, by majority societies as well as by their own traditions, that they are simply not starting from the same point like most other citizens. We need more than just treating the Roma "like everyone else", although even that is often very far from being the case.

(In: Youth Action Programme, 2010, p. 2)

Considering the abovementioned, one of the major criticisms to the EU's hard law approach was that it seemed not to focus on the more precise psychological nature of Roma discrimination nor did it address the complexity of their socio-economic disadvantages. The Commission has explicitly referred to Structural Funds as a key instrument to be employed by Member States to foster Roma inclusion. "The EU Framework for NRIS states, among its central aims, its intention to 'make existing EU funds more accessible for Roma inclusion projects'(EURoma, 2012, p. 3). However by doing as such it seems to suggest to be interested mainly in treating the *symptoms* of discrimination on a purely individual and outward basis rather than being interested in improving the rights of the Roma collectively as a minority group. Such an approach "ignores the prejudice which Roma endure because of their ethnic identity, the fact that they are seen and treated in categorical terms" (McGarry, 2011, p. 133), while simultaneously it also side passes elements of Romani culture hostile to integration and cooperation.

The EU Roma Strategy 2020

Finally on the 5th of April 2011 the European Commission adopted the EU Roma Strategy 2020. "With this EU Framework, the European Commission encourages Member States, in proportion to the size of the Roma population living in their territories and taking into account their different starting points, to adopt or to develop further a comprehensive approach to Roma integration"(European Commission, 2011, p.3).

The idea of the Strategy 2020 is that in order to achieve significant progress towards improving Roma housing and living situations, the European Commission will take the lead in urging MSs to adapt or design National Roma Integration Strategies (NRISs) in order to meet EU Roma integration goals, "with targeted actions and sufficient funding (national, EU and other) to deliver them". (p. 4)

With regard to the Roma's housing situation the main goal articulated within the Roma Strategy 2020 in 2011, was to, "*close the gap between the share of Roma with access to housing and to public utilities (such as water, electricity and gas) and that of the rest of the population*" (p. 7)

When we take a closer look at the EU Roma Strategy 2020 as the EU's new main *modus operandi* in housing matters, we can easily identify that this policy approach is almost ideally fitting that type of process which Harold Koh terms, a transnational legal process, in which annual European Commission evaluations of so-called National Roma Integration Strategies (NRISs) eventually in theory should have the ability to induce MSs into norm obedience, by enmeshing them into a framework in which they (the EU MSs) non-legally commit themselves to *repeatedly participate in a process orientated around housing rights improvements, by way of periodically writing NRIS reports.*⁶⁰

By doing as such this new OMC policy tool, revolving around Roma housing is meant to have an enmeshing influence in which an agreed upon interpretation or norms among all MSs, in the form of Ten Common Basic Principles on Roma Inclusion, is used as a tool, "distilled from the experience of successful policies, for both policy-makers and practitioners managing programmes and projects, providing "a framework for the successful design and implementation of actions to support Roma inclusion" (EU 2011, p. 2).

⁶⁰ National Roma Integration Strategies available here: http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm

In contrast to binding legal norms this OMC on Roma housing, “is based on *cooperation*, between MSs, *reciprocal learning*” and the committed and periodical participation of Member States. It is not based “on legal norms, economic pressures or minimal standards”, but rather MSs agree on a shared interpretation of a set of goals, communicated in NRISs with the aim of internalizing those goals in practice domestically, after which a quasi-law declaring body, in the form of the European Commission evaluates the outcomes and makes recommendations on how to improve the domestic Roma housing situation (Heidenreich and Bischoff, 2008, p. 498 *emphasis added*).

Conclusion

We argue that by ratifying the RESC and by being a participant in a EU Roma housing OMC, Italy has been firmly enmeshed into a TNLP, and by doing so has made itself subject to the treaties procedural demands and EC recommendations. It has given to the European Social Committee as well as to the European Commission, the jurisdictional power to produce quasi-legal Decisions and Communications in the light of a Collective Complaints Procedure as well as through the Commission’s OMC, making it possible for private groups and individuals to initiate proceedings against Italy before the Committee and to pressure the EU more effectively through a peer reviewed process.^{61 62}

It is precisely these annual Conclusions and quasi-judicial Communications produced by the Committee and Commission that according to Koh (1997, p. 2646), will “guide future transnational interactions between the parties” and “will further internalize those norms domestically” as a consequence of repeatedly participating in the process, helping to reconstitute the interests and even the identities of the participants in the process in such a way that they will obey the norms eventually.

However at present we do not see a clear reconstitution of identities and interests within mainstream society in Italy, towards their Roma communities, but on the contrary we are faced by overwhelming evidence that Roma and non-Roma in Italy and elsewhere in the EU do not get along very well at all.^{63 64} The above mentioned regime characteristics therefore epitomize a TNLP “at work” and it confirms that indeed a group of INGO’s (e.g. COHRE, ERRC and the ECSR) and national NGO’s (e.g. OsservAzione and Sucar Drom⁶⁵) have throughout many years been actively engaged in a transnational legal process, making use of international law and legal bodies to persuade Italy into norm obedience.

IV. Political norm internalization and legal norm internalization, but no social norm internalization

“While international diplomatic pressure could play a significant role in many cases, especially to get states to ratify human rights treaties, effective implementation of human rights norms in state societies is a more complex process”

(Uzunova, 2010, p. 309)

Clearly we can see a TNLP “at work”, however the interesting question remains whether this TNLP, actually did have any effect. Did besides political and legal norm internalization also a *social norm*

⁶¹ The Collective Complaint Procedure makes it possible for a broad range of NGO’s to submit complaints. For a detailed list see: http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/INGOListJanuary2012_en.pdf

⁶² i.e. the European Committee of Social Rights

⁶³ By repeatedly having to submit country reports, as a consequence of many treaty obligations (of which the RESC is only), which then are subsequently scrutinized by different international (quasi) judicial bodies (of which the ESC is only one) in the form of Conclusions, Recommendation, Opinions and Decisions, Italy has been subjected throughout the last 20 years, to (although not being legally binding) interpretations that have as their goal to persuade the Italian government to politically, legally and socially obey to the right to an adequate standard of living for migrant Roma.

⁶⁴ It is important to keep in mind that Italy does not only finds itself obliged to repeatedly interact in a TNLP in the procedural context connected to the RESC, nor does Italy only has to abide to processes and rules through the EU OMC, but also due to its participation in many similar treaty regimes that also regulate housing conditions, Italy can be said to be enmeshed into a TNLP.

⁶⁵ European Roma Rights Centre, Centre on Housing Rights and Evictions, osservAzione and Sucar Drom (2008) Written comments concerning Italy for consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 72nd session, available at: <http://www.errc.org/db/02/C9/m000002C9.pdf>

internalization occur? In this section we will show that we indeed can arguably see *political norm internalization* and partial *legal norm internalization* as defined by Koh in Italy. However *social norm internalization*, we argue is blocked by something, preventing the international norm (a right to adequate housing) to enter into the hearts and minds of the local electorate. The norm does not seem to “acquire so much public legitimacy” that there is widespread “general adherence to it”. Instead of seeing a broad acceptance and obedience to a right to adequate housing in the heart and minds of non-Roma Italians, we see strong indications suggesting that many a substantive part of the Italian electorate, especially in and around major Italian cities is very sceptical towards claims made by migrant Roma and Roma advocacy groups demanding more extensive rights to adequate housing. In the next section we will consider what we believe to be the nature of this scepticism, but first we will consider the types of norm internalization in the country.

Political and legal norm internalisation

We recall that *political internalization* can be observed to take place “when the political elites accept an international norm, and advocate its adoption as a matter of government policy”. With regard to the question whether this type of norm internalization has taken place in Italy we can unambiguously see that indeed this has been promoted by most of the political elite in Italy throughout many years. Most clearly this becomes apparent when we consider the signing and ratification of numerous international treaties by the Italian State concerned with the right to adequate housing.⁶⁶

Internationally, the political elite in Italy have shown themselves to be as concerned and interactive with the housing rights of the Roma as any other comparable WEMSSs, however due to domestic tensions and fears for newly arrived Roma from places like Romania and Bulgaria, many politicians in the last 10 years have adapted their discourses in order to bring them more in line with domestic majority thought and sentiments (while simultaneously presenting themselves internationally as strong and interactive advocates for human rights). On the one hand the Italian elite have spoken human rights talk, while on the other they increasingly have felt the opportunistic necessity to strongly speak anti-gypsyism.⁶⁷

Legal internalization we recall occurs when “an international norm is incorporated into the domestic legal system and becomes domestic law through executive action, legislative action, judicial interpretations, or some combination of the three” (Koh, 1998, p. 623).

