

ROMA RIGHTS

JOURNAL OF THE EUROPEAN ROMA RIGHTS CENTRE



NATIONAL ROMA INTEGRATION STRATEGIES: WHAT NEXT?

2013

CHALLENGING DISCRIMINATION PROMOTING EQUALITY



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Some EU Roma-Focused Documents and Events¹:

2013

- European Parliament Resolution of 12 December 2013 on the progress made in the implementation of the National Roma Integration Strategies
- Council Recommendation on effective Roma integration measures in the Member States on 5 December 2013
- European Commission Communication of 26 June 2013 on Steps forward in implementing National Roma Integration Strategies
- Eighth EU Platform for Roma Inclusion held in Brussels on 27th June 2013.

2012

- European Commission Communication of 21 May 2012 on National Roma Integration Strategies: a first step in the implementation of the EU Framework
- Extraordinary Meeting of the EU Platform for Roma Inclusion held in Brussels on 22nd March 2012

2011

- Sixth EU Platform for Roma Inclusion held in Brussels on 17-18th November 2011
- Fifth EU Platform for Roma Inclusion held in Budapest on April 7-8th 2011
- European Commission Communication of 5 April 2011: An EU Framework for National Roma Integration Strategies up to 2020
- European Parliament resolution of 9 March 2011 on the EU strategy on Roma inclusion

2010

- Fourth EU Platform for Roma Inclusion held in Brussels on 13th December 2010

- Third EU Platform for Roma Inclusion held in Brussels on 17th June 2010
- Council Conclusion of 27 May 2010 on advancing Roma inclusion
- European Commission Communication of 7 April 2010 on the social and economic integration of the Roma in Europe
- Second EU Roma Summit held in Córdoba on 8-9th April 2010
- European Commission Staff Working Document of 7 April 2010 - Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion - Progress Report 2008-2010
- European Parliament Resolution of 25 March 2010 on the second European Roma summit

2009

- Second EU Platform for Roma Inclusion held in Brussels on 28th September 2009
- Council Conclusion of 28 May 2009 on the inclusion of Roma
- First EU Platform for Roma Inclusion held in Brussels on 24th April 2009
- European Parliament resolution of 11 March 2009 on the social situation of the Roma and their improved access to the labour market in the EU

2008

- First EU Roma Summit held in Brussels on 16th September 2008
- European Commission Staff Working Document of 2 July 2008 on Community instruments and policies for Roma inclusion

2007

- European Parliament Resolution on a European Strategy on the Roma (B6-055/2007)

¹ Source: http://ec.europa.eu/justice/discrimination/roma/index_en.htm.

Foreword

DR MARTIN KOVATS¹

There was a certain inevitability about the arrival of the EU's Roma integration framework in 2011. Since the eastward enlargement of the Union took place, pressure had been mounting from Roma organisations and activists for an EU Roma policy. More practically, the fact that so many Roma people had become EU citizens brought into the Union the politics of Roma in accession states. The struggle against poverty and discrimination and for cultural recognition and ethnic status is now an integral part of Europe's politics. European integration has helped to add a further dimension to the politics of Roma: migration within the EU. Following the Italian 'Nomad Emergency', the destruction of camps in France meant that Roma would inevitably become an item on the EU's agenda. At the same time, the Framework follows the familiar approach of requiring Member States to set out their commitments on Roma in writing.

The Framework has been criticised for its 'weakness' and accused of being unlikely to have much effect. However, it will certainly be influential. It requires all 28 EU states to produce strategies to guide national and local policy and practice. Targeted attention and resources aim to make a 'tangible difference' to the lives of disadvantaged Roma people. What will certainly happen is that Roma will be subjected to broader and more detailed examination, monitoring and evaluation than ever before. Far more information will be produced and made public about Roma – about how many of them there are, where they live, what they want or need, how much money is being spent on them and so on. More information means more perspectives and opinions. The Roma discourse is growing.

The essays in this series exemplify the diversity of the Roma discourse. All of them discuss the EU Roma framework, but from different perspectives – national, thematic or institutional. Joanna Kostka examines the Polish national strategy and questions what has been learned from previous Roma integration initiatives. Thomas Acton, Andrew Ryder and Iulius Rostas call for greater support to be given

for grass roots Roma involvement in projects and programmes, while Eniko Vincze argues the need for greater consideration to be given to the role of Roma women. Belén Sánchez-Rubio and Carolina Fernández Díez provide an overview of the European Roma Policy Coalition's assessment of national Roma strategies, while the relationship between the Roma Decade and the EU's Roma framework is discussed by Aleksandra Bojadjeva. Bernard Rorke critically analyses the overall approach of the Framework and questions how much progress can be made without more effective action to counter discriminatory attitudes and practices, while the importance of placing the struggle against discrimination at the heart of Roma initiatives is emphasised by Dezideriu Gergely.

To a greater or lesser extent, each of the essays touches upon two themes which are emerging as focal points for assessment of Roma policies as a whole and the EU framework in particular. First, there is the domination of the social policy paradigm mobilised to tackle manifestations of inequality, poverty, segregation and other social or economic 'problems'. While acknowledging the need for effective interventions, this way of framing the issues also appears to place the primary responsibility for 'integration' on disadvantaged Roma people themselves. While personal choice can never be entirely disregarded, systemic and structural factors also need to be properly taken into account if policy goals, no matter how vaguely defined, are to be met. This requires the Roma discourse to be understood in relation to wider political, economic, social and cultural contexts and trends, enabling Roma people, identity and policy to be seen as an integral part of contemporary local, national and European politics and society.

The other important theme addressed by these essays is the relatively limited role Roma people have played in the development of policy initiatives nominally designed to help them. How Roma people and their representatives can assert their interests in the design, implementation,

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INTRODUCTION

monitoring and evaluation of 'Roma policy' is an essential challenge for nascent Roma activism. How Roma respond to this challenge depends not only on what opportunities for engagement are provided by elites, but also on the quality and coherence of Roma interest representation, political relationships and ideological perspectives.

By the time the EU framework comes to an end in 2020 not all Roma people in the EU will enjoy equality of opportunity, decent living conditions or social and material security; nor will prejudice and discrimination have been eliminated. Rather than being the 'solution', the Framework is part of a process of social and political change that offers the opportunity to create better, fairer societies. Each of these essays discusses the importance of local and national contexts in terms of good laws, policies and practices.

For both legal and political reasons the EU's role is that of a motivator and supporter of good national and local actions. The EU is not a government or a service provider, and its laws have to be adopted and applied by national authorities. The EU framework is a mechanism to enable national authorities to take appropriate action to improve the living conditions and life chances of their own citizens

or of residents for whom they have legal and political responsibility. States should also ensure that their own laws are enforced and that Roma people are not discriminated against, either directly or indirectly. Politically, the Framework recognises that the power to meaningfully change the circumstances of disadvantaged Roma people lies within the states and societies where they live. Arguments about anti-racism and social cohesion have to be won in the communities and institutions which are part of Roma people's lives and on which many depend for services and support.

The EU Roma Framework shows just how important Roma issues have become in European political agendas. It will ensure that more resources are directed towards Roma and that more initiatives will be taken. The emerging international public debate about Roma is a unique opportunity for European states and societies to learn about Roma, to talk about Roma and to find ways to transcend the negative legacies of the past and establish non-discriminating, equal opportunity societies where Roma people can prosper. There can be many ways to achieve this goal, but as these essays show, it is crucial to win the argument not only at the European institutional level, but in each separate European society.

What Future for the EU Framework? What Prospects for Roma Inclusion?

BERNARD RORKE¹

Two years after the European Commission adopted the EU Framework for National Roma Integration Strategies (NRIS) up to 2020 to “make a tangible difference to Roma people’s lives,”² there is little cause for optimism: progress remains negligible and discrimination pervasive; hate speech and anti-Roma violence continues unabated; and in many countries Roma exclusion has become even more pronounced. In a climate of rising intolerance and deepening poverty, the NRIS fall way short of what’s required to make the kind of tangible difference that’s needed by 2020. The European Commission has stepped up to the challenge; member states need to quit the foot-dragging and deliver on Roma inclusion, and meet their obligations to guarantee equality, justice, and security for all citizens regardless of their ethnicity.

On June 26th 2013 the European Union sent the strongest possible signal that social inclusion and equal treatment of Roma must be a priority for the entire continent. It announced a new set of measures focused on ending widespread disparities in education, employment, health, and housing, and called on member states to devote more money to Roma integration.³

European Commission Vice President Viviane Reding stated that if member states are serious they need “to move up a gear” in their efforts on Roma integration, and follow up with concrete action. The Commission’s progress report on the National Roma Integration Strategies (NRIS) was coupled with a recommendation addressed to EU countries spelling out what needs to be done in member states for effective Roma integration. The recommendation provides member states with an opportunity to step up and unanimously renew their commitment to the EU Framework’s bold ambition to make a difference to the lives of millions of Roma citizens.⁴

The big question is whether this latest “EU Roma package” will make that difference. The answer lies with member states, for progress on Roma inclusion depends on governments fully availing of the opportunities offered by

the EU Roma Framework, and making smart use of EU funding to support effective policies in education, employment, health, and housing. The European Commission has demonstrated its political will to make a difference; it’s now time for member states to do likewise.

Two years on from the submission of the Roma strategies, Reding declared that “the moment of truth has come. If member states are serious about Roma inclusion they need to deliver more than paper.”

The message to member states was unequivocal - effective social inclusion must be accompanied by rigorous implementation of antidiscrimination legislation and respect for fundamental human rights.

That much more needs to be done was made abundantly clear by the recently published Civil Society Monitoring Reports on progress with national strategies. The monitoring, conducted by civil society coalitions and supported by the Decade of Roma Inclusion Secretariat and the Open Society Foundations, covered six EU member states and two accession countries.⁵

1 Bernard Rorke worked for 15 years with Open Society Foundations on Roma issues. He currently teaches Roma Rights at Central European University in Budapest.

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Framework for National Roma Integration Strategies up to 2020, Brussels, 5.4.2011, COM(2011) 173 final, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

3 Europa Press Release, *Roma: Commission calls on Member States to step up efforts on integration*, Reference: IP/13/607, 26 June 2013, available at: http://europa.eu/rapid/press-release_IP-13-607_en.htm.

4 European Commission Brussels, Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *Steps forward in implementing National Roma Integration Strategies*. 26.6.2013 Com(2013) 454 Final, available at: http://ec.europa.eu/justice/discrimination/files/com_2013_454_en.pdf.

5 Decade of Roma Inclusion Secretariat Foundation, *Civil Society Monitoring on the Implementation of the National Roma Integration Strategies and Decade Action Plans in 2012: SUMMARY REPORT*, (Budapest), available at: <http://www.romadecade.org/civilsocietymonitoring>.

Findings From the Civil Society Monitoring Reports

The reports are rich in detail, judicious in tone and contain a wealth of sector and country-specific policy recommendations about what it takes to make a difference to the lives of deprived and excluded Roma citizens. While national contexts vary and progress is uneven, across most of the countries surveyed common themes included:

- A child-centred approach is missing from the strategies – beyond the sphere of education, it seems that for many member states, the basic notion that all policies impact on children’s well-being and development has yet to sink in;
- Failure to address the lack of reliable baseline disaggregated data necessary for “robust monitoring mechanisms”;
- Poor use of EU funds for Roma inclusion;
- No steps taken to mainstream gender equity across the priority policy areas;
- No systemic moves to end school segregation;
- What is more alarming, especially in terms of combating discrimination and racism, is evidence of stagnation and regress in many countries;

THE RIGHTS AND WELL-BEING OF ROMANI CHILDREN:

The European Commission was clear that to break the cycle of exclusion, NRIS must prioritise rights and well-being of Romani children and young people. The demographics spell out the necessity: 35.7% of Roma are under 15 compared to 15.7% of the EU population overall. The average age is 25 among Roma, compared with 40 across the EU. And UNICEF explicated the reality:

“Roma children in all countries across Europe remain at risk of systematic violation of their rights. This is reflected in severe poverty and marginalisation, discrimination and the denial of equal access to services and of equal opportunities.”⁶

The Civil Society Monitoring Reports confirm anew UNICEF’s observation that “policies are rarely ‘in the best

interests’ of the Roma child and the voices of Roma children and young people are often not taken into account.”

Beyond the sphere of education, it seems that, for many member states, the basic notion that all policies impact children’s well-being and development has yet to sink in. As regards the priority area of housing and its impact on children and young people, the Bulgarian report provides a vivid description of the environment for thousands of children in segregated Roma neighbourhoods, which lack basic infrastructure and services, schools and kindergartens, playgrounds and recreation areas, and access to public transport.

“In the largest and poorest Roma neighbourhood in the western Bulgarian town of Dupnitsa, around 90% of the dwellings have neither a bath nor an inside toilet. Around 40% of the people do not have their own bed, households are crowded and a fifth of dwellings do not have legal access to water and electricity.” Across Bulgaria, in terms of extending basic services to Roma neighbourhoods, progress in the first year of the Framework was described by survey respondents as “negligible.”⁷

In the Czech Republic a combination of massive sell-offs of municipal housing stock, rent deregulation, and rising indebtedness has forced many families from regular housing into hostel-type accommodation. This has become a lucrative business, sustained by the payment of housing subsidies.

As the monitoring report states, “overcrowded and neglected, with shared sanitary facilities, hostels are thoroughly unsuitable as a way of providing stable homes for families with children.” While some municipalities try to assist emergency cases, others have openly declared their intention to “export their local integration problem to other municipalities,” and block any development that might benefit local Roma.⁸

In Slovakia, a number of municipalities classified settlements as waste dumps and carried out forced evictions and demolitions of settlements on ‘environmental grounds,’ often without providing alternative accommodation to families with small children.

6 UNICEF, *UNICEF and Roma Children*, available at: http://www.romachildren.com/?page_id=437.

7 *Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in BULGARIA*, available at: http://www.romadecade.org/cms/upload/file/9270_file4_bg_civil-society-monitoring-report_en.pdf.

8 *Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in CZECH REPUBLIC*, available at: http://www.romadecade.org/cms/upload/file/9270_file6_cr_civil-society-monitoring-report_en.pdf.

In Romania the most remarkable developments on housing policy in 2012 seemed to be forced evictions and ‘resettlement’ of Roma families in remote locations far from city centres, often without basic amenities. In cases documented by ERRC and Amnesty International, families with young children have been forcibly evicted in breach of international law, and relocated to waste dumps, abandoned toxic industrial sites, and remote fenced-in patches of agricultural land.

This is a mere snapshot from four country reports on housing policies for Roma in 2012. But just pause to imagine the impact forced evictions, squalid living conditions, malnutrition, and lack of basic sanitation has on the long-term ‘well-being and development’ of Europe’s youngest and most vulnerable citizens. Add to that the findings of the reports on health, employment and education, and it’s clear that for Roma children and young people, the EU 2020 Agenda for inclusive growth must seem utterly remote and removed from reality.

ROBUST MONITORING MECHANISMS:

For governments to provide substantive annual progress reporting, there is a clear need for what the European Commission calls ‘robust monitoring mechanisms’. There are signs of progress in Spain and Hungary and an expectation that such mechanisms will be in place in these two countries by the end of this year.

As for the other four Member States surveyed, the selection of quotes from the monitoring reports should prompt a degree of concern:

ROMANIA: “The NRIS does not meet the standard requirements for government strategies, policy problems are not clearly articulated, there are too many directions for action, there are no clear priorities, no clear operational objectives, envisaged outcomes are lacking, responsibilities are diffuse, very limited resources and mechanisms to allocate funds lacking. As a consequence, barring a complete overhaul of the NRIS, it is doubtful whether anything resembling a robust monitoring and evaluation mechanism could see the light of day.”

SLOVAKIA: “There is no evidence of intent to create a robust mechanism for monitoring and evaluation of policy implementation.”

CZECH REPUBLIC: “Current progress reporting on Roma inclusion is neither systematic nor independent from political interference. It is essential that the revised NRIS be based on a solid monitoring and evaluation system that can assess the impact of targeted interventions and mainstream policies on the Roma population, and allows for regional and local impact assessment of pilot projects.”

BULGARIA: “There is no clarity in the NRIS concerning proposed monitoring methods and mechanisms. Reports are prepared without any methodology for evaluation, lack concrete indicators, and have no mechanisms to collect information related to outcomes and impacts of policies and projects.”

STRUCTURAL REQUIREMENTS AND USE OF EU FUNDS

In terms of structural requirements, the Commission’s own assessment of the NRIS in 2012 identified inadequate and inefficient use of EU funds for social inclusion as a major problem. The Commission also urged Member States to ensure that the National Contact Points, as the bodies responsible for coordinating implementation of NRIS, should have the resources and mandate commensurate with such a task.

The Civil Society Monitoring reports that bodies responsible for the coordination of Roma inclusion lack the necessary competences and authority in many countries (see CZ, RO, SK, ES), and they are placed under ministries that are not dealing with social issues but security (see BG, SK). Another issue of concern is that Roma participation is limited to formal partnerships that exclude wider civil society involvement, such as is the case in Hungary with the National Roma Minority Self-Government which is led by a member of the ruling party.⁹

As for the use of EU funds, the Monitoring Reports confirm that in 5 of the 6 Member States surveyed:

⁹ *Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in HUNGARY*, available at: http://www.romadecade.org/cms/upload/file/9270_file8_hu_civil-society-monitoring-report_en.pdf.