It was during the 80s that migrant issues gained more importance in Italy “Prior to this, the Italian response to the need of migrant workers was largely left to the Catholic voluntary sector” (Sigona, 2011, p. 599; Picker, 2011). Nevertheless it still took a decade before finally in 90s, one could see the actual emergence of regional laws in 10 regions which had as their aim to protect ‘nomads and nomadic cultures’⁶⁸ (Storia, 2009, p. 13). However not all regions at that time developed Roma housing laws for Roma, but in those cases where they did, these laws had and still have included within them clear provisions protective to a right to adequate housing.

Therefore at present in Italy, on the national level there indeed exist norms related to housing that do take the form of a general framework (see Table 1) whereby the competences for housing are attributed by law, to regional and local governments (Sigona, 2011; Marinaro & Daniele, 2011). A major consequence however of this decentralised housing policy is that different regions and autonomous provinces interpret and implement the national framework legislation in different ways, particularly with reference to migrants Roma minorities. This makes it slightly harder to make overall judgements with regard to the migrant Roma housing situation in the country as a whole.

Regarding the subject of location, it is made explicit almost always in the regional laws, often with very similar wording, that ‘camps and transit areas’ should be allocated to specific areas with the purpose to avoid marginalisation and isolation jeopardizing facilitation of access to education,

⁶⁶ Examples of treaties to which Italy is a Party and that subsequently provide for a right to adequate housing, are: Universal Declaration of Human Rights (1948, Art. 25) International Covenant on Economic, Social and Cultural Rights (1966, Art. 2,3,11) Convention on the Elimination of All Forms of Racial Discrimination (1965, Art. 5e) Convention on the Elimination of All Forms of Discrimination against Women (1979) (Art. 14) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, Art. 43) Convention on the Rights of the Child (1989, Art. 27)

⁶⁷ More on political expressions of anti-gypsyism will be provided for in subsequent chapters.

⁶⁸ Emilia-Romagna, Friuli-Venezia Giulia, Lazio, Liguria, Lombardia, Marche, Piemonte, Sardegna, Toscana, Umbria and Veneto and the autonomous province of Trento.

health and social services, while promoting the inclusion of the inhabitants of such settlements into the social fabric of local communities (Enwereuzor & Di Pasquale, 2009).

Referring to utilities that should be made available in every authorised settlement, all regional laws stipulate that camps should be fenced, have public lighting, electricity for private use, drinkable water, toilet and laundry areas, equipped children's playgrounds, public telephone booths and containers for domestic waste.⁶⁹

(Enwereuzor & Di Pasquale, 2009, p. 9)

As beautiful as such provisions may sound, the implementation policy on the ground shows a different picture, where still many migrant Roma are forced to live in shacks with poor sanitation, lack of water supply and without electricity provision and where migrant Roma are still often allocated in cut-off areas, with poor infrastructure and as far away from the local communities as possible.

Broadly spoken the abovementioned policy evaluation concerned with the question whether *political* and *legal* norm internalization to a right to adequate housing can arguably be said to take place in Italy, shows that indeed both types of norm internalization (i.e. the *legal* and *political* norm internalization of the norm prescribing a right to adequate housing) can be identified in the form of (1) international law, (2) a national legal framework *and* (3) regional laws, to which Italy has committed itself legally. However as abovementioned, according to Enwereuzor & Di Pasquale (2009) only 10 out of 20 regional laws have inscribed in them provisions that explicitly deal with protecting the right to adequate housing of migrant Roma.

Therefore while we do find extensive political internalization in the form of participation to major international human right treaties on housing rights, we nevertheless only find a partial legal internalization to the right adequate housing.⁷⁰ And in those regions where we actually find extensive housing rights, we observe that those provisions are not always adequately implemented on the local level. The mere existence of a Roma housing policy framework, however does not mean that social norm internalization has taken place. If social norm internalization would have been the case the international norm would also have been implemented properly and without much problems. But on the contrary often national and regional housing policies are poorly implemented locally, as evidenced by persistent accounts, describing sub-standard Roma housing in Italy.

The laws are partially in place but they are somehow not, or not properly implemented at the local level. If they would have been adequately implemented we would not have found so much evidence concluding that many migrant Roma communities in Italy are still tormented by a lack of adequate housing. (CERD⁷¹, 1999; ERRC, 2000, Marinaro, 2003; IHF⁷², 2005; Srente, 1997; Amnesty International, 2010, 2011, 2012; European Parliament, 2008; FRA, 2009; Sigona, 2008; 2011; ECRI⁷³, 2012)

Social norm non-internalization

At least in those regions that have the biggest percentages of migrant Roma communities there has been a legal framework in place that has been developed with the aim of protecting the right to adequate housing of the Roma.⁷⁴ However for a national framework law to be effective it has to be observed locally also. This has not extensively been the case in Italy. An astonishing amount of evidence has come to light throughout the last 20 years, whereby numerous experts, civil society institutions, national and international NGO's as well as IGO's, have consistently been arguing that the basic Roma housing rights are still massively being trespassed in the country.

⁶⁹ Regione Piemonte / LR n. 26, 'Interventi a favore della popolazione zingara' (10.06.1993), available at: http://www.comune.torino.it/stranierinomadi/nomadi/normativa/regionale/legge_26.pdf

⁷⁰ Important to note however is that most migrant Roma live in Milan and Rome, two cities that are both covered by a legal framework because they are situated in regions that indeed have adopted regional laws in which detailed prescriptions of a right to adequate housing for migrant Roma or are inscribed. (i.e. the regions of Lazio and Lombardia) Meaning that those 10 regions not having housing laws in place for Roma, might not have them because the percentage of migrant Roma in those regions is too small. However this does not mean that the migrant housing solutions in those regions necessarily are as bad as solutions in those regions where regional laws are in place.

⁷¹ The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

⁷² i.e. International Helsinki Federation for Human Rights

⁷³ i.e. European Commission against Racism and Intolerance

⁷⁴ i.e. Rome and Milan both have regional Roma laws referring to the provision of adequate housing

There has been overwhelming evidence supporting the view that profound tensions between migrant Roma and local Italian populations exist in Italy. Throughout the last 20 years increasingly there have been reports of migrant EU Roma not being allowed into villages or being systematically excluded in nomad camps (ERRC, 2000; Storia, 2009; Sigona, 2011, Yuille, 2007 Amnesty International, 2010, 2011, 2012; Muižnieks, 2012).⁷⁵ There have been detailed accounts of violent pogroms against Roma (ERRC, 2000; Favello, 2005; FRA, 2008; Angelescu, 2008; ERRC et al, 2008) Mayors and city councils explicitly have pursued policies in a discriminatory way against Roma by denying for Roma the right to make use of the normal public housing solutions also offered to non-Roma, but rather instead they have pursued a policy of building “nomad” camps in deserted and non-connected places, preventing proper Roma integration into Italian society. (Marinaro, 2003; Sigona, 2008; Muižnieks, 2012)

There have been accounts of illegal evictions and non-provision of alternative housing after evictions took place (HRW, 2007; Amnesty International, 2010, 2011, 2012; Marinaro & Daniele, 2011; CERD, 2012) There have been accusations of police brutalities against Roma in the country (ERRC, 2000; Angelescu, 2008; ERRC et al, 2008; FRA, 2008; Muižnieks, 2012) and lastly to mention, there has been an intensification of political discourses and media broadcastings discriminating and stigmatizing migrant Roma communities. (ERRC et al, 2008; Aradau, 2009; Muižnieks, 2012)

Conclusion

Considering this contextual situation on the ground, and recalling that *social norm internalization* is only achieved when an internationally prescribed norm actually “acquires so much public legitimacy that there is widespread general adherence to it”, it is hard to actually confirm that indeed this type of extensive norm internalization has occurred in Italy. Still today, despite a partial legal and political norm internalization, not at all the international legal norm prescribing a right adequate housing has acquired “so much public legitimacy” in the hearts and minds of the Italian local electorate, that there is “widespread general adherence” to the norm, provoking solidarity towards migrant Roma. Despite intensive efforts made by AoI’s to change the situation still one can observe an atmosphere of profound mistrust between Roma and non-Roma in Italy.

When we recall that the theory of TNLP argues that:

If a state repeatedly participates in a TNLP that champions and promotes an international legal norm (e.g. the right to adequate housing), it (the State) eventually will fully internalize and obey that same international legal norm (legally, politically and socially).

, however, we have to lament that the data seem to present a different picture. No extensive *social norm internalization*, has taken place in Italy, because the right to adequate housing for migrant Roma seems not to have been broadly protected at all by local councils, especially not for those Roma living near big cities like Rome or Milan. The previously identified TNLP, although “at work” seems to have bumped up to something that has prevented it from doing its internalizing magic. This “something”, we argue is a special type of discrimination, namely *mutual ethno-moral discrimination*. Instead of observing the consequences of a properly inserted HRs norm aiding widespread sympathy, and embracing the newcomers with empathy and solidarity, on the contrary, the relationship between the migrant Roma communities and local populations in Italy has often been one of avoidance, conflict and mistrust, preventing international law from being effectively implemented. The causes for severe lack of local interaction, cooperation, and mutual understanding, we argue is more complex than at first one might argue them to be. Majority discrimination is not the only culprit nor is blatant discrimination its sole cause. A better understanding can be found by a more accurate description of locally opposing psychological predispositions in the form of moral anti-gypsyism and moral anti-gadjeism between Roma and non-Roma Italians.

⁷⁵ Nils Muižnieks is the current Commissioner for Human Rights of the Council of Europe.

V. Mutual ethno-moral discrimination and the EU

What we are facing in Europe is a deeply rooted cultural codex called “anti-gypsyism” or ‘anti-ciganism’ that is really part of society. Walk down the street and ask a normal guy what he knows about Roma, and he will come out with ‘they’re thieves, they’re beggars and so on: all the stereotypes that we’ve known for centuries”

(Cameron, Radio Praha, April 29, 2003 in: Uzunova, 2010)

As shown by the previously mentioned literature, fortunately enough most academics have not felt any inhibition to highlight the detrimental housing conditions which many migrant Roma are phasing in Italy today, nor has there been any lack of detailed description about shameful immoral acts of discrimination against innocent Roma individuals and communities, showing in a clear way the presence of conflict and animosity that exists (in various degrees) on the local level between non-Roma Italians and migrant Roma communities in the country. What scholars nevertheless for the most part often seem to have neglected however, is to dive a little bit deeper into the precise nature of these poor inter-cultural relationships.

The importance of having knowledge of non-legal but rather social (non-written) norm systems is detrimental for a better understanding *why* Koh’s hypothesis predicting an eventual social norm internalization, is only partially taking place. If we want to further specify the theory, we need to know what is going “wrong”, and why being part of international housing rights treaties is somehow not translated into normative changes producing more qualitative as well as quantitative Roma housing solutions for the migrant Roma communities locally.

In this chapter we will argue that one of the major reasons why we don’t see *social norm internalization* of the international right to adequate housing, but instead observe inter-cultural avoidance and mistrust between migrant Roma and non-Roma, can basically be better understood by three *intertwined* observations:

1. The presence of *social norms* in the form of mutual ethno-moral discrimination between Roma and non-Roma (i.e. moral anti-gypsyism versus moral anti-gadjeism).
2. A differential strength levels between local pre-existent *social norms* and international *legal norms*, where social norms are often much stronger than international legal norms.
3. Migrant Roma under- and / or misrepresentation in local (institutional) democracy.

Local social norms versus international legal norms

Before we go into the notions of (1) mutual ethno-moral discrimination and (2) democratic Roma under-representation, it is important to understand that often legal written norms that have been agreed upon nationally or internationally do not always necessarily become broadly held social norms also. Sometimes (international) legal norms are simply not accepted by the general public, not even after many years.⁷⁶

The view that written law drives legal outcomes is plausible only insofar as written law (to the extent that it has any meaning at all) is usually in accord with social norms. The outcomes of cases in which

⁷⁶ An good example of a *legal* (or contractual) *norm* that is currently much weaker than a more deeply held social norm can be distilled from what is happening in contemporary Greece. Here, the international *legal norm* prescribes that a nation must, or should pay back on time, the money previously borrowed from international lenders. However, what we see is that precisely this *legal norm* is currently being opposed by a much stronger *social norm*, which instead is based on the deeply felt social assumption that somehow it is unfair that populations have to be subjected to severe financial austerity, due to mismanagement by corrupt or inadequate politicians (and smart predatory international lenders). The social norms say, “we will not accept” while the international norms are saying “you will have to pay back the money”.

It is precisely those social sentiments and resentment towards the Troika and the previous incompetent Greek governments that have provoked many Greek citizens to disobey and oppose (in their heart and minds) substantial international *legal* agreements imposing extreme austerity and harsh pay back requirements.⁷⁶ They feel they have a moral right (or perhaps even a moral duty) to protest and to hold union strikes as a way of showing their disagreement with international legal commitments/norms made by their own inadequate politicians. International *legal norms*, it seems, are being rejected in Greece by more powerful *social norms*, despite a TNLP. It is for these reasons that we see widespread civil unrest and union strikes in many parts of the country preventing international treaty norms of entering the *social* fabric of life.

the applicable norms differ from the written law demonstrate that the social norms, not the written law, are the driving force.

(LoPucki & Weyrauch, 2000, p. 1435)

We argue that in this particular case in Italy an international legal norm (the right to adequate housing for migrant Roma) is being opposed by stronger social norms which we together would like to call mutual ethno-moral discrimination. A term that aims to indicate conflictual relationships and more understandably, can be dissected into two sub-terms i.e. moral anti-gypsyism and moral anti-gadjeism. Mutual ethno-moral discrimination, although partially underrepresented in the current Roma inclusion debate, we believe to be one major cause of norm non-internalization of the international right to decent housing. We assert that (at least partially) the force of moral anti-gypsyism is strengthened by what we choose to call moral anti-gadjeism. *Both* the intertwined negative presence of moral anti-gypsyism and moral anti-gadjeism, seem to be effectively blocking international legal commitments.

According to Uzunova, (2010, p. 307) moral anti-gypsyism and moral anti-gadjeism⁷⁷ are both, ‘deeply ingrained in European society as a justified way to deal with a social phenomenon’. Behaviour between Roma and non-Roma Italians is often guided by deeply ingrained stereotypical attitudes towards each other. Both communities have developed unwritten rules (or social norms) on how to deal with one and other. These existent views, attitudes and behaviours, can therefore be seen as deeply held social norms directly in opposition to international legal norms requiring the Italian State, in a variety of treaties, to respect the right to adequate housing for Roma communities.

“To be sure, the insight that people’s practice may, and often do, depart significantly from what the law says is not new” (Licht, 2008, p. 716). These social norms constitute a special type of *mutual* discrimination between migrant Roma and local non-Roma populations in Italy. They are firmly embedded psychologically and they are morally charged making it very difficult for international law, not supportive or not in line with these social norms, to trickle down socially into Italian society. How this is the case more precisely will be shared in following sections.

Moral anti-gypsyism

While the sheer beauty of the Forum Romanum as a physical representation of the former greatness of an empire long gone, the psychological structures of moral anti-gypsyism have not at all found to be subjected to such erosion throughout the last centuries, neither in Italy nor in the rest of Europe. Often it has been a form of discrimination, that has been expressed and passed on, from one generation to another, by mouth to mouth, but sometimes also through writings. Back in 1855 the Christian Enquirer wrote:

The Gypsies . . . are an idle, miserable race, a curse to the countries they inhabit, and a terror to the farmer through whose lands they stroll. They seem utterly destitute of conscience and boast of dishonesty as if it were a heavenly virtue... Laws have been passed in several countries to banish them, and great cruelties sometimes practiced to enforce these laws . . . So deeply rooted are sin and vagrancy in the hearts of this miserable race, that neither penal laws nor bitter persecution can drive it out.

(Christian Enquirer, 1855, Quoted in: Uzunova, 2010)

The mass migration of Roma communities from former Yugoslavia towards Italy 20 years ago, anticipated by a decade, the enlargement of the EU and the migration movements that this enlargement produced. However it remains a question whether also prophetic minds could have foreseen alongside the increased migration flows, the reoccurrence of this special type of anti-gypsyism in Italy.⁷⁸

At present, with hindsight, it has become evident that the arrival in Italy of a significant number of Romani migrants, from the early 1990s onwards, indeed re-triggered a form of social mistrust towards migrant Roma that until then had for a long time been latent in the country. Their arrival reawakened an ancient type of social fear and mistrust towards the gypsy (Matras 1997).