- The capacity to absorb and manage EU funds remains weak;
- In systemic terms, the impact on Roma communities remains negligible;
- Roma NGOs and Roma inclusion projects continue to have limited access to EU funds;
- The allocation of EU funds through bureaucratic, competitive procedures is totally unsuited to tackling social exclusion – needs-based criteria need to take precedence to guide disbursement of funds to combat poverty and promote inclusion of the most disadvantaged communities.

The European Commission is actively promoting better targeting of EU funds to support Roma integration in the next financial programming period 2014-2020. This includes the proposal for a specific investment priority - to use at least 20% of ESF resources for social inclusion to be devoted to the integration of marginalised communities, such as Roma and ensuring a requirement that an appropriate Roma inclusion strategy is in place, where EU funds are spent for this purpose.¹⁰

When it comes to an integrated approach to make efficient use of EU funds for Roma inclusion, the following quotes from the monitoring reports give some idea of the enormity of the task ahead:

CZECH REPUBLIC: “The prospects for an integrated approach are limited by the unstable political environment and the highly chaotic process of short-term decision-making.”

ROMANIA: “Far from heeding the European Commission’s prompting to promote effective measures that would allow for reallocation of available EU funds in line with the priorities identified in the NRIS, the Romanian Government’s poor absorption capacity further weakened in 2012. This resulted in serious blockages in the administration of operational programmes, which has severely affected most beneficiaries of EU funds, including projects focused on Roma inclusion.”

ANTI-DISCRIMINATION

The Racial Equality Directive (RED) may have been transposed into domestic legislation across the Union, but since

the adoption of the Framework, there has been no let-up in hate speech, or practices of direct and indirect discrimination against Roma, including school segregation. One of the most alarming findings in the monitoring reports, in terms of combating discrimination and racism, is evidence of stagnation and regress among certain Member States.

It is clear from the reports that, as far as Roma are concerned, the Race Directive has had little impact, and discrimination and segregation continue virtually unabated.

It remains the case that strategies need to be revised to reflect an unambiguous recognition of the interdependence of inclusion and anti-discrimination as a prerequisite for meaningful integration. Towards this end, the monitoring reports again emphasise that:

- The European Union must prevail upon Member States to ensure effective and comprehensive implementation and enforcement of the legislation against discrimination.
- National governments need to screen their national, regional and local administrative regulations and practices, in order to identify and repeal any discriminatory and segregating measures.
- All public service providers need to review their procedures and practices to end direct and deliberate forms of discrimination. In addition, all public bodies and service providers should review their ways of working to ensure that Roma do not experience indirect and sometimes unintended discriminatory treatment due to institutional racism.
- EU institutions must work with Member States to coordinate and scale up existing efforts to work with local authorities, educational institutions, and civil society partners on awareness raising campaigns to dispel anti-Roma prejudice and negative attitudes; empower Roma to know their rights and support inter-cultural dialogue and cooperation.

The Commission’s Assessment

The Commission’s assessment largely concurred with the civil society findings. This latest Communication and proposal for a Council Recommendation mark a robust wake-up call to member states on the need to move from vague intent to concrete implementation, and a clear insistence

10 European Commission, *Proposal for a COUNCIL RECOMMENDATION on effective Roma integration measures in the Member States*, Brussels, 26.6.2013, COM(2013) 460 final, available at: http://ec.europa.eu/justice/discrimination/files/com_2013_460_en.pdf.

that social inclusion must be underpinned by effective anti-discrimination legislation and “specific measures to ensure equal treatment and universal rights.”

In specific policy areas, the Commission has called on member states to:

- Enforce immediately school desegregation and end the inappropriate placement of Roma pupils in special needs schools;
- Eliminate the barriers to (re)entering the labour market;
- Ensure equal treatment and improved access to prevention, basic, emergency, and specialised healthcare services;
- End spatial segregation and facilitate local integrated housing programs paying particular attention to public utility and social service infrastructure.

With regards to “horizontal policy measures,” the Commission calls on member states to screen their national, regional, and local administrative regulations and practices in order to identify and repeal any discriminatory and segregating measures. Furthermore, policies to fight segregation should be accompanied by appropriate training and public information programs addressed to local civil servants, civil society representatives, and Roma themselves.

The Communication gets explicit on earlier calls to governments to “get convincing” on combating discrimination. It calls on member states to take adequate measures to fight racism, stigmatisation, and anti-Roma rhetoric in society; to promote the benefits of Roma integration, sensitise public awareness of cultural diversity; and raise awareness among Roma of their rights, duties, and possibilities to seek redress.¹¹

Conclusion

This latest Communication is eloquent testament to the political will at all levels within the European Commission to ensure that Roma inclusion remains a policy priority for Europe in a time of prolonged crisis. However the real test of political

will lies with the primary duty bearers: the member states. The Commission’s sense of urgency is welcome and well-founded, for across the member states it’s hard to reconcile events on the ground with integration strategies on paper.

Since the submission of the strategies two years ago, across the European Union, Roma have been shot, stabbed and beaten in racist assaults, homes have been firebombed, and neighbourhoods have come under attack by mobs of far-right hoodlums, or been besieged by uniformed paramilitary groups aligned to neo-Nazi political parties.¹²

The NRIS have done little to stem the constant tirade of anti-Roma hate speech. In Hungary, Zsolt Bayer’s anti-Roma diatribe in January 2013 was remarkable not only for its venom, but for the failure of his friends in government to condemn hate-speech in the public sphere. Bayer, one of the main organisers of the pro-government Peace Marches, a founding member of Fidesz, and a long-time confidante of Prime Minister Viktor Orbán wrote in a national daily that

“a significant part of the Roma is unfit for coexistence... They are not fit to live among people. These Roma are animals, and they behave like animals... These animals shouldn’t be allowed to exist. In no way. That needs to be solved - immediately and regardless of the method.”

Viviane Reding promptly condemned the remarks as unacceptable: “The European Union has no room for racism, hate speech or any other forms of intolerance.” Unfortunately there seems to be plenty of room in the Union for hate speech when it comes to Roma and Bayer is far from alone.¹³ Thomas Hammarberg described the emergence of a climate of intolerance against Roma as a shift from ‘traditional’ prejudice to “outright racist attitudes, preached by marginal yet increasingly visible political groups and left largely unchecked by mainstream society”. What is especially troubling about the wider phenomenon of anti-Roma violence in recent years is the indifference and ambivalence of the majority towards the victims. Worse still, acts of violence often prompt open support from sections of the wider public for those who

11 European Commission, *Proposal for a COUNCIL RECOMMENDATION on effective Roma integration measures in the Member States*, Brussels, 26.6.2013, COM(2013) 460 final, available at: http://ec.europa.eu/justice/discrimination/files/com_2013_460_en.pdf.

12 Bernard Rorke, “Roma inclusion in 2012: no respite in prejudice”, *Open Democracy*, (11 January 2013), available at: <http://www.opendemocracy.net/bernard-rorke/roma-inclusion-in-2012-no-respite-in-prejudice-0>.

13 Bernard Rorke, “Hate is where the heart is: Time for Europe to confront anti-Gypsyism”, *Open Democracy*, (2 May 2013), available at: <http://www.opendemocracy.net/bernard-rorke/hate-is-where-heart-is-time-for-europe-to-confront-anti-gypsyism>.

would mete out rough and ready “justice” and inflict collective punishment on Roma.¹⁴

It is clear that a *laissez-faire* approach to the politics of hate just will not do. If the politics of hate seems to be in the ascendant and Roma most often in the firing line, a ‘business as usual’ approach is not just ethically bankrupt but politically reckless. The time has come to counter anti-Gypsyism with the kind of broad-based civic and political solidarity that’s needed to make a difference.

A first step would be for the European Union to officially recognise anti-Gypsyism as a long-standing and deeply rooted form of European prejudice. The lived reality in villages, towns and cities where Roma face intimidation and other forms of very direct and indirect discrimination every day may seem a universe away from resolutions passed in Brussels and Strasbourg. But this would be just the first step, for when it comes to combating the words, deeds and institutional practices that denigrate and dehumanise our Roma fellow citizens, it is the practical impact that will count.

Official recognition of anti-Gypsyism would involve a series of positive and practical steps for the European Commission, European Parliament, and Member States. Within the context of the EU Framework for Roma Integration there is a need for a concerted drive to work with local authorities, law enforcement agencies, educational institutions, and civil society partners to launch public awareness-raising campaigns, and support

community-based initiatives to dispel anti-Roma prejudice and foster inter-cultural dialogue.

Members of the European Parliament would need to work more assiduously with their political parties back in their home countries to fight prejudice, cultivate majority support for Roma inclusion policies, combat hate crime and provide effective redress against institutional racism.

There is a very real prospect that the Europe of 2020 could comprise increasingly closed societies and illiberal democracies where inequality and poverty thrive unabated, and Roma and other visible minorities continue to be denigrated and humiliated as scapegoats and pariahs.

However the Framework hints at another possibility: a viable prospect of forward-looking and fully inclusive societies that foster a sense of common belonging, cohesion, and mutual respect among all citizens regardless of their ethnicity. On the foothills of Bohemia, or the hinterlands of north-eastern Hungary this remains a remote prospect for far too many excluded, threatened and impoverished people. For precisely this reason, and despite all the caveats, the Framework needs the support of all who are committed to deepening democracy. While there is no doubt that the European Commission could do more, the Commission is entirely correct in its insistence that the primary responsibility lies with national governments. It is time for responsible democrats who have been elected to lead to do so, ‘move up a gear’ to fulfil their primary responsibility towards their citizens, and deliver on equality, justice, and social inclusion.

14 Bernard Rorke, “Killing Time: The Lethal Force of Anti-Roma Racism”, *Open Society Voices*, 18 July 2012, available at: <http://www.opensociety-foundations.org/voices/killing-time-lethal-force-anti-roma-racism>.

Empowerment and the European Framework for National Roma Integration Strategies

THOMAS ACTON,¹ ANDREW RYDER² AND IULIUS ROSTAS³

Roma communities are acknowledged to be one of the most excluded groups in Europe, and as Vaclav Havel noted, a litmus test of governmental bodies' commitments to human rights.⁴ Roma communities have been amongst the most prominent victims of both poverty and xenophobia in Europe. Filcak and Skobla⁵ rightly adopt the metaphor of the "canary in the mine shaft", to describe Roma as harbingers of future dangers. Roma have experienced acute forms of marginalisation, in Central and Eastern Europe during the transition period to a market economy since the early 90s. Such exclusion could become the norm for ever greater numbers of people from all kinds of social and ethnic strata, as the negative effects of the financial crisis gain pace across Europe. Acute marginalisation disempowers the excluded, leading to coping strategies which fall outside of collective political action. However, calls for empowerment are becoming prominent through the demands of Roma civil society and the European Union Framework for National Roma Integration Strategies (hereafter referred to as the Roma Framework). The Roma Framework is based on Open Method Coordination and involves member states devising National Roma Integration Strategies (NRIS). This can be described as a deliberative framework, and the European Commission has stressed the importance of ongoing dialogue and partnerships between governments and

Roma groups in the Roma Framework. The Commission has also stated that resulting strategies should be "designed, implemented and monitored in close co-operation and continuous dialogue with Roma civil society and regional and local authorities".⁶ However, attempts to achieve empowerment are being frustrated by "NGOisation", whereby community groups become distant from the grass roots because of excessive bureaucracy or donor-driven agendas. In addition, tokenistic or hierarchal forms of dialogue between centres of power and Roma communities are stifling empowerment. Key questions are emerging: How can empowerment be achieved for Roma communities? How can Roma civil society be revitalised? What role should Government and the European Union take?

The above questions are tied to, and in part dependent on, how society chooses to reconstitute itself in the wake of the financial crisis. Europe appears to be at a crossroads and a new debate has been sparked as to the direction of, and ideals upon which, the EU should be predicated. Amongst the proponents of an alternative strategy has been Habermas, who has been alarmed by the lack of deliberation surrounding the response to the financial crisis. Instead, Habermas⁷ calls for greater deliberative democracy in Europe, which, he argues, will

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- 4 Kamm, H., "Havel calls the Gypsies 'litmus test'", *New York Times*, 10 December 1993.
- 5 Filcak, R. and Skobla, D. "Social Solidarity, Human Rights and Roma: Unequal Access to Basic Resources in Reinventing Social Solidarity Across Europe", in *Reinventing social solidarity across Europe*, ed. M. Ellison (Bristol: Policy Press, 2012), 227-50.
- 6 European Commission, *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions - An EU Framework for National Roma Integration Strategies up to 2020*, 5 April 2011, 9, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.
- 7 Habermas, J. "Germany and the Euro-Crisis", *The Nation*, 9 June 2010, available at: <http://www.thenation.com/article/germany-and-euro-crisis#>.

enable better coordination in other policy fields, alongside new egalitarian economic approaches. Craig et al⁸ argue that supra-collective action could counter “social dumping” and create a system governed by principles of social justice based on equality and solidarity but which also understands and values human rights.⁹ These ideals can be articulated in the concept of “a Social Europe” which incorporates a vision of society based on solidarity, equality, social justice, internationalism and the view that economic wealth should be fairly distributed, without excluding or discriminating against groups or individuals.¹⁰ It is a vision of Europe which would be conducive to the Roma Framework and indeed bolster and create stronger interpretations of this framework than those that have appeared to date.

Deliberation centred upon forms of inclusive community development is needed to mobilise the marginalised and legitimate the politics of a “Social Europe” with application to the Roma issue; for since it is the case that sympathy and support cannot be constructed by outsiders, the Roma themselves will need to win over “hearts and minds”. Freire’s critical pedagogy¹¹ may give us insights as to how, through deliberation and reflection, communities can achieve a form of critical consciousness and grassroots mobilisation. Darder¹² follows up by suggesting inclusive community development is inherently “deliberative” and can provide space for reflection, critique, challenge and action between different social factions. The effectiveness of the involvement of Roma, Gypsy and Traveller communities, as the proverbial “canaries in the mine shaft”, is a crucial test of the viability of the construction of “Social Europe”. However, as noted, present low levels of formal Roma community organisation and weak links of the existing advocacy networks to actual Roma communities, combined with a hierarchical approach to the Roma by government bodies, weaken *all* attempts in European society to mobilise marginalised people. This state of affairs might be reversed, however, by inclusive forms of community development which aspire to a more interventionist and redistributive

vision of society and Europe, especially if policy makers actually respond constructively to these aspirations.

Resource limitations, the need perceived by governments for quick solutions, and donor-driven agendas have limited such forms of development amongst Roma civil society. At a service level, a growing number of Roma mediator positions are being created by governmental bodies and service providers; these can provide useful bridges between Roma communities and institutions but often focus on instrumental efficiency rather than on empowerment. Cornwall¹³ argues that activists need greater manoeuvrability than mediators to attempt transformative empowerment which will enable people to make their own decisions and take collective action. Whether saved from within the community, or negotiated from external funders, the tailored and flexible resources do not seem to be there for empowering Roma community organisations on anything like the scale that could radically transform their marginalisation. In an ideal world if more community organisers could be funded and allowed to work in the manner outlined, that would play a valuable role in providing the community partners which the EU has rightfully recognised as necessary to help shape institutional change at the local, national and transnational level. However, to return to points made earlier about the need for new economic and social initiatives more closely aligned to the principles of social justice, dialogue and partnership, together with resources and opportunities for transformative change, need to be available and achievable; otherwise dialogue will merely descend into “verbalism” and rhetoric which cannot sustain genuine community mobilisation. The European Union has noted the intransigence of EU member states on the Roma question and the dangers and challenges that inertia and xenophobia hold for Europe, and has sought to shape new policy agendas amongst member states through the Roma Framework. Yet as outlined this initiative is in part dependent on a vibrant Roma civil society, a role which poses pressing and immediate challenges for Roma communities, governments, and the EU.

8 Craig, G., Burchardt, T. and Gordon, D. *Social Justice and Public Policy: Seeking Fairness in Diverse Societies*. (Bristol: Policy Press, 2008).

9 Rawls, J.B. *A Theory of Justice*. (Cambridge, Mass.: Belknap Press, 1971).

10 Ségol, B. “*Whither Europe? Looking ahead to the future of Social Europe*”, speech delivered by the General Secretary of the European Trade Union Confederation meeting, Stockholm, 25-28 May 2012, available at: <http://www.etuc.org/a/9893>.

11 Freire, P. *Pedagogy of the Oppressed* (Harmondsworth: Penguin, 1972).

12 Darder, A. *Reinventing Paulo Freire, A Pedagogy of Love*, (Boulder, CO and Oxford: Westview Press, 2002).

13 Cornwall, A., “Unpacking ‘Participation’: Models, Meanings and Practice”, in *Community Development Journal*, Vol. 43 (3) (2008), 269-83.