⁷⁷ Or gypsy law as she herself calls it.

⁷⁸ Between 40,000 and 50,000 “Roma” people are estimated to live in camps in 2010 (ANCI, 2011). They were 10,500 persons in 1996 (PCM, 2000) and at least 18,000 foreign Roma in 2001 (Sigona N. and Monasta L., 2006), demonstrating a significant growth. (Strati, 2011, p.11)

We interpret this mistrust to be motivated by *moral anti-gypsyism*, based on ethno-moral stereotypical allegations that find their root in the perception that parts of Roma behaviour is immoral and unethical.⁷⁹ It is this type of moral exclusion that is *partially* responsible for high levels of avoidance, mistrust and dislike shown by surveys tapping into the attitudinal nature towards Roma in Italy. Together and partially as a reaction to *moral anti-gadjeism*, mutual animosities on the local level have been strengthened. Therefore both *moral anti-gypsyism* as well as *moral anti-gadjesim* should be seen as a major causes of international norm *non*-internalization, because they directly stand in opposition to the promotion of a right to adequate housing for Roma.⁸⁰ “The lack of strong Roma identity and leadership structure are hurdles on the path toward effective integration, but they pale in comparison to the hurdle that is the public’s negative understanding of Romani ethical tradition and culture” (Uzunova, 2010, p, 293).

The Special Eurobarometer Survey (July, 2008, p. 45) concluded that on average almost a quarter of EU citizens would feel uncomfortable having to live next to a Romani family, compared to 6 % for neighbours from other ethnic groups. In Italy the reality on the ground is comparable to that of most other WEMSS. Almost half of Italians (47%) professed to feel uncomfortable having to live next to a Romani family⁸¹ (Eurobarometer Survey, 2008). While according to another survey even 78 % of Italians would not like to have a Roma individual as neighbour (World Value Survey, 2005, in Favello, 2011). Moreover, a survey conducted in 2008, by the Roberto Manneheimer group, concluded that 81 percent of the Italian population “cannot stand Gypsies,” (In: CS Monitor, 2010).

Additionally interesting, a study conducted in 2001 in 27 IEA⁸² countries measuring adolescents’ support for human rights per country, showed that the scores measuring adolescents’ attitudes towards immigrant rights were the lowest of all in Italy. Only the Czech Republic had a score equal to that of Italy⁸³ (Torney-Purta, Lehmann, Oswald, & Schulz, 2001).

Lastly to mention is a survey conducted by the Institute for the Study of Public Opinion (ISPO) in 2008, in which quite clearly the unique moral dimensions of anti-gypsyism were captured. The Institute concluded that 47% of the interviewees in the country that year saw the Roma as thieves, delinquents and layabouts, while 35 % linked the Roma with images of nomad camps, degradation and dirtiness.

What these surveys show is not only that, when expressed, anti-gypsyism often has a moral edge to it, but also that it can be seen as a powerful social norm “which is based on de-legitimation and moral exclusion”(European Commission, 2008). “In some people, the term “Roma” evokes notions of a romantic and carefree lifestyle devoted to travelling, music, and a celebration of life. But European attitudes toward Roma are defined by anti-Gypsyism” (Uzunova, 2010, p. 302). “Anti-Gypsyism is a specific type of discrimination⁸⁴, where throughout Europe, the Roma have often been perceived as having “deviant traits” (European Commission, 2004, p. 7).

Especially their allegedly higher frequency of disrespecting property and fraud laws, have resulted in a broadly shared perception that they are “crooks who will steal or swindle” (Gil-Robles, 2006, p. 8). But also other morally charged accusations have been circulating throughout Europe for a long time. Up until this very day, these psychological manifestations have effectively prevented the international law prescribing a right to adequate housing for Roma from being fully implemented on the local level. It is precisely these strongly held reactions of Roma avoidance in present day Italy, that

⁷⁹ Important to note is that we are not interested in investigating whether widely held ethno-moral allegations against the Roma have a partial foundation in reality, in the sense that we are not concerned so much about whether those allegations typically expressed by Moral Anti-Gypsyism indeed have an empirical truth basis,(more concrete we are not concerned whether it is empirically true that Roma commit more pocket robberies than non Roma etc.) We only conclude that indeed there is a widely held perception among Italian non-Roma that Roma are not really worthy of extensive help or sympathy, not because they have a slightly different skin colour, but because they are believed to, above average, partake in immoral and unethical behaviours.

⁸⁰ The phenomenon of moral anti-gypsyism, in no way, should be seen as an Italian phenomenon, but rather as a European wide phenomenon, that presently, as a consequence of migration from CEE, is becoming more and more visible in WEMSS.

⁸¹ Furthermore a third of people would be uncomfortable with a Roma neighbour in Ireland (40%), Great Britain (36 %) and Cyprus (34%), while also one in four Germans (25%) would not at all feel comfortable, with a Roma as a neighbour either.

⁸² IEA stands for: International Association for the Evaluation of Educational Achievement

⁸³ Italy and the Czech Republic shared the lowest place on the ranking, both countries having a mean score of -9,8

⁸⁴ We analytically distinguish between racism on the one hand and moral discrimination on the other. We find both *moral discrimination* and *racism*, to be morally objectionable types of prejudicial predispositions. However this paper focuses on moral discrimination instead of racism. We argue that making this analytical distinction is key in understanding why complete norm internalization is not taking place.

alongside moral anti-gadjeism, are causing a rather low political will locally to truly improve the migrant Roma housing condition.⁸⁵

Political expressions of moral anti-gypsyism in Italy

Marinero (2003, p. 207) mentions that already back in 1994, in the city of Rome, the elected Rutelli administration, in order to solve what was described as an *emergenza nomadi* (Nomad crisis), in an attempt to develop policies towards Roma that would tackle their supposed “propensity for crime”, explicitly found it necessary to link the city’s Roma policy with criminality.⁸⁶

Back in 2008 the general elections were won by the right wing conservatives of Forza Italia, headed by Silvio Berlusconi. In order to acquire a majority in parliament, a coalition was formed with two other parties, the anti-immigrant Northern League party (headed by Umberto Bossi) and the right wing National Alliance party (headed by Gianfranco Fini). The just newly elected government was constituted in May of that year. Together, representing the majority of the Italian electorate, all three party leaders while in office, nevertheless have found the freedom to morally exclude migrant Roma by repeatedly making use of anti-gypsy rhetoric. This observation led one scholar to observe that:

While hostile statements towards other minorities generally cause some public or private reaction, anti-Roma hate language usually carries few consequences even in contexts otherwise used to guarded language.

(Simoni, 2008, p. 84)

At the time in 2008, Minister of the Interior Robert Maroni stated publicly that, “all Romani camps will have to be dismantled right away and the inhabitants will be either expelled or incarcerated” (La Repubblica, 11 May, 2008). Furthermore Maroni was quoted stating that, “that’s what happens when gypsies steal babies, or when Romanians commit sexual violence” (Times Online, 2008).

A year earlier, former mayor of Rome Walter Veltroni blamed the overall increase in violent crime in the city on the recent immigration of Romanian Roma, asserting that “before the entry of Romania into the European Union, Rome was the safest city in the world”(HRF : La Repubblica, 2007, October 31). Furthermore, Mr. Fini (leader of the National Alliance), at the time speaker of the lower chamber of parliament and well-known for his occasional anti-Romani expressions, publicly remarked in 2007 that Roma basically considered “theft to be virtually legitimate and not immoral”. He additionally stated that they felt the same way about “not working because it has to be the women who do so, often by prostituting themselves”.⁸⁷

Democratic implications of moral anti-gypsyism: Local Roma under- and misrepresentation.

In cases where the majority highly seems to dislike a minority, or in places where a minority is not really welcomed by mainstream society, the exercise of local democracy often leads to an under- and /or misrepresentation of that same minority.

Law no. 81 of 25 March 1993 changed the voting system for municipal and provincial elections in Italy, by providing for the direct election of local-councils, mayors and provincial presidents in order to bring greater stability and decision-making capacity to municipal and provincial councils, and greater control over their activities.