However, whilst there are high expectations in declared European Roma policy and the framework, at least in theory, for Roma to organise themselves and to participate in the democratic process and policy making, authorities ignore the historical past and lack of such traditions among Roma communities. With few exceptions, in the past Roma had no models of organising and expressing their interest in society in a similar manner to other groups. As a vulnerable group, that faced severe exclusion throughout their history, Roma developed specific survival strategies and practices, often based on intense forms of social capital, adapted to the context in which they lived. Thus, expecting Roma to be able quickly to develop representative institutions similar to those of other groups in society may be not only unrealistic and ethnocentric but also indicates a lack of knowledge and understanding of the Roma situation. Ensuring representation through democratic means of a deeply marginalised community not well versed in political organisation presents serious challenges.

However, mobilization and empowerment are objectives worth setting - deliberation on the Roma Framework and the national strategies will allow Roma not only to participate, and facilitate trust formation, but also to communicate their preferences (and ethnicity) to the wider public. Deliberation and public communication influence the perception of Roma at individual and group levels with regard to who they are, what their relations are with wider society, and their capabilities. The deliberation on policy options is not only about the aims but also about the means as to how to achieve those aims. If there is imposition and not aggregation of interests in society then designed solutions will not produce sustainable effects. In this endeavour Roma civil society may have a key role to play.

Someone not very familiar with the situation of Roma in Europe might ask why it should be the NGOs that represent Roma, and not other institutions. This is a valid question as the representation function of the NGOs is not a primary function. They are not subject to regular public scrutiny, and their leaders are not elected by those who they claim to speak on behalf of. The representative weakness of Roma civil society is reflected in recent comments

by Gheorghe,¹⁴ who has stated: “Most Roma organisations still operate as ‘sects’ rather than ‘churches’, since they are not yet part of a broader mass movement”.

In addition, as NGOs do not have a constituency, from a democratic point of view it could be argued that they lack legitimacy. While these points make sense in terms of theory of democracy, there are still some aspects to consider before denying that Roma NGOs should play any role in policy making. If NGOs are not perfect interfaces of communication between Roma communities and centres of power, how can wider Roma involvement in decision-making processes be achieved? Are there any alternatives?

Despite the deficiencies of Roma civil society the alternatives to Roma NGOs are limited. Roma political parties have been unsuccessful in attracting Roma voters and playing a role in the political arena in most European states, and Roma representation in national parliaments and the European Parliament is slight, to say the least.¹⁵ Thus, the only partners left for policy makers are Roma NGOs. Irrespective of the objections about their formal representative status, NGOs are the only institutions developed by Roma that might claim to represent the voice of the Roma or to have the potential one day to do so. So far the NGOs have provided the best platforms for Roma activists, and have managed to prepare some for institutional and political power. It should also be noted that the NGO sector has played a significant role in enabling Gypsy, Roma and Traveller women to play a greater role in articulating the aspirations of their communities, a development that has generated positive results but has also challenged a traditionally male-dominated culture.¹⁶ These are the main reasons why policy makers should take into account these voices and should invite them to the negotiations when designing and deciding policies towards Roma. However, there is a need for a long-term programme to transform NGOs into grassroots-based and knowledgeable partners for local and national governments and international organizations. This process of transformation is very much tied and integral to the progress made in the Roma Framework. Inertia and verbalism will sap not just the legitimacy of the framework but also the vitality and relevance of Roma civil society.

14 Gheorghe, N. with Pulay, G. (2011) ‘Choices to be made and prices to be paid: Potential roles and consequences in Roma activism and policy. In *From Victimhood to Citizenship: The Path of Roma Integration*, eds Gheorge, N and Pulay, G, (Budapest: Kossuth Press, 2013).

15 McGarry, Aidan, *Who Speaks for Roma?: Political Representation of a Transnational Minority Community* (New York: Continuum, 2010).

16 Biró, A., “*The Price of Roma integration*”, speech delivered at “The Price of Roma Integration”, conference held at Snagov, Romania, 22 September 2011.

ERPC's Assessment of National Roma Integration Strategies: 2012 Report and Recent Developments

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Under the new European Framework for National Roma Integration Strategies (NRIS), European Union (EU) Member States (MS) were required to submit strategies on Roma inclusion to the European Commission (EC) by the end of December 2011. All MS responded to the call and submitted their respective NRIS in late 2011 or early 2012. The EC assessed the NRIS themselves in May 2012 in its Communication *National Roma Integration Strategies: a first step in the implementation of the EU Framework*,² and their implementation in June 2013, in the Communication *Steps forward in Implementing National Roma Integration Strategies* accompanying a Proposal of Recommendation from the European Council.³

The EC intended to take into account contributions from civil society in its evaluation of the NRIS. In this context, the European Roma Policy Coalition (ERPC), consisting of Roma and pro-Roma organisations at EU level,⁴ engaged with various civil society organisations in early 2012 to obtain their assessment of the NRIS, and compiled these assessments in its March 2012 report *Analysis of National Roma Integration Strategies*.⁵ The ERPC shared the outcome of the survey and the desk screening assessments with the EU institutions and all other interested stakeholders as a contribution toward improving the NRIS and monitoring progress made by measuring outcome in implementing the NRIS in the four key priority areas of health, housing, employment and education.

In a first step, the ERPC carried out desk screening assessments of the NRIS submitted by the governments of Austria, Bulgaria, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Wales, as well as the Czech Republic's Roma Integration Concept for 2010 to 2013. The report that the ERPC published in March 2012 highlighted the main analyses of the survey results and the desk screenings of the NRIS.⁶

In a second step, the ERPC gathered the views of Roma and Traveller organisations and civil society on the processes that led to the design of the NRIS in the different MS. In particular, the ERPC undertook a survey to assess whether the consultation of civil society and Roma and Traveller organisations was appropriate and whether anti-discrimination issues were being taken seriously in the NRIS. The survey was disseminated electronically to a wide audience throughout the EU and beyond and was completed by over 300 persons, the majority coming from the civil society sector.

The resulting report is divided into three main parts. The first is based on an analysis of the respective NRIS by ERPC reviewers, highlighting key issues in the NRIS including a review of budget allocations in NRIS, coordination mechanisms in implementing NRIS and indicators and monitoring

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- 2 European Commission, *National Roma Integration Strategies: a first step in the implementation of the EU Framework*, 0 available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0226:en:NOT>.
- 3 European Commission, *Steps forward in Implementing National Roma Integration Strategies*, available at: http://ec.europa.eu/justice/newsroom/discrimination/news/130626_en.htm.
- 4 The ERPC is composed of Amnesty International, the European Network Against Racism, the European Roma Grassroots Organisations Network, the European Roma Information Office, the European Roma Rights Centre, the Fundación Secretariado Gitano, the Open Society Institute, Minority Rights Group International, Policy Centre for Roma and Minorities, and the Roma Education Fund. Additional information available at: <http://romapolicy.eu/>.
- 5 ERPC, *Analysis of National Roma Integration Strategies*, available at: http://romapolicy.eu/wp-content/uploads/2012/09/Final-ERPC-Analysis-21-03-12_FINAL.pdf.
- 6 At the time of the survey (4-31 January 2012), only 21 MS had submitted their NRIS to the EC. MS that had not yet submitted an NRIS included Belgium, Italy, Lithuania, Spain, UK and Sweden. Some of the NRIS reports submitted to the EC during the survey period were draft versions (e.g. Bulgaria, France and Portugal). It is interesting to note that 10 per cent of respondents were unaware of whether their government had submitted an NRIS or not, including in e.g. Bulgaria, Germany, Ireland, Poland, Romania and Spain.

issues. The second part draws on the results of a survey involving various stakeholders; its main objective is to provide an overview and analysis of stakeholders' perspectives on the NRIS, stakeholders' participation and anti-discrimination. The third part reflects on the lessons learnt and offers recommendations to national governments with a view to improving processes in developing, implementing and monitoring NRIS and enhancing Roma participation.

The present article begins by describing some of the key stakeholder survey results before analysing the main lessons learned and the recommendations that emerged from the report, and concluding with the ERPC's assessment of the state of play of NRIS one year on and the degree to which civil society was taken into account in the EC's analysis of the implementation of the NRIS.

Stakeholders' participation in the design of the NRIS

As identified in the EC Communication, the NRIS should "be designed, implemented and monitored in close cooperation and continuous dialogue with Roma civil society, regional and local authorities".⁷ The ERPC therefore developed and published a 16-question survey at the end of 2011 with the aim of obtaining the views of Roma and civil society organisations on the NRIS. The survey's aim was to assess: a) whether the consultation of stakeholders, in particular civil society and Roma organisations, was appropriate and b) whether anti-discrimination issues were taken seriously in the NRIS. The survey was disseminated electronically to a wide audience throughout the EU and beyond by relying on the mailing lists of ERPC members and affiliates. Respondents were invited to participate in the ERPC survey during the month of January 2012. The survey was completed by 326 persons, 90 of whom provided substantial, detailed responses. The majority of these respondents represented Roma (or Traveller) NGOs (37) and pro-Roma NGOs (16). A substantial number of answers also came from human rights NGOs (15) and academic institutions, universities or research institutes (5). Other responses came from a variety of stakeholders, including equality bodies, international organisations, regional/local authorities, foundations, and faith-based and anti-racist organisations.

52 per cent of the respondents reported that some form of stakeholder participation took place in the design of the NRIS; 31 per cent said that NRIS were designed without the participation of stakeholders. 17 per cent did not know if their government allowed stakeholder participation. Overall, it seems that participation was allowed by governments at a minimum level. However, since there were a moderate number of respondents that were unable to answer this question, it could be possible that the participation rate was higher or lower than that reported.

Those MS where greater stakeholder participation was reported included Portugal, Slovakia and Spain. Respondents from Portugal, Slovakia and Spain unanimously agreed that their government designed the NRIS in cooperation with stakeholders. Although not all respondents knew about it, the majority of the respondents in Bulgaria (60 per cent), Ireland (66 per cent) and Romania (58 per cent) also reported stakeholders' participation. Respondents in Germany, Hungary and the Netherlands were divided in their answers: 50 per cent reported stakeholder participation and 50 per cent reported that such participation was not allowed by their government. Although these findings are inconclusive, one can argue that while some consultation probably took place, not all stakeholders were involved. Lack of stakeholder participation was reported by all respondents in France and the majority of the respondents in the UK (78 per cent).

14 per cent of respondents reported that civil society took part in decision-making processes on the NRIS in Bulgaria, Czech Republic, Finland, Italy, Portugal, Romania, Spain, and Slovakia. 10 per cent of respondents from Belgium, Czech Republic, Finland, Portugal and Slovakia also reported that a continuous dialogue between decision makers and civil society and relevant bodies took place within their national contexts. Civil society reported (27 per cent) that they were consulted on the NRIS through stakeholder meetings in Belgium, Bulgaria, Finland, Hungary, Ireland, Portugal, Romania, Slovakia, Spain and the UK.

Furthermore, 33 per cent of respondents reported that written feedback on draft documents was accepted as a means of stakeholder exchange on the NRIS in Belgium, Bulgaria, Czech Republic, Denmark, Germany, Hungary, Ireland, Malta, Portugal, Romania, Spain, Slovakia and Slov-

⁷ EC (2012) *An EU Framework for NRIS up to 2020*, 9.

enia. Beyond this, a national conference was hosted in the Netherlands and in Finland five hearings were organised in different regions which were open to the Roma population and to civil servants working in the social sector.

Main lessons learnt

Several valuable lessons can be drawn from the desk screening analyses of the NRIS as well as the analysis of the stakeholder survey on the NRIS. Among others, key issues highlighted in the assessment of the NRIS include the use of prior research and experience to inform the NRIS, budget allocations in the NRIS, coordination mechanisms in implementing the NRIS, the adoption of a human-rights approach as a basis for the NRIS, Roma participation in the different phases of projects, and indicators and monitoring issues.

a. Recognising the starting point and learning from past experience

Prior research on Roma served as a basis in devising the NRIS for Denmark, Finland, Hungary, Latvia, Slovakia, Spain, and Wales. There was no specific mention of prior research in the NRIS for Bulgaria, the Czech Republic, Germany, Netherlands, and Portugal. Nonetheless, Bulgaria, Czech Republic, Finland, France, Hungary, Poland, Slovenia and Spain, for instance, refer to their previous experience with Roma integration strategies and with specific measures targeting Roma, such as the Decade of Roma Inclusion, involvement in the EURoma Network and building on experiences from previous strategies.

When it comes to using the Ten Common Basic Principles (CBP) on Roma Inclusion as a baseline in the NRIS, Bulgaria, France, Hungary and Slovakia mention the CBPs, but there is some question as to whether the CBPs are sufficiently reflected in the overall NRIS. Neither the Czech Concept nor the Dutch and Welsh NRIS make explicit reference to the CBPs for Roma Inclusion. The Czech Concept nonetheless complies with all the principles (with the exception of Principle 7) and the Dutch and Welsh NRIS appear to be inspired from the CBPs. The Polish NRIS also reflects most of the principles without mentioning them. Denmark, Finland, Latvia, Portugal and Spain mentioned the CBPs, which are sufficiently reflected in the overall NRIS.

It does not appear as if research, reference to the CBPs, or previous Roma integration strategies were used as a basis

for the development of the NRIS in Germany, Austria, Romania and Slovenia.

b. Setting realistic targets

The objectives for defining ambitious, targeted and realistic goals within a defined timeline varied from one NRIS to the next. Overall, the Bulgarian, Dutch and Slovene NRIS do not give the impression of being realistic and feasible. On the contrary, the Danish, Finnish, French, Latvian, Portuguese, Slovakian and Spanish NRIS give the impression of being realistic and feasible. The Hungarian NRIS gives the impression of being realistic and feasible, but with a number of limitations.

The impact of the economic crisis will potentially affect the feasibility of the NRIS in most member states.

Overall, many of the NRIS failed to provide an adequate description of the current situation with regard to the Roma. The NRIS themselves, as well as the Action Plans, revealed a lack of awareness and/or intention on the part of national governments to tackle crucial issues for integrating Roma in each of the four priority areas defined by the EC.

The inadequate identification of the problems in setting ambitious, targeted and realistic goals affected the formulation of strategic goals and concrete measures with varying effects from one NRIS to the next. There were often deficiencies because 1) data were minimal; 2) systemic factors for social exclusion of Roma, such as segregated education, had not been identified; and 3) there was a lack of analysis of the good and bad practices in Roma inclusion programmes from previous years.

c. Establishing clear responsibilities and coordination mechanisms for implementation

Overall, the implementation coordination mechanisms foreseen in the NRIS do not seem adequate. Out of 18 NRIS submitted when the desk screenings took place, only six – namely Finland, France, Latvia, Portugal, Slovakia and Spain – include coordination mechanisms that are considered adequate. Some do not even mention their National Contact Point and/or its mandate in their NRIS, such as the Czech Republic, Denmark, Germany, Latvia, the Netherlands and Wales.

A further problem, common to several NRIS (e.g. Austria, Italy, Portugal and Wales), is that often no indication

is given as to how the implementation is ensured, and not enough information is available with regard to the communication channels between both horizontal and vertical actors. In several cases, such as the Italian and Slovenian NRIS, the lack of a clear description of the division of tasks also makes it difficult to assess whether the foreseen coordination mechanism is adequate. Moreover, most of the NRIS do not indicate how their implementation will be ensured at the regional and local levels and who is responsible for implementation on the ground.

The mismatch between the measures proposed in the NRIS and the actual political will is a concern that has been raised in several assessments; for example in the case of the Czech Republic where the Council for Roma Minority Affairs has a very weak mandate. Also, in the case of Latvia and Poland, certain activities and projects are mentioned but there is no real responsibility over their implementation and Roma communities are not involved at all in coordination. Finally, the Hungarian case has been highlighted for the fact that recent political and legal developments in that country do not reflect the equality agenda of the NRIS.

d. Allocating adequate budget to the NRIS

It is important that dedicated funding be made available for enabling the implementation of measures described in the NRIS and the Action Plans. Funding for this varied, however, from one NRIS to the next.

The majority of NRIS do not allocate budgets. Those which do include Denmark (from 2012-2016, a total of 20 million Danish Kroner, around 2.7 million Euro), Finland (3 million Euro to municipalities), Poland (annual allocation up to PLN 10 million, around 2.5 million Euro for education and PLN 700,000, around 175,000 Euro for textbooks for Roma students – additional amounts are not specified), Portugal and Wales (amounts not specified). In some NRIS, information on budget allocation was incomplete (Romania) or was not provided (Austria, Germany, Slovakia and Slovenia).

Budget allocation varied from one NRIS to another. However, in most NRIS the budget will be allocated through different processes, with the exception of Finland and Poland where it will be distributed only according to national calls for proposals. The budget line allocation is also placed within core ministries (Slovenia), government without specification

(Denmark and Portugal) and to specific governmental funds (Wales). Budget allocation of EU funding is not sufficiently used. A budget for the NRIS is only allocated as EU funding in the Danish and Portuguese NRIS.