(Morlino, 2009, p. 20)

Furthermore:

Constitutional reforms in 1999 and 2001 sanctioned direct election of the presidents of regional governments and empowered regional authorities to choose their own statutes and electoral systems. It gave them general lawmaking powers and greater revenue-raising and expenditure autonomy, with an

⁸⁵ by not making them eligible for social housing but rather instead massively segregate them into Roma camping sites.

⁸⁶ Rome as a city is situated in the province of Lazio, and has the highest concentration (22%) of Roma people in the country (Strati, 2011)

⁸⁷ Moreover Fini was also quoted as having claimed that “Roma have no scruple about kidnapping children or having children of their own for purpose of begging” (Di Caro, 2007, p. 5)

equalisation fund “to the benefit of areas where the fiscal capacity per inhabitant is reduced” (Constitution art. 119. 3).

(Morlino, 2009, p. 21)

By taking into account these major institutional changes that took place in Italy in the early and late 90s, whereby the ability of regional and local councils, to more autonomously make, adapt, change and implement policy locally (also with regard to Roma housing issues), we are able to better appreciate and understand how important it is for minorities like the migrant Roma, to be “liked” by local majorities. The knowledge that moral anti-gypsyism is shared by a substantial subpart of local Italians, especially by those living in big cities, in this light, might therefore better help to understand the current sub-optimal housing situation of many migrant Roma.

It is not hard to see that logically those citizens engrained with moral anti-gypsyism, if possible, will oppose, and sabotage whenever they see a possibility, any policy proposal that might seem to be too favourable to migrant Roma. A democratic pro-Roma housing policy and moral anti-gypsyism simply do not go hand in hand. In this context, local councils will not produce the political will necessary, because electorally, it simply will be against their own self-interest to substantially improve the detrimental housing conditions of the migrant Roma in their district.

Moral anti-gadjeism and its impact on moral anti-gypsyism

As abovementioned, we can see a substantial amount of survey research highlighting and exploring the phenomenon of anti-gypsyism, that exists in Italy. However fewer studies have been commissioned, critically exploring possible elements in Romani culture (i.e. their norm and value system) that arguably also might be contributing to the continuation of segregation, avoidance and mistrust on the local level. We argue that this lack of research should be seen as a missed opportunity to try to bring both communities closer to one and other.

We for our part, aided by insights derived from previous anthropological field research, identify also within Romani communities a norm system and attitudinal tendencies partially contributing to distorted majority-minority relations and voluntary social exclusion. We sadly enough also see firmly rooted attitudinal characteristics and cultural beliefs within certain sub-sets of migrant Roma communities which are not at all very different in nature from the abovementioned forms of moral anti-gypsyism. Also in Roma communities, arguably, one can see moral discrimination against the non-Roma (or gadje) way of life.

Despite the unprecedented silence regarding this phenomenon in policy papers, perhaps due to its sensitivity, we nevertheless observe a strong sense of moral anti-gadjeism present also within Roma communities. Not only do these beliefs and attitudes support degrading and negative behaviour towards non-Roma, but they also might be an important element determining the strength levels of ethno-moral anti-gypsyism as well. Moral anti-gadjeism potentially can be *as* de-stabilizing and detrimental to Roma housing rights improvements, as is moral anti-gypsyism and for that reason, policies on Roma non-Roma relations will need to be enlightened more profoundly, with notions of moral anti-gadjeism as well, if MSs as well as the EU are truly interested in developing an equitable and just policy approach related to Roma minorities.

Although not an Italian national, the comments once made by professor Stanilov, a member of the Hungarian National Assembly and party member of an extreme right wing party, shows precisely, the type of sentimental expressions, that although highly objectionable, nevertheless seem to epitomize, sentiments that also can be found in an increasing subsection of the Italian electorate. An electorate that is increasingly concerned with the continuous increases of migration to their country, of groups of people, that are perceived as not contributing to the country, but rather are deemed to require constant help and social assistance. According to Bulgarian Professor and politician Stanilov:

Applying the notion of tolerance toward the Gypsies is simply unthinkable. We can be tolerant toward the Armenians, for example, they come to Bulgaria, a year later they know perfect Bulgarian. They identify themselves as Bulgarian; they belong to an ancient nationality. They are pleasant guests, who are a part of Bulgarian society, a part of our history and nation. (..) Conflicts between Bulgarians and

Gypsies are not based on denial of human rights to the Gypsies but on a clash between these two cultural models. They have a right to exist, to have a place to live. The problem is that their way of life directly violates social order, established by Bulgarian society and nation. If an ordinance bans raising of pigs in a neighbourhood, Bulgarians don't raise pigs there, but the Gypsies do. . . . There are no rights without responsibilities. All programs for Gypsy integration are going to be futile. Even if you build houses for all of them, they will bring their horses inside and ruin them.

(Interview in 2006, quote from Uzunova, 2010, p. 305)

Although the abovementioned quote is situated at the extreme populist right end of the political spectrum, the fact that these expressions reach and acquire a relatively large political platform, is indicative for sentiments present in substantial subsections of majority societies towards some aspects of Roma behaviour and culture also in WEMSSs.⁸⁸

In Italy "in 2008 the Lega was not only in a far stronger position in terms of vote share and seats gained reflecting its increased electoral strength", but they also managed to secure four ministries which were all closely linked to its key themes, "more so than had been the case during its previous time in power" (Albertazzi & McDonnell, 2009, p. 11).

When it comes to Roma attitudes towards work, Sway (1988, p. 124) states that the types of low status blue collar work available to Roma often conflict with the Roma "sense of dignity and need of autonomy". According to Henriques (2012, p. 1) Roma "have never really integrated European mainstream society, in fact, this trait has become part of their identity and pride and is now regarded as a non-violent struggle". Additionally interestingly in their research Weyrauch & Anne Bell, (1993) and Vivian & Dundes (2004) observe that many Roma communities have encapsulated their mistrust towards the Gadje in the form of stereotypes and beliefs that disclose some elements of strong moral anti-gadje feelings. For example they state that many Roma often perceive non-Roma (or Gadje) as having no sense of justice or decency. They see them (the gadje) as polluted and as untrustworthy.

Taking a closer look at the stated Roma critique, at least partially, it seems to suggest that Roma communities often are not highly esteemed, not because of racism against them, but rather because they themselves do not respect conventional social norms and rather prefer their own (sometimes conflicting) way of life before that of the societies in which they live. According to Weyrauch⁸⁹ & Anne Bell, (1993, p. 27) "Roma law has evolved to insulate Roma from the host society, and thus to maintain its own insularity from the host legal system" They mention that "Roma share a fervent belief in their own uniqueness, and ethnocentricity has kept them from violating their prohibition against cultural integration".

For example, they state that the high level of illiteracy that historically has been present in Roma communities might deliberately and conveniently have been kept off the agenda by Roma elites by downgrading its importance, because throughout time this illiteracy might have served their interest in protecting their communities from gadje influences and ideas, possibly threatening Roma traditions and culture.

The gypsy determination not to assimilate into the dominant society has been crucial in their survival as a separate population. This drive stems in part from the Roma's belief that non-Gypsies are in a state of defilement because of their ignorance about rules of purity and impurity. Gypsy society relies heavily on distinctions between behaviour that is pure (vijo) and polluted (marime).

(Weyrauch & Anne Bell, 1993, p. 29)

This Paper argues that it is understandable that the different Roma communities, throughout the centuries, have developed a protective norm and value system, in order not to be assimilated by the

⁸⁸ Twice the party "Ataka" to which the quoted populist professor was a member, surprised its opponents by acquiring 8.1 % of the seats of the National Assembly in 2005 and 9.4 % in 2009, making it both times the 4th largest party of Bulgaria (Cholova, 2011, p. 47). In the Italian Case the Lega Nord, a similar party, throughout the last 20 years has reached a similar platform of that of the party to which the mentioned professor is a member. It won access to parliament with a resounding 8.6% of the votes in 1992. Followed by 10.1% of the national vote in 1996 elections and a 8.3 % of the casted votes in 2008 (Hopkin and Ignazi, 2007).

⁸⁹ Walter O. Weyrauch is Distinguished Professor and former Stephan C. O'Connell Chair of the Levin College of Law at the University of Florida, Gainesville.

more dominant European cultures to which they have been subjected and among which they have lived.

While Romanies have never been colonized through dispossession of land ... in many other respects they can be considered as colonial subjects, victims of imposed discursive (mis)representations and structural inequalities, marginalized, patronized, exploited, stripped of language, culture, dignity.