None of the NRIS indicate the amount and the percentage of the NRIS to be covered by EU funding. Most of the NRIS do not foresee facilitating access to EU funding. Only the Danish (through the Danish Structural Fund Programmes 2007-2013), French (by privileging the use of the European Social Fund for the dissemination of good practices and innovative programmes), Latvian (by building capacities of Roma NGOs and focusing on accessing funds) and Spanish (by fostering the use of and raising the amount of the ERDF dedicated to Roma, etc.) NRIS have a process to facilitate access to EU funding.

e. Planning adequate accountability and monitoring mechanisms

There are indications on how the NRIS will be implemented in Denmark, Finland, Latvia, Portugal, Slovakia and Spain. Some indications exist for Slovakia and Slovenia, but they are rather vague. In Spain, the NRIS uses the principles of good governance as indicators for monitoring implementation: openness, participation, responsibility, efficiency and coherence. In contrast, Portugal has quantitative indicators, which enable effective monitoring of progress.

In turn, there are indications on how the NRIS will be monitored in Finland, Poland and Slovenia and there is a reporting system for the NRIS in Finland, Hungary, Poland, Portugal, Slovakia, Slovenia and Spain. In addition, there are indications of who is responsible for reporting on the progress of the NRIS in Poland, Portugal, Slovakia, Slovenia, and Spain. Monitoring methods mentioned in the French NRIS concern only the monitoring of the access to rights of persons in situations of poverty and exclusion, irrespective of ethnic origin.

The reporting systems in the Bulgarian and Polish NRIS remain problematic, and there is no reporting system set up in France, Germany, Netherlands or Wales. There are no indications on who will be responsible for reporting on the progress of the NRIS in the Czech Republic and Romania.

f. Adopting a human rights-based approach as the basis of the NRIS: anti-discrimination and the fight against anti-Gypsyism, gender equality, Roma empowerment and migration issues

Regarding the recommendation to follow a human-rights approach, including in particular gender equality, non-discrimination, desegregation, combating anti-Gypsyism and promoting proactive approaches to Roma inclusion, MS focused on different aspects in each NRIS.

The ERPC stakeholders' survey unfortunately reveals the lack of emphasis placed on such measures in the NRIS, with a majority of respondents reporting that there was no mention of anti-discrimination and the fight against anti-Gypsyism at all in the NRIS, or that some measures are planned but they are insufficient. Human rights issues were also often neglected in the discussions during the preparatory drafting phase of the NRIS.

In Bulgaria, Hungary, Poland, Portugal, Slovakia and Slovenia some targeted **anti-discrimination measures** are proposed but are insufficient, while in Germany the NRIS does not contain any targeted anti-discrimination measures. In France and Wales, the NRIS include anti-discrimination measures only in relation to particular themes, but not in all areas of the NRIS. Anti-discrimination measures are foreseen in each key area, and go beyond these to target anti-discrimination in general, only in Finland, Latvia and Spain. In Denmark, the NRIS targets anti-discrimination in general.

The NRIS in Austria, Denmark, France, Germany, the Netherlands, Portugal and Slovenia do not target **anti-Gypsyism**. Some measures are planned in the Bulgarian and Polish NRIS to target anti-Gypsyism, but are perceived as insufficient, while the Romanian NRIS is perceived as minimalist in terms of combating anti-Gypsyism. In the Finnish NRIS, the fight against anti-Gypsyism represents one of the objectives, yet no specific measures referring to anti-Gypsyism are foreseen. There are no measures targeting anti-Gypsyism in the Latvian NRIS, although most of the anti-discrimination measures also target anti-Roma sentiments. The measures from Slovakia, although insufficient, are a good starting point. Only the Spanish NRIS is considered to have included sufficient measures to tackle anti-Gypsyism.

There are no measures to address **gender equality** in the Bulgarian, German, Latvian, Dutch, and Welsh NRIS. While the German NRIS recognises that women and girls experience multiple discrimination, it nevertheless fails to specifically target gender equality. Similarly, there are no

specific measures in the Finnish NRIS to address gender equality relative to specific areas, but gender equality is viewed as a cross-cutting issue throughout the NRIS. The Czech Concept, as well as the French, Romanian and Slovenian NRIS, envisages gender equality in relation to particular themes, but not in all areas of the submitted NRIS. Some measures are planned in the Danish, Hungarian, Polish and Slovak NRIS to target gender equality, but these are insufficient. On a more positive note, sufficient measures are envisaged within the four areas to target gender equality in Spain. Finally, it should be noted that in Portugal and Spain the NRIS also envisage specific measures to address multiple discrimination of Roma women.

The Bulgarian, Finnish, Hungarian, Latvian, Portuguese, Romanian, Slovak and Welsh NRIS fail to address the issue of **migration** at all. The Austrian NRIS refers to Austria's National Integration Plan, which is partly dedicated to the fight against discrimination of immigrants and minorities. Migration-related measures are also envisaged in the Danish, French, and Dutch NRIS, but only in relation to a particular priority area, not in all areas of the NRIS. Only in Spain does the NRIS address the issue of migration: here sufficient measures are envisaged within the four key areas and beyond to target fundamental rights of migrant Roma in general.

The Czech Concept and the French and Slovenian NRIS do not address the issue of **empowerment** at all and there is little mention of empowering Roma in the Bulgarian NRIS. Some measures are planned in the Danish, German, Dutch, and Romanian NRIS to target the issue of empowerment, but they are insufficient. Different measures are foreseen in the Finnish, Latvian, Slovak and Welsh NRIS to contribute to the empowerment of the Roma minority. This is even indicated as a main objective of the Finnish NRIS. Nevertheless, it is difficult to assess if the measures are or will be sufficient, as there is no information about capacities, in particular at local level. In the Polish NRIS, empowerment-related measures are envisaged only in relation to a particular area. In the Portuguese NRIS empowerment is mainly promoted within the area of gender equality but also by promoting citizenship education.

It is interesting to note that the Hungarian NRIS goes beyond consultation and specifically mentions that social inclusion must involve the "empowerment of those living in poverty and the Roma community in order to enable them

to shape society”. The Spanish NRIS envisages sufficient measures within the four key areas and beyond to target Roma empowerment in general.

g. Ensuring Roma participation in the drafting process and implementation

Findings from the ERPC stakeholders’ survey suggest that in most MS, some form of participation has taken place. However, the NRIS consultation processes were often not accessible to all stakeholders or even Roma civil society. When consultation did take place, it seemed to have very little impact, or none at all, on the NRIS in the vast majority of cases. Moreover, a large majority of respondents across MS described the drafting process of the NRIS as lacking transparency. In most cases stakeholders’ participation, in particular the involvement of Roma, is still unclear with regard to implementation of the NRIS.

Conclusions: the state of play one year on and ERPC recommendations

State of play one year on

Roma inclusion will continue to face challenges as long as little is done to combat the deep-seated anti-Gypsyism and discriminatory tendencies prevalent in European societies, and to invest in positive, explicit measures to promote Roma inclusion in employment, education, housing and healthcare with a view to improving their socio-economic conditions and reducing existing gaps with the majority population. Discrepancies in treatment are evident in different areas such as housing, education, employment, healthcare, political participation and freedom of movement. Furthermore, there seems to be little political commitment at national levels to stop such a shameful reality in Europe. As we witness increasing harassment and violence against Roma in various MS, and considering further tensions and anti-Roma sentiment due to the economic crisis, it is urgent to address anti-Gypsyism.

On June 26 the EC launched a progress report on Roma integration, taking stock of how MS are implementing their respective NRIS. The EC’s main conclusion is that insufficient progress has been made and another push for Roma integration is needed. Commissioners Viviane Reding and László Andor have sent a wake-up call to MS to make them

reiterate their commitment to Roma inclusion. This assessment of national progress has been reinforced by the presentation of a Recommendation to MS, to be adopted by the EU Council. Indeed this proposal for a Council Recommendation sends a strong message to national governments that the NRIS need to be properly implemented in order to make a positive difference on the ground.

Fortunately the EC seems to have finally made a clear link between social inclusion, discrimination, racism and Roma participation. However, a lot still needs to be done, especially at national and local levels. As highlighted by the EC and many other relevant stakeholders, overall financing is still inadequate for the implementation of the NRIS, specifically regarding the use of Structural Funds, while coordination mechanisms at national, regional and local level have not been properly implemented as a means to assure effective and efficient public policies for tackling inequality and discrimination of Roma in MS.

Despite the fact that the EC’s current standpoint can be considered a step forward for Roma inclusion, its tangible impact remains to be seen: whether it will mean a real new impetus to the EU framework, since as of today the NRIS are far from making a positive change in the daily lives of Roma. In fact, there are indications that the situation of many Roma has been worsening since the adoption of the EU Framework of NRIS, as they are increasingly affected both by discrimination and racist attacks and by the economic crisis. It is urgent that MS become politically determined to face for once the inequality and discrimination suffered by many Roma in Europe. In fact, both financial and technical tools are available to do so; what is missing is the will to bring together the efforts of various actors on the ground and work towards achieving tangible results and social change.

ERPC recommendations

Civil society has repeatedly called on the EC and MS to actively pursue social inclusion and anti-discrimination measures. The ERPC recommends that the need to eliminate anti-Gypsyism should constitute the core around which NRIS are built. Although eliminating the gaps related to income, health and education are important, there will be no progress unless the elimination of anti-Gypsyism is made a key priority of the NRIS.

In fact, in the EC’s report MS have received bad marks particularly in relation to the fight against discrimination. Countries

like the Czech Republic, Hungary and Slovakia, for instance, are singled out for continuing and pervasive school segregation. The assessment confirms the urgency of pressing MS to immediately implement European anti-discrimination law in practice. Where necessary, the EC should trigger infringement procedures to ensure compliance.

The EC should follow closely the reaction of MS to its progress report and the proposed Council Recommendation, focusing on quantitative and qualitative indicators that provide information about the progress made in the four key areas of education, employment, housing and health; in terms of Roma participation in the design, implementation, monitoring and evaluation of the NRIS; in equal treatment; and in the fight against discrimination. Indicators for genuine Roma participation and empowerment as well as for the advancement of anti-discrimination measures should be introduced and followed up.

MS should adopt the proposed Council Recommendation and clearly show their political determination to serve all EU residents, including Roma, on an equal basis. Roma must be considered full citizens that deserve their governments to fulfil their rights, just like anybody else.

The different NRIS show that there are clear and worrying differences in the political will to address discrimination and anti-Gypsyism and to amend national policies in order to enable greater participation of Roma in all collective areas of society. Strategies to combat anti-Gypsyism at European and national level that go beyond the Framework of the NRIS should be developed. First, there should be a strong commitment to take urgent measures against the worrying and widespread racism, violence and harassment that Roma face, such as speaking out on monitoring racist violence and hate speech incidents, developing instruments to combat racism and supporting the EC and MS in the implementation of these instruments. Possible instruments include:

- A crisis protocol to respond adequately to manifestations of anti-Gypsyism, such as hate speech and inter-ethnic clashes;
- Steps to address the weaknesses of the Framework Decision on Combating Racism and Xenophobia in EU legislation by providing an accurate definition of the types of racist and xenophobic activities and behaviours which it seeks to target, including responses to

public figures and representatives of state authorities who engage in racist and xenophobic activities and behaviours, and expressly addressing racist violence targeting vulnerable groups such as Roma;

- Strengthening the monitoring of the implementation of the Equality directives and the Framework Decision on combating racism and xenophobia and reacting to violations of EU legislation appropriately.

Moreover, ongoing efforts are needed from governments to improve implementation of the NRIS in the four key priority areas of health, housing, employment and education. The ERPC made suggestions to tackle the lack of capacity and experience in implementing the NRIS. Furthermore, a stronger and more effective Roma participation in the implementation of the NRIS is needed. It was therefore proposed to provide technical assistance to the implementers and to ensure that a sufficient number of Roma representatives form part of the implementation teams.

Governments should set up clearer indicators as well as better monitoring instruments to measure and assess the progress made. Experience to date shows that the reporting process is often reduced to reports that lack methodology for evaluation, as well as concrete indicators and mechanisms for collecting information related to the outcomes of integration policies. Consequently, the EC and MS should clearly establish a strong monitoring and reporting process for the NRIS. Updates in annual reports by each institution engaged in the process of implementing the NRIS do not constitute a sufficient reporting mechanism. More thought and qualitative methodology is needed for assessing progress and reflection as to whether annual reports are sufficient. Importantly, governments should make the NRIS evolve on a yearly basis according to lessons learnt from the monitoring mechanisms.

Clear details on the funding for Roma-related measures are needed, delineating EU and national funding. Additionally, MS should be more committed to using EU financial instruments for Roma inclusion (e.g. Structural Funds). As is evident from the report, some good practices have emerged in this initial stage of implementation of the NRIS. It is important to set up effective means of exchanging good practices, and the ERPC recommends that peer reviewing mechanisms be set up between MS.

National Roma Integration Strategy: Do Good Intentions Fail?

JOANNA KOSTKA¹

Europe continues to face tremendous difficulties in alleviating the socio-economic marginalisation of its largest minority, the Roma.² This highly diverse diaspora of people, one of the oldest surviving minorities on the old continent, struggles against deep-seated prejudice, racism and poverty. For over a decade now, the European Union (EU) has exerted pressure on its member states to “change the situation of their marginalised population” dispensing a wide range of legal, policy and financial instruments in hopes of persuading reluctant governments to accept responsibility for integration, community development and social cohesion. For a variety of reasons EU initiatives and measures have essentially failed to generate suitable and sustainable success. As a consequence in 2011 the European Commission launched the “EU Framework for National Roma Integration Strategies (2013-2020)”, calling on member states to prepare and revise National Integration Strategies, in an effort to generate tangible improvements in the living conditions of the Roma, which continue to resemble those of sub-Saharan Africa.³

In response to the European call, the Polish government proposed to continue its Roma-integration activities undertaken since 2001 within the framework of the “Pilot Programme for the Roma Communities in Malopolska Region 2001-2003” and the “National Roma Integration Strategy for the years 2004-2013”. It stated that the 2014-2020 strategy will be fashioned on existing models and practices, and will adhere to the priorities outlined in the

European Framework. In a country marked by transient reforms and deep-cutting political imbroglios, opting for continuity could be taken for a steadfast political commitment to the needs of Poland’s most marginalised minority.⁴ However, the minuscule impact of past measures and the largely ineffective implementation methodologies dramatically undermine the choices and motivations of the authorities. It seems that instead of commitment to socio-economic reforms and inter-cultural dialogue, the Polish state has settled for fragmented, one-off interventions, driven by a political interest to demonstrate compliance with EU frameworks and recommendations.

This article presents an analysis of Polish experiences in designing and implementing the National Roma Integration Strategy for the years 2004-2013 (hereinafter referred to as the “*Programme*”). Close scrutiny of the *Programme* is imperative as it constitutes one of the main pillars of Polish integration policies and forms a ‘prototype’ for the upcoming strategy for 2014-2020, which apart from small technical adjustments to the *modus operandi* has remained basically the same. The analysis is also timely as there is mounting evidence that many problems identified in the early 2000s have not been fully resolved, and there is a danger that similar mistakes are being replicated. The article argues that the main shortcomings of the *Programme* are rooted in the down-playing of strategic dimensions of exclusion, and a failure to conceptualise integration of Roma as a process requiring changes in institutional settings and in

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2 ‘Roma’ is a *political term* used as an umbrella name for all members of the Romani ethnic community (such as Roma, Sinti, Kale, Gypsies, Romani-chels, Boyash, Ashkali, Egyptians, Yenish, Dom, Lom and Travellers). Its usage in political and sometimes academic discourse demonstrates a strong tendency to treat the extremely ethnically diverse Romani community or communities as a largely homogenous group, overshadowing the various appellations preferred by the individual groups and subgroups (such as Sinti, Kale, Rudari, Boyash, and Travellers). I am aware that from an ethnographic point of view, the Romani community is extremely diverse and all Romani groups, subgroups and metagroups have their own ethnic and cultural features (see Acton and Gheorghe 2001, Marushiakova and Popov 2001). Thus in this article I make every effort not to over-ride or undermine deep-cutting differences.

3 The 2003 UNDP report *Roma integration is key in an enlarged EU* first made that comparison, 10 years later the situation has remained basically unaltered and in fact there is mounting evidence that it has even deteriorated (see the 2012 report *The Situation of the Roma Minority in Selected New Member states of the European Union*, European Liberal Forum)

4 The prognostic section of National Roma Integration Strategy 2003-2013 defined Roma as the “only ethnic minority at risk of social exclusion” (NRIS 2003: 4)

the attitudes of both the majority and the minority population. The *Programme's* narrow focus on the immediate needs of (often randomly selected) groups and communities, although effective in delivering practical and appreciated aid, has failed to recognise a need for wider pro-integration reforms and in many instances (perhaps unintentionally) only exacerbates divisions between the communities, thus undermining the legitimacy of public provisions.

Roma in Poland – Brief overview

Poland has one of the smallest proportions of national and ethnic minorities in the European Union.⁵ According to the results of the National Census in 2002 around 4,500,000 people in Poland (1.23%) declared other than Polish nationality. Within this number only 12,731 Polish citizens declared that they belong to the Roma ethnic minority. Although non-governmental organisations claim that the real number is much higher, their estimates rarely surpass 50,000. This means that Roma constitute at most around 0.03% of the entire population of Poland, a number too small to attract substantial political attention. Although small in number the Roma population is highly diverse: the four main Roma ethnic 'sub-groups' - the Polish Roma, Carpathian Roma (Bergirtka Roma) Kelderians and Lowerians - are characterised by profound historical, social and economic differences.⁶ This diversity leads to considerable variety in the policy needs, aspirations and political capacities of each community. However, because of a long history of exclusion from political activism and limited interaction between Roma and non-Roma communities, many of the divisions, internal tensions and idiosyncratic needs go unnoticed by outside observers (including policy makers and academics). Moreover, the lack of comprehensive studies on the situation of Roma, compounded by the weak lobbying power of Roma leaders, allows for an overly-simplified and essentialist picture of the minorities' living conditions, more often than not limited to negative assessments of personal attainments, adaptability and hermetic culture.

As a result, the reality of 'Roma' people does not necessarily determine the political perceptions of Roma or the content of public policies supposedly aimed at Roma inclusion or empowerment (Kovats 2013). Instead, Roma are often expected to comply with measures that respond to very limited and static interpretations of their interests (Vermeersch 2002). Although the EU was instrumental in re-defining Polish Roma as an ethnic group, increasingly supported by a minority rights framework and supranational funding for social inclusion, the promotion of Roma "difference" over "equality" dramatically reduced the potential for societal solidarity and disconnected Roma people from the wider political arena. The perpetual absence of Roma civil society in political life and the decision-making apparatus has given rise to "crisis-management" interventions, characterised by low-cost investments (i.e. infrastructural repairs, individual scholarships and training programs) delivered by individual public agencies reluctant to form partnerships with the communities, NGOs or even other public actors. Treating members of the Roma population as passive beneficiaries of state aid has only reinforced dependency patterns, missing an opportunity to promote empowerment and to engender a sense of shared ownership.

Socio-economic standing

Given that it has such a small and widely dispersed Roma population, Poland has rarely encountered international criticism or "shaming tactics". Although in 2005 the European Commission against Racism and Intolerance (ECRI) criticised Poland for lax investigation and prosecution of violent attacks on Roma,⁷ the socio-economic aspects of Roma exclusion continue to be largely overlooked. This omission is largely a result of reluctance or inability to collect comprehensive and reliable data on the socio-economic situation of the Roma minority, a failure that gravely obfuscates the scale and scope of experienced problems. Nevertheless research conducted by international organisations indicates that Roma face profound difficulties in each of the main policy areas (employment, housing, education and health) and struggle

5 Visegrad.info "Roma minority in Visegrad countries", (2010) available at: www.visegrad.info/minorities-social-exclusion-roma-minority/factsheet/roma-minority-in-visegrad-countries.html.

6 For a detailed historical account of Polish Roma, including their tragic persecution and extermination during World War II see Mroz, L. *Od Cyganów do Romów. Z Indii do Unii Europejskiej* (Wydawnictwo DiG, Stowarzyszenie Romów w Polsce – Romski Instytut Historyczny: Warszawa, 2007).

7 The escalation of anti-Roma disturbance took place in early 1990 in Kielce and Mława, towns with significant Roma populations. Although open violence has since subsided, Roma rights advocates regularly point out the failure of the state to adequately prosecute violent acts committed against Roma.

against widespread discrimination.⁸ The limited social-economic gains that the Roma community experienced under communism were swiftly reversed by the transition from command to market economies. The introduction of feverish neo-liberal policies has severely constrained the ability of Polish Roma to cope with change by depriving them of income and formal employment.⁹ A study by the Fundamental Rights Agency found extensive impoverishment and structural unemployment among Roma communities, showing that unemployment ranges from 45% to 70%, with some communities experiencing even 100%. Rampant privatisation of social housing and declining security of tenure have led to the accumulation of debt, forcible evictions and homelessness. The living conditions of many Roma, already characterised by poor quality and/or segregated housing, have continued to deteriorate. It is estimated that more than 60% of Roma live in substandard conditions. The gap between Roma educational attainment and the national average remains enormous and shows signs of widening. Despite a steady rise in the number of Roma pupils completing primary school (according to the Ministry of Labour 70% of Roma children attend elementary school), the performance of Roma children is still disappointing and drop-out rates continue to be extremely high.¹⁰ Instances of segregation and placement of Roma children in “special schools”, although not as common as in the neighbouring states, continue to thwart Roma educational attainments and subsequent economic success in adulthood. Moreover more than 80% of Roma children have no access to pre-school education or to any after-school or cultural activities, while NGOs claim that more than 50% go to school hungry. Finally, in comparison with the non-Roma population, Roma communities suffer from poorer health and unhealthy living conditions, which translate into shorter life expectancy and higher risk of fatal diseases. These persistent inequalities across the socio-economic sphere threaten to lead to the escalation of conflicts with

the majority and the consolidation of what Andrzej Mirga called “an underclass of citizens”.¹¹

Despite acknowledging that Roma are the only minority in Poland at risk of dramatic socio-economic exclusion that requires considerable investment, the political elites refrain from nationwide debates on poverty and social cohesion. Instead, Roma-exclusion issues remain largely confined to debates about cultural values and perceived difficulties in harmonising elements of Roma culture with mainstream values and practices.¹² The opinion expressed by Sławomir Łodziński, a sociologist at Warsaw University, that “the principle area of conflict is culture”, echoes through most governmental deliberations on the “Roma Question”. Roma-led organisations themselves are prone to concentrate on cultural aspects, pointing to a “lack of understanding of Roma customs” and widespread fear of coercive assimilation among Roma communities.¹³ Although some central elements of Roma culture might deviate from consolidated mainstream expectations, focusing exclusively on such differences obscures existing commonalities and downgrades the role of social, economic and political complexities in perpetuating exclusion and poverty. Instead, Roma exclusion is framed as a product of individual choices and cultural dogmas rather than a consequence of problems partially related to the decline in the quality and accessibility of public services. It is conceptualised in terms of “distance” or separation from a core of society which consists of people who are integrated into the sets of relationships and institutions that are considered “normal”. Such conceptions are at the core of governmental action plans, and arguably constitute an implicit yet powerful obstacle to meaningful integration and alleviation of poverty.

Government Support

In accordance with national law and international guidelines signed by the Republic of Poland, the Roma community is

8 See European Union (EU) Agency for Fundamental Rights (FRA) and United Nations Development Program (UNDP), 2012 *The Situation of Roma in 11 EU Member States: Survey Results at a Glance*.

9 Most affected were the communities of Carpathian Roma living in southern Poland. Employed as unskilled labour in the state-run industrial complexes, they were the first to lose their jobs as a result of hasty privatisation and mass closures.

10 In 2006 the Association of Roma claimed that half of all Roma children were not enrolled in schools, in part because they and their families feared coercive assimilation.

11 Mirga, A. and Gheorghe, N. *The Roma in the Twenty-First Century: A Policy Paper*, (Project on Ethnic Relations: Princeton, 1997).

12 Ministry of the Interior and Administration *Programme for the Roma Community in Poland*, (2003) 4.

13 Stowarzyszenie Romów w Polsce, *Tradycyjna kultura Romów*, available at: www.stowarzyszenie.romowie.net/index.php/czytnik-artykulow/items/101.html.

recognised as an ethnic minority, with full access to legal protection and state aid.¹⁴ As a result of the work of the Team for National Minorities, in March 2000 work began on the preparation of a pilot government programme for the Roma community in the Malopolska province for the years 2001-2003. The programme was developed by the Ministry of Internal Affairs and Administration (MIAA) in cooperation with other ministries, as well as the Regional Plenipotentiaries for Roma Issues and local authorities. Consultations were held with selected Roma-led non-governmental organisations as well as the leaders of self-governments. Although the implementation of the programme was severely limited because of inadequate funding from the state budget, it received a positive assessment from the European Commission¹⁵ and from the Commissioner for Human Rights - a rather surprising development given the incongruence between the programme's scope (limited to a few communities residing in one region) and the circumstances of the Roma population in general.¹⁶

The pilot programme's main priority was to achieve "full participation of Roma from the Malopolska¹⁷ region in civic and social life" as well as to bridge the gap between Roma and the rest of society in all major policy areas, including education, employment, health and housing. Given the absence of comprehensive evaluation of the programme's outputs and outcomes, it is difficult to assess how influential it actually was. One initiative that received some analytical attention was the introduction of Roma teaching assistants, in an effort to eliminate segregation of children in so-called "Roma classes", and to provide language support and mediation between schools and families. Despite numerous setbacks, the initiative was considered as "needed and generally effective" by both public authorities and Roma NGOs.¹⁸ As a result, in 2005 the position of "Roma teaching assistant" was recognised as an official job category, subsidised by the Ministry of Education and Sports. However, the direct impact of such assistance on the participation and performance of Romani

children remains unclear. In fact, the drop-out rate (especially among girls) has not been reduced, and in some regions it has actually increased.¹⁹ Although the programme lacked indicators and benchmarks with which to assess its achievements, the authorities advertised it as "good practice" and used the lessons they claimed to have learned from it as a blueprint for the preparation and implementation of a nationwide, multi-annual programme: the National Roma Integration Strategy for the years 2004-2013.

The adopted *Programme* constituted part of a policy of equal opportunities aiming to "equalise disparities between ethnic minorities and the rest of Polish population". Internalising the objectives of the pilot programme discussed above, it was envisioned as an affirmative action initiative, promoting social integration, with particular attention to economic, care-providing and educational functions. It stated that "because of the extreme levels of exclusion and widely spread discrimination experienced by Romani communities, targeted programmes for Roma are seen as a necessary transition step to full mainstreaming". The main priorities covered eight policy areas: education, employment, health, housing, security, civic participation, culture and inter-cultural learning. The thematic areas, however, were unevenly represented, both with respect to the number of the co-financed projects and to their values. The majority of the co-financed projects (64%) were carried out in the area of education, followed by culture (13%), housing (10%) and health (3%). Initiatives pertaining to employment constituted only 2% while less than 1% was allocated to security and 4% to inter-cultural activities. Despite such incongruities²⁰ and its acutely underdeveloped anti-discrimination dimension, the *Programme* complied with general EU recommendations and vouched to promote innovative plans in close cooperation with self-governments and Roma NGOs.

The activities implemented as part of the *Programme* were financed from the specific state budgetary allowance for

14 The Polish Constitution sanctions legal protection of national and ethnic minorities and states commitments in this field (Chapter II Article 33, section 1-2, 2005).

15 European Commission, *Regular Report on Poland's Progress Towards Accession*, COM(2002) 700 final, 31.

16 At the time of the pilot programme no other comprehensive programme was targeted at Roma-inclusion.

17 The choice to implement the pilot programme in Malopolska was dictated by the size and level of impoverishment of the Roma population residing in this region.

18 Rozycka, M. "Zawód- asystent edukacji romskiej" *Stowarzyszenie Asystentów Edukacji Romskiej*, available at: www.romowie.info/post/-zawod--asystent-edukacji-romskiej/88.

19 Stowarzyszenie Romow w Polsce, *Projekt badawczy na temat poznanawczego i jezykowego funkcjonowania dzieci romskich w polskim systemie edukacji*, (Universytet Jagiellonski, 2011).

the integration of the Roma community. The annual allocation amounted to PLN 10 million (approx. EU 2.5 million – which also covered educational tasks, whose implementation was the Programme’s main priority). Moreover, a sum of PLN 700 thousand (approx. EUR 175 thousand) from the state budget managed by the Ministry of National Education and Sports was spent annually on textbooks and other school supplies for Roma students. The Ministry also granted funds for scholarships for gifted Roma students (since 2011 – available at all levels of education). The implementation of other thematic projects was financed from the resources of self-governments and municipal authorities. All together, the *Programme* realised 4,793 initiatives, of which 66% were undertaken and co-financed by the self-governments. In an effort to strengthen the sustainability of provided initiatives the *Programme* was granted support from the European Social Fund for the Human Capital Operational Programme (sub-measure 1.3.1 Projects for the Roma Community – contest projects). The allocation for the “Roma component” for 2007-2013 amounts to EUR 22 million. This component has been designed as complementary to the governmental *Programme*. By 2011, 50 project co-financing agreements had been undersigned as a result of contests organised as part of sub-measure 1.3.1; the total value of the projects amounts to PLN 39 million (nearly EUR 10 million). Problems with inter-programme coordination and inadequate capacities of implementers slowed down the absorption rate and consequential redirection of EU funding to other targets.

Programme Review

In 2011 a review of the *Programme* was commissioned by the Ministry of Internal Affairs and Administration, to evaluate the undertaken activities and their achievements in the eight main priority areas. The review diagnosed the effectiveness of implementation process and proposed a list of recommendations concerning the continuation of the *Programme* in the years 2014-2020. Overall, the report delivered a rather “lukewarm” assessment, praising the unprecedented interest shown by

the authorities in Roma issues but pointing out several serious structural pitfalls. It stressed that overly-bureaucratic top-down management, the absence of innovative approaches to exclusion and the limited capacities and expertise of major stakeholders severely curtailed not only the efficiency of the implementation process but also the relevance and sustainability of introduced interventions. The report pointed out that “a vital opportunity to build inter-cultural partnership and stimulate local ownership of the *Programme* was relinquished” in favour of the “monopolisation” of the *Programme* by an impervious group of Roma leaders and self-governments often far removed from the communities and the most urgent issues.²¹ As one project manager expounded:

*“The design of the Programme overlooked the existing patterns of privilege and the uneven distribution of resources among Roma communities, NGOs, and local authorities. In many instances the Roma leaders became the ‘puppets’ of the government agencies, which favoured tokenistic forms of local consultation over less comfortable discussions with street-level groups representing the full diversity of community interests. The funding opportunities were often hijacked by ‘established’ organisations and better off communities, leaving out those in the direst need”.*²²

The *Programme’s* objective to engage with interrelated problems through multiple sectors were deemed to be overly ambitious and not clearly specified. In fact the strategic dimension was judged to be less concrete and explicit at the lowest levels of the administrative hierarchy. The report illustrated that the implementers eschewed initiatives which could promote systemic change, in favour of practical tasks and activities. In fact, when questioned, the overwhelming majority of the project managers were unable to delineate programme goals or explain how, in the long run, their projects would contribute to integration and cohesive development.²³ This pitfall resulted in the predomination of miscellaneous, “one-off” projects which rarely fitted inside a given goal-axis and had limited bearing on the envisioned path towards integration and mainstreaming. Talking about infrastructural initiatives, The Provincial Office convincingly argued that the

20 According to the 2002 census the gravest issues affecting Roma communities were inadequate housing conditions and widespread long-term unemployment. Thus it is rather surprising that cultural activities (composed largely of festivals and entertainment) surpassed the other two fields.

21 Evaluation Report, 7 – 9.

22 Związek Romów Polskich w Szczecinku, (2013).

23 A result of the survey conducted among self-governments, local authorities and NGOs, in the framework of the Evaluation Report (2011).

lack of a strategic dimension in the proposed projects stemmed from inadequate technical capacities, confusion over common goals and highly equivocal regulations:

*“The Programme’s regulations failed to introduce any requirements for demonstrating projects’ impacts and envisioned outcomes. This substantially weakened the motivation of managers to develop strategic, sustainable methodologies. They simply chose kinds of activity they were already competent in or used to, without considering the overall Programme’s purpose. Because many of them lacked experience in tackling complex issues and were not provided with any technical assistance they remained frugal in their conceptions and opted for simple, feasible tasks – roof repairs, replacement of windows, etc. – none of which added to or complemented existing state interventions and development policies”.*²⁴

The predominance of such undertakings (out of 20 projects, 19 provided one-off repair assistance while one delivered improvements to the sewer system) was also attributed to the reluctance of self-governments to include the needs of Roma communities in their wider political agendas. A high level of prejudice and inability to win support of the non-Roma majority for the *Programme* meant that there was little interest in designing and implementing elaborate inclusion projects which would bring two communities together. The fear of losing the support of the electorate, compounded by dwindling resources and limited pressure from above, effectively pushed Roma issues aside. The fact that the *Programme*’s funding was targeted solely at Roma, only exacerbated the inclination “to do nothing” or “do the minimum”. The report identified that such “exclusive” targeting had become a source of conflict between Roma and non-Roma especially in areas where the two communities lived in close proximity under similar conditions. As one frustrated mayor put it:

*“I cannot simply provide assistance and money to one group while excluding another ... here everybody is dealing with similar problems and lives in similar conditions ...favouritism simply does more harm than good ... it deepens mistrust and creates unnecessary conflict... the provisions we receive offer little flexibility and prevent us from creating larger-scale programs which would benefit everybody... this is not equal treatment - this is perpetuation of difference”.*²⁵

Despite these problems, the report indicated that the majority of the *Programme*’s activities (93.3%) were implemented

by the self governments. Although the growing engagement of public authorities was considered a “generally positive development”, the character and impact of their commitments appeared highly unsatisfactory. The report revealed that an acute lack of knowledge about the Roma population, compounded by disinclination to consult with the communities, led to the creation of irrelevant measures, guided by the aspirations of the self-governments rather than by the actual needs of the citizens. Most Roma survey respondents declared that the projects executed for the Roma communities were not discussed with them. Although the authorities insisted that such consultations did take place, the evaluation revealed that they were undertaken in an ad-hoc manner, without the engagement of the entire community. Throughout the running of the *Programme* not a single public meeting was organised, at which Roma and non-Roma interested in funding opportunities could have met, learned about the possibilities and discussed possibilities for collaboration. Furthermore, the consequences of poor organisation and weak links with local authorities and NGOs were evident in accessing funding earmarked for implementing employment and cultural activities. More than 45% of available funds were not utilised, while implemented health and training activities attracted less than 5% of the intended participants.