(Lee, 2004, p. 32)

We do consider this however to be an enlightened view, that although being intimately in line with historical truth, unfortunately nonetheless, seems not to be able to rely on much sympathy within local main stream societies. This historical awareness is simply lacking beyond academic circles. A substantial sub-group of Italian non-Roma citizens only tend to see what they perceive to be in front of them, communicated in their media, their social networks or seen by firsthand experiences.

Moral Anti-gypsyism, instead of enlightened views of sympathy, are mostly on the radar screen of non-Roma. The average non-Roma citizen translates ethnocentric behaviours and survivalist attitudes to be deliberately negative and morally offensive, when in fact often such attitudes for many centuries, have served as essential protection shields for the Roma in their struggle for survival in a hostile environment.

The problem however often is one of selective observation in a sense that non-Roma in mainstream society often interprets moral anti-gadjeism to be another example of their perceived moral deficiencies, a view which as such, further tends to contribute to, and enforces the already existent sentiments of moral anti-gypsyism in the general population as a negatively reinforcing spiral, simultaneously worsening the Roma cause in the form of increase local opposition to migrant Roma.

The new EU Roma Strategy 2020

As an important AoI we would like to finish this chapter by briefly examining the new EU Roma Strategy 2020. In the Strategy we can barely find any reference to the presence of mutual ethno-moral discrimination and only briefly in one sentence the Commission (2011, p. 2) emphasises that “integration of Roma is a *two-way process* which requires a *change of mindset* of the majority of the people as well as of members of the Roma communities”.

It seems, when taking a closer look, that the new Strategy 2020, does not differ much from the pre-2011 EU’s problem analysis. Like in previous Commission documents, the problem of mutual ethno-moral discrimination is only briefly mentioned, without explicitly examining its nature. By barely mentioning the complex problem of mutual distrust and avoidance, the EU fails to dive deeper into the possible ways of changing that very “mind-set” and fails to provide any strategy on how to confront the social norms of moral anti-gypsyism and moral anti-gadjeism in a profound and meaningful way.

An observation that was also recognized and expressed a year earlier prior to the new Strategy 2020 by Uzunova (2010, p. 320) when she mentioned that “the EC recognises that anti-gypsyism is a special type of discrimination based on de-legitimation en moral exclusion, but nevertheless “anti-gypsyism is left largely unexplored (..) moreover there is no mention about gypsy law or elements of Roma culture that may be hostile to integration”.

Instead of focussing more on psychological solutions to the problem of mutual dislike and avoidance, and to strategically direct more funds toward programs that tackle mutually held stereotypical predisposition hostile to cooperation and mutual understanding, the EU chooses a safer, easier and more familiar way of dealing with the problem, namely by mainly facilitating and promoting more and easier access to financial funds to improve material conditions (EURoma, 2010).

In several Member States, for marginalised communities living in urban or rural areas, housing constitutes a decisive factor of integration. It is therefore necessary to *extend the eligibility of expenditure on housing interventions* in all Member States to communities living in urban or rural areas.

(Amendment 2010, *Regulation (EC) No 1080/2006, emphasis added*)

When in essence it would be wiser to direct more efforts to treating (besides the symptoms) also the *disease* of mutually held ethno-moral animosities, being a major cause of their material deprivation in the first place, the Strategy emphasises investments in better material housing conditions as one of its main responsibilities, bombarding the EU's Structural Funds (ESFs) to be “ *pivotal* financial and political instrument to tackle the disadvantages encountered by Roma”, focussing extensively on the infrastructural capacity of those funds to socio-economically improve Roma living standards (EU Roma Network, 2010, p. 50).

Conclusion

In this chapter we concluded that the reasons why the international norm prescribing a right to adequate housing for migrant Roma has not been inserted into the internal value set of local Italian society, can be said to have been caused by the presence of *moral anti-gypsyism*, a special type of Roma dislike, based on ethno-moral stereotypical allegations that find their root in the perception that parts of Roma behaviour are immoral and unethical. These psychological predispositions as such, are not only shared by a substantial subpart of majority society, and functions as a deeply held *social norm* more powerful than the *international legal norm* prescribing a right to adequate housing, but they do also make it very difficult for migrant Roma to be properly democratically represented on the local level.

Besides having found indications that the Roma suffer from a form of local moral exclusion and democratic underrepresentation, we have also found evidence supportive of the view that, partially this majority moral exclusion is counteracted by another psychological construct. Also within migrant Roma communities, we argue, one can find the presence of deeply held morally degrading attitudes towards non-Roma, characterized by a typical ethno-central dislike of non-Roma (or Gadge), shared by a substantial subpart of the migrant Roma communities, based on ethno-moral stereotypical notions of impurity, that find their root in perceiving the Gadge (or non-Roma) as being impure or marime (polluted) exploitative and overindulgent (Weyrauch & Anne Bell, 1993; Vivian & Dundes, 2004).

As abovementioned, we have been able to basically identified 3 intertwined main causes, explaining why even after many years of a TNLP, still today the international right to adequate housing is not fully being extended to many migrant Roma in Italy.

1. The presence of *social norms* in the form of mutual ethno-moral discrimination between Roma and non-Roma.
2. A differential strength levels between these local pre-existent *social norms* and international *legal norms*, where social norms in this case are much stronger than international legal norms.
3. Migrant Roma under- and / or misrepresentation in local (institutionalized) democracy.

We furthermore took a brief look at the new EU Roma Strategy 2020 and we concluded that the new 2011 EU Roma Strategy 2020, in the light of these 3 interrelated observations, while barely giving attention possible ways to solve the presence of inter-cultural animosities, the Roma Strategy 2020 furthermore seems over-focussed in improving outward situations without simultaneously also sufficiently emphasizing the necessity of improving more psychological solutions to Roma social exclusion and poverty in the form of policy programs that have as their strength to structurally bring together Roma and non-Roma citizens in those places most in need of reconciliation and mutual respect.⁹⁰

⁹⁰The European Structural Funds (ESFs) consist of the European Social Fund, the European Regional Development Fund (ERDF) and the Cohesion Fund. “At present a total of 308.041 billion Euros, equivalent to approximately one third of the European Union's budget was allocated to the Structural Funds” out of which also directly as indirectly EU Roma can also profit. (EU Roma Network, 2010, p. 48)

EU Roma Strategy 2020 highlight the increasingly central role that Structural Funds are playing in investment in key social protection measures and access to public services for persons and communities in situations of poverty and exclusion. “to support the efforts of the EU members in social inclusion, which includes actions in support of the Roma”. In that sense, the Structural Funds are therefore expected to become a pillar of Roma integration at the local, regional, national and EU levels. (ERRC, 2011, p 1)

Overall Findings and Recommendations

True compassion is more than flinging a coin to a beggar, it comes to see that an edifice which produces beggars needs restructuring.

(Martin Luther King Jr.
Speech in 1967)

TNLP predicts that international legal norms, whether pertaining to soft law regimes or hard law regimes will eventually be internalized into domestic systems, (Abbott & Snidal, 2000) if at least Agents of Internalization (AoI's), making use of international legal fora, repeatedly manage to trigger a transnational legal process⁹¹. According to Koh (1996, p. 184), a Transnational Legal Process describes the theory and practice of how AoI's "*interact* in a variety of public and private, domestic and international fora, to make, interpret, enforce and ultimately, *internalize* rules of international law" into domestic societies. In our theoretical chapter we explained that the *internalization phase* of the theory provides for 3 types of norm internalization, i.e. (1) political norm internalization, (2) legal norm internalization and (3) social norm internalization.

Koh's theory hypothesises that international norms eventually will get imbedded (or internalized) into domestic societies, through a process of interactive socialization. However, we conclude that in some societies, especially those which are plagued by majority-minority conflict, *international legal norms* are sometimes opposed by stronger *local social norms*. Also in Italy, despite its impressive participation and entanglement in a TNLP, as a contracting party to numerous international treaty regimes, as well as being a participant in the EU Roma housing OMC, AoI's have nonetheless not managed to *socially* insert the norm prescribing a right to adequate housing into the internal value set of local Italian communities, and *social norm internalisation* has simply not yet fully occurred in the country, as can be evidenced indirectly by the presence of a considerably strong opposition by mainstream society towards extensive Roma rights but also by the continuation of sub-standard housing arrangements in the country.