The sombre finding of the report was that the *Programme*’s funds have paid little attention to institutional barriers to integration and have failed to address the imperative need for inter-cultural dialogue. Although Polish equality policy envisions integration as a process that necessitates structural changes and awareness-raising among mainstream society (about issues concerning minorities including women, people with disabilities, and national and ethnic minorities) the *Programme* failed on both counts. Except for the initiatives concerned with Roma teaching assistants, structural dimensions of exclusion were largely ignored inside other policy areas (i.e. the majority of initiatives offered “one-off” training programmes in different fields, targeted almost exclusively at Roma). Moreover, less than 1% of available funds were used to finance initiatives which aimed to disseminate information and knowledge about Roma history, culture, and traditions. Surprisingly even fewer resources were devoted to research and project-facilitating interaction between the Roma and non-Roma populations. One of the community leaders bitterly stated:

24 Interview with Provincial Office in Malopolska (2013).

25 Interview conducted during the conference Mayors for Roma Inclusion held in Skalica, Slovakia 2011.

*“Of course, providing Romani children with books and notebooks is important but without changing the curriculum to include aspects of Romani culture and its contribution to Polish history, proper integration is just a dream. The ‘helping hand’ projects only impose a new culture of dependency, and totally underline the hostility and ignorance of mainstream society towards the Roma. What good are training projects when it is a common practice to reject job applicants based on their belonging to a certain ethnic group? I am not saying that Roma are without their faults, but in order to prompt integration the majority needs to change as well”.*²⁶

The report concluded that further progress requires closer links between projects aiming to improve the quality of life for Roma communities and wider socio-economic inclusion policies. It stated that this could be achieved through increasing inter-departmental cooperation and the share of the Roma representatives in the process of planning, implementation and evaluation of projects designed by self-governments and non-Roma NGOs. To ensure the effectiveness of this partnership all efforts should be governed by commitment to shared objectives and clear targets informed by an overarching strategic vision and by transparency of operations, and strategic interests being given priority over local or sectional interests.

What will the future bring?

The unveiling of the new Roma inclusion strategy unfortunately suggests that an isolationist and narrow affirmative paradigm is still at the core of the anticipated action plans. The new *Programme* remains basically unchanged with only a few adjustments - mostly minor procedural and funding updates. Ornamented with ambitious goals and objectives, it neither sets out a real time-frame nor presents concrete indicators and benchmarks. Although education is still the engine of the integration policy, the new *Programme* does not envision any innovative or truly integrative reforms (i.e. curriculum change, introduction of Polish as a second language, pedagogical training etc.), instead it basks in previous achievements and largely downplays identified shortcomings. Perhaps the most problematic issue is the fact that the *Programme’s* account of the Roma quandary does not appear to be based on any substantive scientific field research or

quantitative assessment of the situation on the ground. Although annual reports provided by the Provincial Offices have been incorporated, they rarely contain data disaggregated by ethnicity. In spite of the Commission’s assurance that “the Directive on Protection of Personal Data does not forbid collection of anonymous statistical data, which should be sufficient for effective monitoring and evaluation” the *Programme* continues to hide behind the national legislation²⁷ and bases its assessments predominately on ad-hoc consultations with Roma NGOs and problematic census data collected in 2002 and 2011. Thus, in the words of a Roma leader from the Wielkopolska region,

*“The sad part is that the authorities continue to lack knowledge about who the Roma are, what they do and how they live. There are no country-wide surveys, no qualitative case studies and no assessments of living conditions. The research that actually has been conducted rarely informs policies, and it has not been taken up by the designers of the current Programme. Even more problematic is that fact that Roma culture is consistently viewed as static, hermetic and unchangeable. Thus we are viewed in the same way as we were fifty years ago”.*²⁸

The *Programme* is virtually silent about the need for partnership and inter-cultural dialogue. As such, it does not provide any tools for generating collaboration between public institutions and NGOs and communities. It also does not envision any technical support for impoverished municipalities and continues to treat Roma NGOs as passive beneficiaries and not as potential engines of empowerment and social dialogue. It must be stated however, that thus far Roma leaders and Roma-led organisations have not made substantive efforts to work together and/or engage in dialogue with the majority population. Working in isolation not only diminishes their efforts to improve the situation inside their communities, but also removes them from political, cultural and social debates. The above dynamics only perpetuate the main challenges facing Roma integration programmes: the reluctance of local authorities to incorporate Roma issues into their political agenda and the lack of interaction between Roma and non-Roma societies.

Finally, the *Programme* fails to present concrete anti-discrimination measures, especially in the fields of employment,

26 Interview conducted during Roma Day Conference organised in Poznan 2013.

27 *Polish Legal Act of 29 August 1997: on the Protection of Personal Data Journal of Laws of 2002 No. 101, item 926.*

28 Interview conducted during the conference of Mayors for Roma Inclusion held in Skalica, Slovakia 2011.

education and health, where consistent inequality and lack of access have been well documented. The stubborn promotion of conventional training without provision of initiatives to tackle discrimination lacks any true prospects of addressing one of the greatest problems facing the majority of Roma communities. In a climate of growing anti-Gypsyism and a time of economic uncertainty, ignoring centuries-long prejudice and deeply ingrained stereotypes jeopardises the effectiveness and sustainability of proposed programmes. Aid-style projects, not complimented by structural changes and fruitful inter-cultural debate, run a high risk of intensifying an already conflicted and mistrustful environment. To promote any positive change the *Programme* should be sensitive to the charge of favouring one group over another, rather than benefiting societies as a whole. The challenge here is to avoid the creation of separate policies and administrative structures

for Roma minorities, without losing the affirmative aspect of the programme. The *Programme* needs to reject the simplistic conception of Roma culture and provide a forum for a debate where commonalities rather than differences could be discussed and celebrated. Spending money on quick and practical improvements is definitely tempting, but when undertaken outside the political arena without structured dialogues, it runs the risk of deepening ethnic division and fortifying antagonistic attitudes not only towards the Roma, but also to all other minority groups who do not fit the “Polish model of citizenship”. The *Programme* could be instrumental in overcoming domestic divisions, and generate adequate conditions for social cohesion, providing that it recognises the paramount need to address structural discrimination and acknowledge the benefits of working together for the benefit of all.

Streamlining the Decade of Roma Inclusion and the EU Framework¹

On 2nd February 2005, nine Prime Ministers of Central and Eastern European countries (including Serbia and Montenegro, which later divided into two countries) pledged that their governments would work toward eliminating discrimination and closing the unacceptable gaps between Roma and the rest of society. They declared the years 2005–2015 to be the Decade of Roma Inclusion (the “Roma Decade”) and committed to supporting the full participation and involvement of national Roma communities in achieving the Decade’s objectives and demonstrating progress by measuring outcomes and reviewing experiences in the implementation of “Decade Action Plans”. They decided on the priority areas of education, employment, health and housing, mainstreaming non-discrimination, poverty reduction and gender equality.

The Decade is a landmark initiative focusing on Roma inclusion and promoting dialogue between Roma, governments and international actors. It has encouraged and assisted participating governments to develop Action Plans, and inspired the European Union Framework on National Roma Integration Strategies (NRIS) up to 2020 (the EU Framework). The Decade has established useful structures and practices, and achieved substantive results primarily in the area of education. It is the leading initiative in engaging Roma in the public policy debates affecting them. It also laid down basic standards of cooperation on Roma issues, at the same time remaining flexible and open to interested governments and international partners. Since 2005, participation has risen, with four more countries, two observing countries and a number of international organisations.

The EU Framework draws inspiration from and focuses on the same policy areas as the Decade: education, employment, health and housing. It mentions gender equality, but only in passing within a reference to the 10 Common Basic Principles on Roma Inclusion. It is related to the initiative *Europe 2020 A Strategy for Smart, Sustainable and Inclusive Growth*, designed *inter alia* to combat poverty, and draws on the Race Equality Directive (RED) as the foundational legal instrument prohibiting

discrimination. Moreover, the EU Framework sets some specific basic objectives in all priority areas.

In order to encourage meaningful efforts for integration of Roma, the EU Framework requires all EU Member States to develop National Roma Integration Strategies – a requirement similar to the Decade’s National Action Plans. Furthermore, the EU Framework stipulates a monitoring system. The Roma Decade throughout the years has also advanced its own monitoring system, from simply presenting developments and challenges by governments, Roma civil society and the international partners at the International Steering Committee meetings, towards more structured written reporting by governments and support for civil society evidence-based monitoring and reporting. Both the EU Framework and the Roma Decade have established simple coordinating structures at national and international level. Governments designate a National Contact Point in the case of the EU Framework, or a National Decade Coordinator in the case of the Decade, to interface with the international initiative and to coordinate national efforts to implement their official Roma inclusion/integration policies. At international level, the EU Framework is managed by a unit at the Directorate-General (DG) for Justice of the European Commission, which takes the lead within the European Commission on Roma issues, at least with respect to Member States. The Roma Decade is managed internationally by the Decade Secretariat – a small non-profit entity supported primarily by the Open Society Foundations and with a fairly limited mandate to facilitate dialogue and provide technical support. Both the initiatives organise regular meetings – in the case of the EU Framework these are the meetings of the National Contact Points and the EU Roma Platform, and in the case of the Roma Decade they are the International Steering Committee meetings and thematic events.

Besides the facilities offered by the Roma Decade, which are similarly offered by the EU Framework, there are other

¹ Decade of Roma Inclusion Secretariat Foundation is the main facilitation body of the Decade of Roma Inclusion responsible for supporting the Decade Presidency, coordinating among Decade partners, engaging Roma civil society, bringing new members to the Decade, assisting national Decade planning, providing technical and expert advice, building knowledge management system, ensuring flow of information within and from the Decade.

facilities offered only by the EU. For instance, the EU provides significant financial support for the implementation of the official policies of the governments for Roma inclusion/integration. The Roma Decade lacks its own funding mechanism. Governments are expected to allocate funds for the implementation of their policies on Roma inclusion, with possible support by international partners, including the EU. Another facility offered by the EU is the possibility to correlate or even mainstream Roma integration within other policies and institutions within the EU, such as those existing in the areas of anti-discrimination/equality, education, employment and youth, to name but a few. The open method of coordination has been mentioned as another facility of the EU Framework. This means peer exchange, support, and review among governments; it is also the way in which the Roma Decade works, and many believe that the Decade has been very successful in this respect. As a creation of treaty, the EU has numerous instruments and institutions to enforce EU rules beyond the national enforcement mechanisms, which is not the case with the Roma Decade. For example, the Race Equality Directive creates a legally binding mandate on Member States to enact and enforce anti-discrimination law. Moreover, enlargement countries are expected to align their laws with the RED as a condition of membership, and most have taken steps to do so.

The Roma Decade inspired the EU Framework, which incorporated many features of the Decade into the EU legal and bureaucratic structure. Does the Decade now offer anything above and beyond the EU Framework? Is there unnecessary duplication in the two processes?

For the past year, the Roma Decade partners have been addressing these questions in considering whether or not to extend the Decade beyond 2015. A multi-stakeholder working group has engaged in extensive consultations at national and international level with all the relevant Roma inclusion actors to inform this decision. This process led to the conclusion that the Roma Decade should continue, in close harmony with the EU Framework, in order to streamline efforts on Roma inclusion/integration. As a result, a new Declaration on the Roma Decade has been formulated and is in the process of being adopted by the participating governments.

The first, and probably the most important area where the EU Framework can learn from the Roma Decade is

the experience gained within the work on Roma inclusion. Throughout the years Roma Decade partners have been working on Roma inclusion, trying various approaches, failing and succeeding and learning along the way. They have worked out meaningful ways to support Roma inclusion. Significant results have been achieved in the area of education, where, with the Roma Education Fund's financial, technical, coordinating and policy support, a number of programmes have been developed and implemented, including pre-school inclusion, drop-out prevention, scholarship support for secondary school and university students, and programs for Roma assistants, mediators and mentors in all levels of education, etc. There are similar success stories in the other priority areas as well, such as the Roma health mediators programme, an integral approach to housing, or organising secondary goods collectors to secure their labour rights. Roma Decade partners are unequivocal that the work on those successful practices should continue; that they should be institutionalised hopefully with the support provided through the EU Framework and EU funds. Potentially successful practices building on the knowledge gained throughout the years should continue to be identified and piloted by the Roma inclusion partners as was the practice within the Decade.

In the future, the Decade might focus on specific objectives within the priority areas that have the best potential to feed into the EU Framework objectives. For example, since the EU sets as an objective in the area of education completion by all Romani children of primary education, the Roma Decade might consider focusing attention on early childhood education, pre-school education or prevention of early school leaving through thematic workshops and other activities that would significantly contribute to the EU Framework objective. Or in the area of health, where the EU Framework focuses on access to healthcare, the Roma Decade might focus on community-based healthcare and methods to increase the number of Roma health workers, including Roma mediators.

In this context it is important to highlight the role that the Roma Education Fund has played in advancing Roma inclusion in the area of education. As a private foundation operating relatively independently of bureaucratic and political constraints, REF has proven to be extremely beneficial, supporting the development and implementation of innovative programmes. It would be valuable to replicate this institution for other priority areas, subject of course to the availability of funds.

One successful element of the Roma Decade difficult to replicate in the EU Framework is the meaningful involvement of Roma in the whole policy cycle of Roma inclusion on local national and international levels. Roma participation has been supported within the Roma Decade through funding provided by the Open Society Foundations, and the active engagement of the Secretariat in capacity building, coordination and networking, facilitation of dialogue between Roma civil society and decision-makers and contribution to information sharing. Beyond the well-established practice of participation of Roma in all Decade-related events at international level, as well as planning, implementing and monitoring Roma inclusion policies and measures at national and local level, the most recent initiatives of Roma civil society monitoring and Roma Decade Focal Points² are themselves highly beneficial to Roma participation and to the improvement of Roma inclusion policy. At the same time, the EU Framework offers the EU Roma Platform where Roma representatives have some opportunity to contribute to the Roma integration discourse. However, this mechanism offers only limited opportunities for civil-society-government dialogue on policy development and implementation. The Roma Decade offers a more robust platform for the exchange of information, good practices and policy development, compared to the EU Framework and its Platform, which is limited in its frequency and possibilities for deeper discussions. The Decade of Roma Inclusion has established a practice of focused thematic discussions in areas such as: funding, monitoring and reporting, hate speech, anti-discrimination legislation, civil registration, and ending educational segregation, to name but a few. It engages a wide range of Roma inclusion/integration actors, including governmental experts and directly involved public officials, as well as Roma and non-Roma civil society and international organisations. Of course, there is a long list of specific issues that would benefit from focused discussions and exchange in the future.

Another very important point frequently highlighted as a feature of the Roma Decade that can contribute and should be related to the EU Framework is the involvement of non-EU countries in Roma inclusion/integration processes within the EU. The Roma Decade accepts on an equal footing EU member states and enlargement countries and has cooperated with the EU enlargement structures of the European Commission in an effort to bring

enlargement countries closer to the EU Framework. Moreover, the European Commission has clearly recognised the capacity of the Decade in this respect and would like to see it continue to work actively with enlargement countries, as DG Justice deals largely with member states, and the Directorate-General for Enlargement addresses many issues apart from Roma inclusion/integration. The Decade is able to bring to the table all the relevant countries for Roma inclusion/integration, including EU Member States, EU enlargement and neighbouring countries, and all relevant players, including government, civil society and international organisations.

The funding of Roma inclusion/integration efforts is an additional aspect that is relevant for both the EU Framework and the Roma Decade. The Roma Decade has limited dedicated funding opportunities – there is only the Decade Trust Fund to which participating governments and the Open Society Foundations have contributed a relatively small amount of funding to organise thematic events within the Roma Decade. Funding of the implementation of Roma inclusion/integration policies at national level is the responsibility of the participating governments. EU funds (structural funds and Instrument for pre-Accession Assistance) are available to support implementation of Decade Action Plans and EU National Roma Integration Strategies, should governments decide to make use of those funds. There is no earmarked funding for the implementation of the NRIS. Some argue that there is a lack of funding opportunities; others criticise insufficient capacities within implementing agencies to absorb available funding, or overly burdensome conditions for absorbing such funding. Most would agree that too little available funding is being used effectively to address the priorities of the Decade and the EU Framework. Therefore, funding of the implementation of the Roma inclusion policies is a challenge from many aspects.

The Roma Education Fund and the Making the Most of EU funds for Roma (MtM) Programme, each inspired by the Decade of Roma Inclusion, offer useful lessons about efficient and effective funding of Roma inclusion/integration. The experience of the Roma Education Fund shows that having a dedicated fund managed relatively independently and free from political constraints can help ensure that donor funds achieve real impact. The MtM uses capacity building and provision of technical support to governments

2 More information about the Roma civil society monitoring and Decade Focal Points can be found on the Roma Decade website, available at: www.romadecade.org.

and civil society to help the absorption of EU funds for Roma inclusion/integration. The Roma Decade and the EU Framework need to work closely to develop similar strategies aiming at tackling the challenges to the funding of the implementation of Roma inclusion.

If the Decade is to continue to coexist with the EU framework, the two initiatives need to minimise duplication of requirements and efforts. There is no need to have Decade Action Plans alongside National Roma Integration Strategies: all states, whether EU member states or not, should be encouraged to develop National Roma Integration Strategies consistent with the EU Framework (which would also be consistent with the Decade approach). All states, whether EU member states or not, should have a single government contact point to interact with the EU and the Decade bureaucracies on Roma issues, and hopefully, to coordinate at the national level Roma inclusion/integration efforts across national government structures. All states should also report regularly on the implementation of Roma inclusion/integration using a common reporting template that can be accepted by the EU and Decade. Similarly, civil society organisations reporting independently on inclusion/integration should follow the same template. Harmonisation should not be limited to the Decade and EU framework, but should also be extended to all international initiatives for Roma inclusion, including those of the Council of Europe and the Organisation for Security and Co-operation in Europe. Harmonisation should also include eliminating meetings and conferences

on the subject of Roma inclusion/integration, to the greatest extent possible. The Decade Secretariat, the European Commission, Council of Europe, OSCE, World Bank and interested UN agencies should make an effort to create a joint two-year schedule of meetings and conferences, and to collaborate on their organisation whenever possible.

The EU Framework has raised efforts for the inclusion of Roma to a higher level, but has not reduced the need to continue and advance the Roma Decade. Rather, a strong need for close cooperation between the two initiatives has been identified in order to lift up the existing experiences and practices of the Roma Decade and to make the best use of the facilities provided by the EU Framework. The main issues to be addressed within the streamlining efforts between the two initiatives are the needs to replicate the best practices of the Roma Decade in the priority areas, to amplify already established practices under the Decade of Roma participation in the policy dialogue, to use the experience and information-sharing pioneered by the Roma Decade, to use the coverage of the Roma Decade outside the EU, to work together in addressing the challenges and improving the situation with regard to the funding of the implementation of Roma inclusion/integration policies and to harmonise structural processes and requirements in order to avoid duplication and facilitate participation by governments. The Decade Secretariat and the European Commission are actively engaged in efforts to address the challenges that have been identified and to achieve fruitful cooperation beneficial for both sides, for the Roma inclusion/integration partners, and above all for the Roma.

Roma Women's Voices and Silences on Unjust Power Regimes¹

ENIKO VINCZE²

Introduction: paper overview

My paper aims to offer a general idea of how “Roma women” were constructed as political subject by political and policy discourses in the context of the European Union, with special reference to the example of Romania.³ In terms of empirical material, the analysis is based on my research conducted on Roma women's access to reproductive health rights interpreted as a phenomenon of social exclusion,⁴ as an issue shaped by politically and ideologically driven policies⁵ and as a matter of everyday negotiations between “culture” and “rights” or of the social life of rights in the context of particular power regimes.⁶ But it also relies on my recent investigations about Roma marginalisation,⁷ and moreover on experiences gained from activist work.

The paper observes that during two decades after 1990, the political and policy discourses predominantly framed “Roma women” in the dichotomy of gender *versus* culture. As a response to the mainstream/male-stream ethno-cultural Roma politics they were (self)conceived as women entitled to universal (women's) human rights struggling,

through their gendered positions, against the anti-Roma racism of the majority population and for a dignifying Roma identity. More recently, in the context of the current broader trends of EU policies regarding Roma, one may observe that the “nation-builder” Roma politics is shadowed by a social agenda informed by inclusion policy. But the latter is not addressing class relations and the multiple dispossession of Roma (instead, it treats social exclusion with an approach that places poor Roma in between individual failures and vulnerable groups), and treats “Roma women” (and Roma altogether) as a potential labour force useful for the market economy. Parallel with this, nowadays one may observe a process sustained both by the state and institutionalised civil society, which de-politicises poverty, pretending that the huge social problems encountered by a big part of the population are a kind of accident or are the outcomes of individual failures of adapting to the market economy and might be best handled with a project-based approach. Despite these trends, there are signs in the Romanian public sphere that show the political potential of Roma women. The paper talks about this in the context of the relationship between Roma and non-Roma feminists,

- 1 Paper presented at the 20th International Conference of Europeanists organized by the Council for European Studies, Amsterdam, 25-27 June 2013: *Crises and contingency: states of (in)stability* Panel: *Romani activism, challenged democracies, contentious politics*.
- 2 Eniko Vincze is professor of socio-cultural anthropology and feminism at Babes-Bolyai University, Cluj, Romania. She conducted research, published and has been involved into activism on Romani women, as well as on schooling, labour and housing in terms of policies and everyday experiences related to marginalized (Roma) communities. Currently she is coordinating the research *Spatialisation and racialisation of Social Exclusion* (www.sparex-ro.eu), supported by a grant of the Romanian National Authority for Scientific Research, CNCS – UEFISCDI, project number PN-II-ID-PCE-2011-3-0354.
- 3 A descriptive overview on Roma women's activism responding to human rights violations is offered by Issue number 4 of the *Roma Rights* quarterly published by the European Roma Rights Centre in 2006, entitled *Romani Women's Rights Movement*, that, among others, presents snapshots on the issue from 16 countries. In the same year, two researchers from Romania published their results about the status of Romani women in Romania (Surdu and Surdu, 2006). A few years earlier OSCE reported on Roma women's access to public healthcare.
- 4 Magyari-Vincze, *Social Exclusion at the Crossroads of Gender, Ethnicity and Class. A View through Romani Women's Reproductive Health*, (Cluj-Napoca: EFES, 2006).
- 5 Magyari-Vincze, “Public Policies as Vehicles of Social Exclusion: the Case of Romani Women's Access to Reproductive Health in Romania”, in *Gender Politics in Post-Communist Eurasia* (Michigan State University Press, 2009) 87-119.
- 6 Vincze, Enikő “Culture, rights and moral entitlement”, in Nevi Sara Kali *Roma Women's Journal*, Issue nr. 2, (2010) 9-29.
- 7 *Spatialization and racialization of exclusion. The social and cultural formation of 'Gypsy ghettos' in Romania in a European context* (2011-2014), supported by the programme IDEI of the Romanian National Research Plan, available at: www.sparex-ro.eu; *Faces and Causes of Marginalisation of the Roma in Local Settings: Hungary – Romania – Serbia*, a joint initiative of the United Nations Development Programme Bratislava Regional Center, the Roma Initiatives Office and the Making the Most of EU Funds for Roma programme of the Open Society Foundations, and the Central European University/Center for Policy Studies, research carried out by the Research Centre for Economic and Regional Studies, Hungarian Academy of Sciences, Desiré Foundation from Cluj, Romania, and Belgrade University, Serbia (October 2012 - June 2014), available at: http://www.desire-ro.eu/?attachment_id=531.

and both of the need to fill in the class gap in women's movement and to build connections between structural and political intersectionality.

In a first step the paper describes how both the ethno-cultural and socio-economic paradigm of European Roma politics, for different reasons, practiced a gender-neutrality, which actually functioned as gender blindness. In front of this, female activists voicing Roma women's experiences had and have to fight with a major challenge: turning taboo or silenced issues into respected and relevant topics of the Roma movement.

In its second chapter, the paper recalls the first moments of Roma women's representation and participation on the European policy agenda, observing the major ideas around which they were articulated, as well as the beginnings of health mediation created in Romania. The latter empowered Roma women from local communities to increase the access of their disadvantaged fellows to public healthcare. The third chapter of the paper notices how the current European framework for Roma policies is framing Roma women's issues in the language of economic arguments for Roma inclusion. In addition, it highlights the proposals of some female activists from Romania by which they intended to participate on the revision of the National Roma Inclusion Strategy.

Last, but not least, in the fourth chapter I am going to scrutinise some of the particularities of how Roma women are affected by advanced marginality or by living in multiply deprived territories, observing that this issue is neglected by current politics and policy measures.

In the fifth chapter, by making use of some ideas developed in the Roma participation literature, and in feminist intersectionality theories, the paper formulates a diagnosis about the causes and manifestations of the current de-politicisation of socio-economic aspects of Roma marginalisation.

Finally, in its conclusions, my analysis presents an argument on the (potential) transformation of Roma women (activists) into political actors and on the need for re-politicising poverty intersected with other (gendered and racialised) forms of marginalisation. In this matter, my analytical frame is also based on the approaches within anthropology of policy, according to which policies are not neutral instruments for solving problems, but are forms of power that "organise society

and structure the ways people perceive themselves and their opportunities" and are having a contribution "to empower some people and silence others".⁸ In this sense one should identify and challenge – both in research and social activism – the political convictions underlying particular policies that address marginalised Roma (women) or the absence of other policies rooted in specific views about the causes and remedies of (intersectional) marginalisation. By this, ultimately he/she might contribute to a Roma politics addressing how – while shaping and sustaining each other – classism, racism and sexism create and maintain socio-economic and cultural systems that dispossess poor Roma of opportunity structures to control their means of living, bodies or representation.

Gender-neutral or gender-blind Roma politics in Europe

The post-communist history of Romani politics is marked, among other ways, by a division between the ethno-cultural and the social paradigm defined and used by different individuals and groups at local, national and European level. Nowadays this division is becoming more and more tensioned, as followers of ethno-culturalism are blaming socio-economically oriented activists for the failures of social inclusion policies. They assert that despite the measures taken in the past twenty years under the heading of inclusion, today the majority of ethnic Roma continue to live in poverty and the majority population is more and more ready to blame Roma for undeservingly receiving too much "social assistance". Ethno-culturally oriented elites insist that instead of victimising discourse and practice demanding redistribution, and of claims for universal human rights, one should better focus on cultural recognition, assuming accountability for one's own destiny, and acquiring respect and dignity.

It is known that at least since the 1970s ethnic politics has informed the efforts of Roma nation-building, which – in the absence of an "own nation-state" – aimed at creating a sense of ethnic solidarity and pride based on Romani language and on the set of traditions framed under Romanipen, while demanding the recognition of cultural and linguistic rights. On the other hand, envisaged under the umbrella of social Europe and of claiming socio-economic rights, the socially oriented politics focused people's attention on exclusion, marginalisation and poverty. Ethnic discrimination and racism were

8 Shore, Cris and Write, Susan (Eds.), *Anthropology of Policy: Critical Perspectives on Governance and Power* (New York: Routledge, 1997).

more or less emphasised by both types of politics; however – depending on the political ideologies in which they got framed – they were stressed to different degrees.

For quite a long time, gender awareness did not characterise Roma politics in any of its forms. In the context of ethno-cultural paradigms Romani were conceived as naturally bearing the role of reproducing and nurturing the ‘nation’ (*neam, națiune*) both in a biological and cultural sense, but were not recognised as political subjects. The socio-economic paradigm was no better either in terms of addressing Roma women’s status in the community or in broader society: their particular needs and interests and experiences were shadowed by the seemingly gender-neutral effects of poverty and social exclusion on Roma communities. One may say that for a long period of time, Roma women’s public voices were silenced under the shade of “Culture”/identity politics or “Society”/social inclusion policies, blind towards internal divisions and towards gendered and racialised class hierarchies between Roma and non-Roma.

Ironically, for example in Romania, Roma women’s status within their own communities was addressed first by the (otherwise patriarchal) mainstream public discourse in a false feminist tone, which was seemingly deeply concerned about their subordination to community norms regarding early marriage and childbirth. **This was and remains a challenge that nowadays Roma feminists are faced with: protecting women’s and children’s rights within their own communities while deconstructing the way in which such mainstream positions are reproducing convictions according to which Roma are an inferior race performing pre-modern/primitive practices of life.**⁹

The appearance of Romani women around the European policy-making table

The Europeanisation trend towards Roma started at the beginning of the 1990s. The concept of Roma/Gypsy as

a “European” issue was formally acknowledged in 1993, when a Resolution of the Council of Europe declared Gypsies to be “a true European minority”, as far as they were identified in almost every European country, totaling a population of 7 to 9 million, or even 12 million according to other estimations. Later during the 1990s “the Roma problem” was about being associated with East European countries, amongst them, most importantly, with Romania whose accession to the European Union was conditioned, among other ways, by “finding a solution to this issue”.

The rights based Roma discourse started to explore the gender dimension of racial discrimination and Romani women’s situation at the end of the 1990s, when the Specialist Group on Roma/Gypsies of the Council of Europe decided at its 7th meeting in Strasbourg (29-30 March 1999) to request a consultant to prepare an introductory report on *The Situation of Roma/Gypsy Women in Europe*. The report framed the problem in terms of **how Romni are experiencing the conflicts between traditional culture and modern society, and between acting for cultural rights on behalf of their groups and women’s rights as universal human rights**. Around this time, the Network Women Programme of the Open Society Institute started to also show interest towards Roma women and launched the Roma Women’s Initiative programme. As a result, some young women activists ended up working within international women’s agencies, others were getting positions within international women’s networks while keeping their local institutional affiliations, and yet others entered into national Roma organisations while also being involved in gender-related programmes or even separate NGOs dealing with women-specific issues.¹⁰

Altogether, one may conclude that during those times **Roma women’s voice in the public sphere was mediated by international or European organisations supporting the creation of different forms of Roma women’s representation**. Out of these, in Romania the **institution of health mediation** (initiated as early as 1993) proved to be the most

9 Bițu, Nicoleta and Morteau, Crina, *The Case of Early Marriages within Roma Communities in Romania: Are the Rights of the Child Negotiable?* (Bucharest: Romani CRISS, 2010).

10 Fragments from the **Roundtable discussion: Romani women and civic activism** critically reveal past moments of women’s organizing, but also plans for the future (see: <http://www.youtube.com/watch?v=rX-lInSAL4I>). The event took place at the conference *Roma women for equal opportunities* organized in Timisoara, Romania, between 30 June – 2 July 2011 within the project *Equality through difference. Roma women’s access to the labor market*, with the participation of Letiția Mark (AFT, Timișoara); Crina Morteau (ERSTE Foundation, Bucharest); Carmen Gheorghe (E-Romni, Bucharest); Rosemary Kostic Cisneros and Montserrat Sanchez Aroca (Drom Kotar Mestipen, Barcelona); Teodora Krumova (Center Amalipe, Veliko Turnovo, Bulgaria); Sebihana Skenderovska (National Roma Centrum, Kumanovo, Republic of Macedonia); Violetta Zentai (CEU CPS Budapest Hungary) and others.

successful one at grassroots level.¹¹ This was due to the fact that it simultaneously aimed to improve the access of marginalised Roma to public healthcare and targeted Romani women's empowerment. The Roma health mediator, conceived as a public position for women, was trying to put into practice the ideal of **balancing between mothering as a traditional role highly respected within Romani communities and taking care of the relationship between Roma groups/families and larger local communities which they belonged to**. At the same time health mediators were supposed to tackle one of the most sensitive issues of an ethnic minority faced with racial discrimination. They had to figure out **how Romni might make use of their reproductive rights without becoming victims of racist fertility control and without being blamed by their own families/communities for not fulfilling the sacred duties they were supposed to have in terms of childbirth**.

Forms of gender awareness in current Roma inclusion policies

The shift from defining Roma as a “trans-national European minority” to conceiving them as a “European social problem” was happening at the turn of the century, and it was consecrated for good with the launch, in 2011, of the European framework for Roma inclusion strategies. The latter had a great role in situating issues of Roma poverty and social exclusion in between the responsibilities of the European Union and the Member States, and it aimed at raising the awareness of all stakeholders about the gaps between Roma and the non-Roma population in all domains of life. Despite these achievements, this framework strategy pushed the realities of human rights violations, ethnic discrimination and racism to the background of Roma policies, and left no room for recognition politics or for addressing the relationship between this and social inclusion policies. It defined arguments for Roma inclusion in terms of the economic benefits that this might bring to European societies as a whole, stating that:

“Addressing the situation of Roma in terms of employment, poverty and education will contribute to progress towards Europe 2020 employment, social inclusion and education targets.”¹²

This strategy makes some explicit references to **Roma women**, but within the same discursive frame. They **are mentioned in the context of the reduced employment and the increased school abandonment rates among Roma, and also in the context of problematic access to quality health care, but the promotion of gender equality is not conceptualised here in terms of women's rights or social justice and multiple discrimination is not addressed either**.