Survey data of the last decades as well as the type of expressions made by leading government politicians in Italy, suggest that indeed a special type of discrimination, namely moral anti-gypsyism might be acting like a powerful social norm, preventing democratic institutions on the local level to produce the necessary respect for the weaker international legal norm prescribing a right to adequate housing for migrant Roma.

We have put forward two textbook example of a TNLP "at work" in which we empirically observed that indeed, in accordance with Koh's theory, a group of INGO's (e.g. COHRE, ERRC and the EP and the EC) in cooperation with national NGO's (e.g. OsservAzione and Sucar Drom) have, throughout the last 20 years, been actively engaging in a TNLP, making use of international law (e.g. the RESC, the TEU and other regimes) and their (quasi) judicial bodies (e.g. the ECSRs, EC, ECtHRs) to persuade Italy into norm obedience. However despite Koh's optimistic hypothesis that, *if states repeatedly participate in a TNLP, they will eventually fully internalize international legal norms*, the empirical observations presented in this Paper, do not entirely support Koh's expectations and they are different from those predicted by Koh's theory of TNLP.

In chapter V we concluded that indeed *legal norm internalization* as well as *political norm internalization* of the norm prescribing a right to adequate housing, can be identified in Italy.⁹² However, *social norm internalization* of the right to adequate housing, as defined by Koh, has not occurred in Italy (yet), and many migrant Roma are still living in shacks and huts at the outskirts of major Italian cities.

If the international legal norm prescribing a right to adequate housing would have been socially internalized into mainstream society it should have, "acquired so much public legitimacy" on a local

⁹¹ The term hard law refers to legally binding obligations that are precise and that delegate authority for interpreting and implementing the agreed upon law. Soft law legal arrangements are the opposite of hard law. Documents governed by soft law regimes have often provisions within them that are not legally binding, not precise and there is not judicial authority protecting whether the agreed on rules/provisions are actually obeyed to. International law prescribing a right to adequate housing, often occupies a middle position with regard to the rule precision, the level of obligation and the type of delegation to external judicial bodies.

⁹² In the form of (1) international legal commitments to which Italy is a party, (2) a Roma national policy framework and (3) regional Roma laws, protective to the right to adequate housing.

level that it would have been easy to observe. But not yet we can observe a widespread general adherence” to that norm, in the hearts and minds of the local Italians (Koh, 1998 p. 1413). Rather on the contrary, the identified TNLP, although “at work” seems to have bumped up to something that has prevented it from doing its internalizing magic. This “something”, we argue is a special type of discrimination, which we coined *mutual ethno-moral discrimination*. This type of discrimination we have found, functions like a deeply help social norm, that is much stronger than the international legal norm prescribing a right to adequate housing. Our research shows that although Italy has a national Roma housing policy framework and many Italian regions have laws that aim to protect Roma housing rights, these laws are not being enforced locally.

Instead of provoking widespread sympathy, embracing the newcomers with empathy and solidarity, on the contrary, the relationship between the migrant Roma communities and local populations in Italy has often been one of avoidance, conflict and mistrust. If the laws would have been followed through, we would not have found so much evidence supportive to the view that at present, migrant Roma in Italy are still tormented by a lack of adequate housing (CERD⁹³, 1999; ERRC, 2000, Marinaro, 2003; IHF⁹⁴, 2005; Srente, 1997; Amnesty International, 2010, 2011, 2012; European Parliament, 2008; FRA, 2009; Sigona, 2008; 2011; ECRI⁹⁵, 2012).

We conclude that the complex question “to what extent” the TNLP promoting the insertion to a right to adequate housing into Italian society has taken place, can to a high extent, be contributed to the presence of specific characteristics that can be found in Italy, in the form of inter-culturally help stereotypical predispositions on the local level (Moral anti-gypsyism versus moral anti-gadjeism).

Notwithstanding the difficulties that obviously arrive when measuring social constructs in the form of attitudes and beliefs present in the psyche of a collection of individuals, we argue that when we consider the survey data of the last decades, independent reports, as well as the type of expressions made by leading government politicians in Italy, it is reasonable to propose that indeed a special type of discrimination, namely moral anti-gypsyism might be acting like a powerful social norm preventing democratic institutions on the local level to extensively respect and obey the weaker international legal norm prescribing a right to adequate housing for migrant Roma. A reality that at present, still often results in situations wherein migrant Roma find themselves excluded from local democratic processes and often are forced to live their lives in shacks and huts at the outskirts of major Italian cities.

Furthermore our data shows that a common strategy often used by politicians as well as ordinary citizens, when attempting to socially exclude the Roma, is to emphasise and highlight age old moral stereotypes about the gypsy (Matras, 1997). The success and persistence of this Roma-moral-exclusion-strategy is sustained and fuelled by the present Roma socio-economic situation, but arguably also by certain elements of Roma culture and belief systems.

Besides moral anti-gypsyism (although not often emphasised by the academic literature focussing on Roma- majority relations), the paper nevertheless also wants to direct attention towards a similar form of moral exclusion and condemnation arguably said to be present within migrant Roma communities potentially also being equally hostile and degrading towards the Italian non-Roma communities. Many Roma, equally seem to have myths, stereotypes and beliefs that negatively affects their behaviour and attitudes towards non-Roma among which they live.

The literature shows that often, at least in part, Roma culture and belief systems lead Roma not to cooperate nor to trust local society, but rather it stimulates them to voluntary social exclude themselves, while at the same time upholding certain attitudes and beliefs arguably considered deeply degrading towards non-Roma (Weyrauch & Anne Bell, 1993; Vivian & Dundes, 2004). Additionally other commentators observe the presence of behavioural tendencies (resulting from certain Roma beliefs) that might appear ethnocentrically and therefore might be perceived as unacceptable to majority populations. For example Sway (1988, p. 124) states that the types of low status blue collar work available to Roma often conflict with the Roma “sense of dignity and need of autonomy”, while according to Henriques (2012, p. 1) Roma “have never really integrated European mainstream society, in fact, this trait has become part of their identity and pride (..)”. Additionally interestingly in their research Vivian & Dundes (2004) observe that many Roma communities often mistrust the Gadje and

⁹³ The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

⁹⁴ i.e. International Helsinki Federation for Human Rights

⁹⁵ i.e. European Commission against Racism and Intolerance

Weyrauch & Anne Bell, (1993) state that part of the Roma belief system, include within them stereotypes and beliefs that disclose some elements of strong moral anti-gadje feelings. For example they state that many Roma often perceive non-Roma (or Gadje) as having no sense of justice or decency. They see them (the gadje) as polluted and as untrustworthy.

In the light of the just mentioned *local* inter-cultural majority-minority animosities we found it important to also consider local democratic arrangements. Our research shows that municipalities are responsible for the construction and management of the Roma camps sites, while the regional authorities bear the financial cost of acquiring land and constructing the camp sites (Enwereuzor & Di Pasquale, 2009). Furthermore, new laws in Italy since 1991 have decentralized decision-making and by doing as such have empowered local politicians by facilitating “direct election of local-councils, mayors and provincial presidents in order to bring greater stability and decision-making capacity to municipal and provincial councils, and greater control over their activities”⁹⁶ (Morlino, 2009, p. 20).

In essence therefore these particular institutional features of local democracy in Italy, have resulted in increased levels of democratic empowerment of regional and local politicians, possibly further weakening the already precarious position of many migrant Roma communities locally by increasing the potential for minority mis- and/ or underrepresentation but also by making the occurrence of local populist anti-gypsy electoral campaigns more likely (Osservazione, 2008).

In our final section of our last chapter we set out to analyze briefly the new EU Roma Strategy 2020 and asked ourselves the question what kind of influence the EU as an AoI might have in influencing and improving the housing rights of the EU Roma. What we found in the data, shows that the EU sees itself as merely being that of a *facilitator* of financial funds, and as a promoter, coordinator and initiator of Roma policy initiatives, who’s main aim is to structurally *stimulate* and persuade the MSs “to make more effective use of the instruments already available” (EC, 2008, p. 2.).

At present the EU is not willing to take full responsibility for national, regional or local Roma policy implementation or monitoring, stating that “MSs have the primary responsibility and the competence to change the situation”, declaring itself to be only a soft power on the issue (EC, 2012, p. 1).⁹⁷ However one of its policy tools nevertheless available through which the EU significantly can influence Roma social inclusion, as an AoI, is by cleverly making use of its financial funding abilities.

At present EU financial funds are used mainly to provide MSs and (I)NGO’s with money to tackle (1) detrimental Roma socio-economic conditions, and (2) to provide better access to legal remedies for *individual* Roma. However barely any focus seems to be directed towards funding initiatives aiming for a reduction of deeply felt local inter-cultural animosities between majority and minority (McGarry, 2010). As stated by Sigona (2012, p. 1224) “relying on the ‘international community’ to push for a rights-based agenda” for Roma communities, may not always bring about the desired outcomes for the formal ‘beneficiaries’. Besides the dual importance of (1) directing financial resources to cure the material socio-economic symptoms of Roma exclusion, and (2) promoting and providing non-discrimination protection to *individual* Roma also more emphasis should be put on a more culturally sensitive utilization of financial funds.

EU policy should much more than presently is the case, financially empower non-polarizing sociological policy initiatives, that have as their aim to “fill the gap in democratic legitimacy” by promoting healthy political dialectics locally capable of strengthening a local political will by the fostering of mutual understanding (Sigona, 2012, p.1224).⁹⁸ For example by empowering migrant Roma woman and by tapping into their adaptive ability to naturally create “collaborative networks”, also with non-Roma citizens, local inter-cultural bridges might be build in order to establish forms of mutual understanding and cooperation (Marti *et al.* 2012).

While at present often there are no meaningful local inter-cultural interactions, in those rare cases that they can be found they often tend to be extremely sensitive, fragile and reactive (Uzonova, 2010). Therefore

⁹⁶ This type of decentralised decision-making structure, often has profound consequences for the provision of adequate housing for migrant Roma (in contradiction to international law commitments), because due to the democratic and decentralised nature of city councils it becomes possible for majority voices engrained with moral anti-gypsyism, to effectively pressure their local politicians to exclude the Roma minority within its constituency, by simply democratically de-stimulating policies and programs favourable to its Roma minority. In Italy, therefore the migrant Roma, at present might be in danger of suffering from the tyranny of the local majority in matters concerning international housing rights.

⁹⁷ The reason it doesn’t have more power in the social field, unfortunately, is due to the fact that the MSs are simply, upon till this day, not willing to hand over this power to the EU.

⁹⁸ A gap sometimes produced by aggressive rights-based INGO approaches paradoxically hindering the occurrence of stronger local harmony.

legal assistance is a crucial tool to improve and protect *individual* Roma rights, but legal assistance does not need to result in polarizing attitudes and the modus operandi on the local level should ideally be one of non-polarization. INGO's or MS governments should be conscious about the fact that migrant Roma are often weak and vulnerable on the local level and therefore most interested in maintaining social rest and workable relationships with local communities (Sigona, 2012). EU financial funds therefore should empower those AoI's that employ strategies not harming local Roma non-Roma inter-cultural dialogue and cooperation⁹⁹. Only if inter-cultural relationships improve *locally*, and *only* if *local* sociological interactive structures are somehow developed, Roma non-Roma relationships will have a credible chance of improving. By bringing Roma and non-Roma together into newly created local spaces of inter-cultural interactions, through the power of socialization an *elitist* TNLP-like process can be duplicated by enmeshing local citizens into *localized interactive inter-cultural processes*.

The monumental importance of the force of beliefs and ideas present in Italian society between the majority and minority, currently is underemphasised and under-studied in EU, and national policy prescriptions and more analysis should be directed towards ethno-moral anti-gadjeism as well. Both the Roma and the non-Roma have a responsibility, however as stated by European Commission President, Barroso (2008) "As a matter of fact, we need both. We need increased action by public authorities and majority societies as well as increased civic responsibility among the Roma, *but in that order*" (Villarreal, F. & Walek, C. 2008, p. 5, *emphasis added*).

International human rights norms will have a fairer chance of being socially internalized into the fabric of local life, making a TNLP more effective and influential locally, if somehow the problems of inter-cultural avoidance and mistrust are addressed more intensively by the creation of *localized non-elitist interactive inter-cultural processes*. By effectively targeting the psychology of mutually held ethno-moral discrimination, sociologically, rather than only legally, a stronger *local* political will might eventually flourish, capable of changing the current deadlock situation for the better. Inter-cultural ethno-moral discrimination should be seen as the layer of dust that first needs to be removed before the brightness of international law can clearly shine through, into the living room of local society in Italy and elsewhere.

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⁹⁹ Both an EU soft law OMC as well as EU hard law non-discrimination approach are necessary in fighting Roma social exclusion and poverty, however increased EU efforts should also be made to facilitate processes capable of changing the hearts and minds of both Roma and non Roma with sociological tools rather than a only with legal tools. More concretely this means that EU funding should be used more cleverly by empowering local inter-cultural relations, aimed at increasing mutual understanding, trust and cooperation between majority and minority.

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IX. Appendix

Table 1

Table 1 Regional laws concerning Roma and Sinti

Region	Year of publication and revision	Title
Emilia Romagna	L.R. n.47, 12 January 1988	Measures for the nomadic minorities in Emilia Romagna.
	L. R. n.34, 22 August 1993	<i>(Norme per le minoranze nomadi in Emilia Romagna)</i>
Friuli-Venezia Giulia	L. R. n. 11, 20 June 1988	Measures for safeguarding 'Romani' culture.
	L.R. n. 25, 24 June 1991	<i>(Norme a tutela della cultura 'Rom')</i>
Lazio	L.R. n. 82, 25 May 1985	Measures in favour of Roma. <i>(Norme in favore dei Rom)</i>
Liguria	L.R. n. 21, 27 August 1992	Measures for safeguarding the Gypsy and nomadic peoples. <i>(Interventi a tutela delle popolazioni zingare e nomadi)</i>
Lombardia	L.R. n. 77, 22 December 1989	Regional Action plan for the safeguarding of peoples belonging to traditionally nomadic and semi-nomadic ethnic groups. <i>(Azione regionale per la tutela delle popolazioni appartenenti alle etnie tradizionalmente nomadi e seminomadi)</i>
Marche	L.R. n.3, 5 January 1994	Measures in favour of emigrants, immigrants, refugees, stateless people, nomads, and their families. <i>(Interventi a favore degli emigranti, degli immigrati, dei rifugiati, degli apolidi, dei nomadi e delle loro famiglie)</i>
Piemonte	L.R. n. 26, 10 June 1993	Measures in favour of the Gypsy population <i>(Interventi a favore della popolazione zingara)</i>
Sardegna	L.R. n.9, 9 March 1988	Measures for protecting nomads' culture and ethnicity. <i>(Tutela dell'etnia e della cultura dei nomadi)</i>
Toscana	L.R. n.17, 1988	Measures for Roma and Sinti peoples.
	L.R. n.73, 8 April 1995	<i>(Interventi per i popoli Rom e Sinti)</i>
	L.R. n.2, 12 January 2000	
Provincial Authority of Trento	L.P. n.15, 2 September 1985	Measures for protecting Gypsies. <i>(Norme a tutela degli zingari)</i>
Umbria	L.R. n.32, 27 April 1990	Measures for promoting the inclusion of nomads in society and for protecting their identity and cultural heritage. <i>(Misure per favorire l'inserimento dei nomadi nella società e per la tutela della loro identità e del loro patrimonio culturale)</i>

(continued)

Table 1 (Continued)

Region	Year of publication and revision	Title
Veneto	L.R. n. 41, 16 August 1984 L.R. n. 54, 22 December 1989	Measures for safeguarding the culture of Roma and Sinti. (Interventi a tutela della cultura dei Rom e dei Sinti)

The titles of the laws vary but they share a common emphasis conveyed by the use of terms such as '*a tutela di*' (for safeguarding) and '*in favore di*' (in favour of). The laws adopt different ethnic labels to identify their beneficiaries: for example, while in Veneto the beneficiaries are 'Roma and Sinti' and their culture, in Emilia Romagna they are the 'nomadic minorities' living in the region, and in Piedmont the 'Gypsies'. Such variety, while revealing the legislators' difficulty in identifying exactly who are the beneficiaries of the legislation, is also indicative of the complex and undefined nature of the reality that the legislation tries to capture and discipline. The definition provided by the regional law of Lombardia (L.R. n.77/1989), offers an interesting example of this struggle. To the point of sounding tautological, art.1 paragraph 3 states: 'for the purpose of this law, by nomads we refer to individuals belonging to ethnic groups traditionally nomads and semi-nomads'.