As far as the Romanian National Strategy for the Social Inclusion of Roma is concerned, it considered the “gender dimension” of the addressed problems not under the targeted four sectorial chapters, but amongst the ten basic principles assumed by this policy document. Under the “principle of equal opportunities and gender awareness”, the Strategy declares:

“the Government Strategy for Roma minority inclusion envisages the central role of women who play an important role within their families and minority, also by increasing their level of education and qualification, as well as their employment rate, by involving them in the education of children and other activities that ensure the increase of welfare level of families, family cohesion and the development of future generations.”¹³

Approached in May 2012 by the European Commission to revise its strategy of a document that did not make references to Roma women or to the gender dimension of Roma marginalisation, the Romanian government, through its National Agency for Roma, collected some proposals for revision from civil society organisations by the end of May 2013. The proposals coming from women's groups focused on **violence against women** and **health** issues. Regarding the latter, proposals highlighted **the dramatic situation of Roma women in terms of life expectancy** (at the 60 years of age, it is 13 years lower than the life expectancy of non-Roma women, and it is one year lower than the life expectancy of Roma men), or in terms of **maternal mortality rate** (0.62% in case of Roma, compared to 0.04% in case of majority women). Besides their causes entrenched in community

11 Evaluations of this initiative are to be found in Schaaf, (2005); Wamsiedel, Vincze and Ionescu (2012).

12 European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, 4.

13 *Strategy of the Government of Romania for the Inclusion of the Romanian Citizens belonging to Roma Minority, for the period 2012 – 2020*, available at: http://ec.europa.eu/justice/discrimination/files/roma_romania_strategy_en.pdf.

norms regarding gender relations and women's body and sexuality, these problems are rooted in the structural disadvantages that Roma women are faced with, such as the lack of health insurance and the discriminatory practices of healthcare providers. Connected to violence, activists mentioned that the phenomenon of **violence against Roma women is still invisible in Romania**. However, some small-scale qualitative research and informal observations made at grassroots level during activist work offered us alarming hints about how **Roma women, under conditions of poverty and marginalisation, become victims of trafficking, prostitution and physical violence**. Consequently, they proposed the elaboration of a system of identifying such cases, offering special assistance to victims, running educational programmes and campaigns, and most importantly **introducing an intersectional approach towards policies preventing and eliminating violence against women**.

Lack of adequate policy responses to problems of marginalised Roma (women)

The current economic crisis and the ways in which the Romanian state continues to impose austerity measures for "solving" it, reinforce both social inequalities resulting from post-communist economic restructuring and current neoliberal regimes, and manifestations of racism and populism directed against impoverished Roma.

If one looks to the map of Romania, he/she may observe that many compact Roma communities live in rural areas where economic activity is reduced to subsistence economy; or in small towns where work disappeared due to the collapse of industries on which, before 1990, their urbanisation was based; or in poor neighbourhoods of big cities that are usually located in polluted environments, and socially isolated and culturally stigmatised urban areas. The formation of such vicinities is the result of manifold mechanisms, including policies of local development that create spatial divisions

within the localities trying to exclude and to make invisible their unwanted and scapegoated elements, such as impoverished Roma. The inhabitants of such spaces are affected by multiple (including housing) deprivations, have access only to precarious informal labour or to underpaid jobs in the formal economy, have low expectancies and reduced financial possibilities regarding school participation, and, generally speaking, are endangered by various insecurities (from the lack of identity and property documents, through to the lack of health insurance, to the difficulties of survival from one day to another).¹⁴ In addition to this, they are blamed for being poor, or for being socially assisted in an undeserving manner, and most importantly, for being the inferior race which likes living under such conditions and which should be separated from the majority population in schools, jobs, and residential areas. **Roma women are pushed to the margins by the whole socio-economic system as members of their dispossessed class and under these conditions of severe poverty are making tremendous efforts to fulfil the household and motherhood-related duties allocated to them by a domestic patriarchal regime. These private and public socio-economic orders eventually exhaust their bodies and endanger their lives (as statistics on Roma women's life expectancy shows). Simultaneously, their sexuality is expropriated from two directions: on the one side they are viewed as bearing the obligation for the biological reproduction of their own ethnic group, and on the other hand they become targets of racist fertility control and undignifying discourses according to which they give birth to children with less value than majority mother's children (as practices of sterilisation or discourses on Roma and non-Roma fertility demonstrate).**

Furthermore, if advanced marginality¹⁵ characterised by the multitude of dispossessions mentioned above happens in a socially and spatially segregated and ghettoised area that makes impossible the access of inhabitants to any form of social and legal protection, in time it might produce internal mechanisms of exploitation.¹⁶ Those people who, under

14 Causes and aspects of the spatialisation and racialisation of Roma exclusion are revealed by my recent investigations based on fieldwork conducted in five big cities (available at: www.sparex-ro.eu), and in 5 small cities and 20 villages (available at: <http://www.desire-ro.eu/?cat=6>) in Romania.

15 I am using this term after Waquant (2008), describing the new form of social exclusion and expulsion in neoliberal regimes, which does not stem from economic crises or underdevelopment, but is rather the result of economic restructuring and its unequal economic effects on the lowest fraction of workers and subordinated ethnic categories. The specific advanced urban marginality that emerges in full-blown and global neoliberal economic and politic context has to be distinguished from former forms of urban poverty, which has been a characteristic feature of earlier stages of capitalism and, we may add, of late socialism in Romania.

16 In this context, the European Roma Rights Center documented in a few countries the sensitive issue of trafficking in Romani Communities (ERRC 2011).

these conditions, have access to any source of “welfare” (such as electricity, or running water, or relations with authorities, or connections with humanitarian aid-distributors) might dominate the most vulnerable individuals of the group by creating circles of redistributive dependency between themselves and the latter. Exploitation happening in such encapsulated spaces reproduced in time takes different forms: financial (as it is in the case of usury); material (as in the case of selling the scarce goods to those in need on a higher price than they actually cost); sexual (as is the case with women’s forced prostitution); human (as in the case of children sent for begging); economic (as is the case with forced labour). **These are instances when the disempowerment of marginalised women is multiplied and (re)produced by the interaction between several forms of subordination.** And this is the state of affairs, which would necessitate complex intersectional interventions sustained during long periods of time, including the empowerment of rights-holders, territorial desegregation, the assurance of adequate and affordable housing, creation of job opportunities, or briefly put, a complex human, social and infrastructural development programme with the special assistance of the most vulnerable.

But unfortunately **the Romanian state was not willing and/or capable to elaborate and implement intersectional policies which could have acted on severe cases of social inequality and marginalisation produced at the juncture of class oppression, patriarchy and racism as intersecting forms of social and cultural domination.** Eventually it is to be observed that during times when public policies are focusing on cutting welfare budgets, and when the state is preoccupied with justifying why it should support the ‘free market’ and the privatisation of all spheres of life, and why it should stop being a force of development and welfare, it is more than idealistic to believe that it will act in such a role with regards to Roma inclusion policies.

The ongoing de-politicisation of socio-economic (Roma) issues

Instead of fulfilling its social role, particularly during the past five years the Romanian state has tried to transpose

its inclusion and human rights related accountabilities to civil society organisations. It pretended that the huge social problems that a big part of the population is faced with are a kind of accident or are the outcomes of individual failures of adapting to the market economy and might be best handled with a project-based approach. Moreover, it contributed to the de-politicisation of Roma marginalisation and anti-Roma racism, and transformed these issues into seemingly politically neutral policy matters. Many scholars observe that this is a more general trend characterising the field of European Roma politics and policies. Van Baar, for example, states that nowadays “primary political problems tend to be removed from the domain of political discourse and reformulated in the ‘objective’ and ‘neutral’ language of expertise, policy-making and science”.¹⁷

In their turn, mainly since the European structural funds became available in this country, the Romanian Roma organisations seemed to be ready to transform themselves into service providers and to compete with each other on the market of European-funded projects. But obviously, these organisations could not solve the structural problems faced by marginalised Roma communities, such as socio-spatial segregation, lack of adequate and affordable housing, lack of decent jobs that might assure stepping out of poverty, or eliminating institutional obstacles of participation in societal life and the underlying anti-Gypsy racism. Instead they are at risk of being transformed into bureaucratic machineries reporting target group indicators and sustaining themselves financially, among others trying to survive the shortcomings resulting from the inadequate national management of the EU-funds-related operational programmes. Enforced by the types of project calls, NGOs were offering a series of vocational courses under the conditions of a labor market that does not demand labor force, they started running social economy programmes in the absence of a law for social economy, or they focused on facilitating school participation of individual children without having control on the institutional mechanisms causing school abandonment and mistrust in the educational system. Eventually, these civil society organisations lost their credibility in front of Roma communities that they were supposed serving, while the creation of new grassroots organisations became almost impossible. **The NGOisation of the Roma movement¹⁸ and the financialisation of**

17 van Baar, Huub, *The European Roma. Minority Representation, Memory, and the Limits of Transnational Governmentality*, (Amsterdam: 2011) 13.

18 Rostas, Iulius “The Romani Movement in Romania: Institutionalization and (De)mobilization”, In *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization and the Neoliberal Order*, eds Nador Sigona and Nidhi Treghan. (New York: Palgrave Macmillan, 2009) 159-185; Sigona, Nando and Nidhi Trehan (Eds.) *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization and the Neoliberal Order*, (New York: Palgrave Macmillan, 2009).

these NGOs structurally greatly reduced the potential of institutionalised civil society to sustain solidarity, and through it, to put political pressure on the state in terms of respecting human rights (including socio-economic rights) through appropriate development programmes, or pressure the state to act responsibly before (Roma) marginalisation becoming a mass phenomenon.

Under these conditions, one may expect that the structurally induced marginalisation of Roma will continue intersecting with the production of new narratives of belonging and redefining the boundaries of the 'nation' by the political elites.¹⁹ Consequently, **Roma women will not only continue to suffer the effects of economic marginalisation and be placed in the category of undeserving citizens alongside with Roma men, but – due to their reproductive and maternal roles – they will be perceived and controlled more and more strongly as symbols of ethno-cultural boundaries and embodiments of racialised differences.** Despite their particular experiences of oppression, though experiencing intersectional discrimination for example due to deportations/repatriations from West European countries and/or due to forced evictions happening within Romanian localities, Romani women usually perceive or voice their problems in more ethnic and social, and less in gender terms. Furthermore, Roma women, at local level, seem ready to join activism organised around ethno-social matters, and do not really expect solidarity from mainstream women's organisations. On the other hand the latter, for example while addressing the issue of violence against women, define violence in the framework of reducing differences between women and men to sexual difference, and are not concerned with the particular effects on Roma women of the violence suffered by them as members of communities stigmatised due to their ethnic background or with them becoming victims of violent physical attacks or of racist hate speech.²⁰ Moreover, forms of violence endured by Roma women within their own communities (among them domestic violence and trafficking) are considered by them as "natural" elements of their life, or as events around which they should remain silent for several reasons. Under these circumstances, **Roma women's voices on unjust power**

regimes with many faces have reduced chances to be heard and eventually to be transformed into political factors of policy-making and social change. But even if they are not visible/hearable for a large public and they do not address the structural issues of the ethno-culturally or socially oriented politics, **this does not mean that they do not act as powerful women solving "small issues" of everyday life (from childcare under precarious conditions, through providing income for the family, to emotionally managing situations of forced evictions).**

Conclusions: the political potential of Roma women's activism

Parallel with phenomena highlighted above, it is also to be observed that while the socio-economic aspects of Roma marginalisation are more and more de-politicised (transformed, at best, into public policy issues without addressing the major systemic causes of mass impoverishment and marginalisation), **there are signs in Romanian public life that Roma women activists – while building solidarity with non-Roma women and/or with anti-racist actions – are becoming more and more political. This politicisation seems to be happening exactly around their experiences as women, but it has the potential to evolve towards reframing 'Roma women' as political subjects in an intersectional way.** On the other hand, matters embraced by a current radical non-Roma feminist agenda (violence against women, rape, maternity, birth, or women's sexuality) framed by the principle of "the personal is political" are becoming more and more inclusive towards Roma women's experiences.

Hopefully, due to their knowledge and sensibility towards Roma socio-economic marginalisation, Roma feminists have the potential to centre attention on social inequalities and by this to enrich the radical non-Roma feminist agenda focusing in its turn on 'femininity'. After that point, or simultaneously, **Roma feminists might become important participants of re-politicising poverty, social inequality and marginalisation, including the re-politicisation of understanding racism as a cultural system justifying and maintaining the social divisions of**

19 Sigona, Nando and Nidhi Trehan (Eds.) *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization and the Neoliberal Order*, (New York: Palgrave Macmillan, 2009).

20 I could observe this discrepancy in the way in which at the 2012 Human Dimension Implementation Meeting of OSCE-ODIHR (Warsaw, 24 September – 5 October 2012) the discussions within a working session dedicated to Roma/Sinti women ran in parallel with those of the working session on the equality of opportunity between women and men, and on preventing violence against women.

classes. By doing this, they might also fill the class-gap identified in the European anti-discrimination policies by several scholars: “social class is the most prominent example of a social category that is strongly connected to inequalities, yet not currently included in the European equality agenda”,²¹ “intersectionality in the case of Romani women is most often conceptualised in terms of gender and race/ethnicity. ... [but] poverty and social exclusion intensify the level of discrimination experienced by Romani women. [That is why] while class may or may not be a ground for discrimination in legal terms, it is important to understand how it interrelates with other facets of social identity and thus, its role in intersectional discrimination”²²

Starting from the view according to which “social divisions have organisational, intersubjective, experiential and representational forms”²³ my paper demonstrated that Roma women’s experiences of social divisions and intersecting disadvantages are perceived by themselves in a situated manner: sometimes, in some situations or in the context of some relationships they express their needs in terms of gender, other times they mostly emphasise their socio-economic status, but sometimes they make explicit the fact that they are having particular, feminine ways of dealing with poverty or particular problems of women arising from their social marginality and from their confrontation with racism. This proves that social divisions are not reducible to each other. Despite this, because categories of race, class and gender are intertwined and mutually constitutive,

we have to give centrality to questions like how race is ‘gendered’ and how gender is ‘racialised’, and how both are linked to the continuities and transformations of social class, but all these need to be addressed “in particular locations and contexts”.²⁴

As far as the political intersectionality assumed by Roma women feminist is concerned, that should address sexism, racism and class exploitation, but also homophobia by acknowledging the realities of structural intersectionality (the distinction between political and structural intersectionality belongs to Crenshaw).²⁵ Moreover, as a conclusion, I could add that **institutionalised forms of Roma women’s representation (that are more or less assuming intersectional politics or policies) have the chance to resonate with the experiential or structural forms of intersectionality if – while formulating political and policy demands – they are able to assure the participation of multiple Roma women voices in this process.** Or, differently put, if they are capable of providing Roma (women) with the power to control their means of production, reproduction and representation. But obviously, this effort in itself would not be enough for generating systemic change: for this they need alliances across gender, and across different social and ethnic groups that could generate political action enforcing national and international stakeholders to really act on behalf of the socially and economically dispossessed classes of present-day European societies.

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Fighting Discrimination and Promoting Equality in the Context of the Roma Inclusion Policies in Europe

DEZIDERIU GERGELY¹

Discrimination on the grounds of race, colour or ethnicity is outlawed by international and European law as a violation of human rights. The case-law of international human rights bodies, such as the European Court of Human Rights, outlines that States have an obligation to prevent, sanction and remedy discrimination.

The spectrum of Roma rights violations in Europe

The European Commission stated that many of the estimated 10-12 million Roma in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives, being marginalised and living in very poor socio-economic conditions.² The Council of Europe's Commissioner for Human Rights underlined that discrimination and other human rights abuses against Roma have become severe and that no European government can claim a fully successful record in protecting the human rights of the members of these minorities.³

Research and monitoring carried out by the European Roma Rights Centre shows that segregation of Romani children into separate and/or substandard education continues to be the most widespread violation with respect to the right to education. Residential segregation accompanied by hazardous living conditions for Roma and forced evictions without alternative accommodation are even more evident in many European countries. Discrimination remains one of the major barriers to health care and social assistance for Roma in many European states. In some cases, the social exclusion of Roma is exacerbated by the lack of documents that leads to denial of access to basic

rights. Racist or stigmatising anti-Roma rhetoric has been on the rise in both public and political discourse, including accusations that Roma as ethnic groups are engaged in criminal behaviour. Reports of violence targeting Roma across Europe have become more frequent in recent years, often in the context of racist speech against Roma. Violence against Roma remains a serious problem not only because it harms the Roma directly affected by the attacks, but also because Roma as an ethnic group are impacted by the lack of an effective response by State authorities. The freedom of movement of goods, services, capital and people are fundamental principles of the European Union. However, Roma have repeatedly been treated differently from non-Roma in the exercise of this freedom. Romani women and children are negatively affected by multiple forms of discrimination. Their vulnerability to discrimination on a range of grounds including ethnicity, sex and age leaves many in deep social exclusion and poverty, victims of serious human rights abuse.⁴

The obligation on states to go beyond principles and take action against discrimination

In the context of discrimination, states must fulfil the obligations laid down by international human rights law and they are liable if those legal obligations are breached. Furthermore, States not only need to comply with non-discrimination principles as such, but also need to ensure that these principles are implemented in practice. In other words, States are required to act against discrimination, on the one hand by ensuring protection against and by preventing it, and on the other hand by eliminating it and remedying it where it does occur.

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2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2011, *An EU Framework for National Roma Integration Strategies up to 2020*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0173:en:NOT>.

3 Council of Europe, Thomas Hammarberg, *Human rights of Roma and Travellers in Europe*, 2012, available at: http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf.

4 European Roma Rights Centre "New Country Profiles on Roma from ERRC", available at: <http://www.errc.org/article/new-country-profiles-on-roma-from-errc/4171>.

Therefore we can argue that fighting discrimination is basically more than the passive toleration of basic rights by the State: fighting discrimination requires a complex array of effective, targeted and measurable actions in law and practice that translate into promoting equality by preventing, punishing and remedying the infringement of rights and creating equal opportunities for those disproportionately affected by discrimination. Such complex arrays of measures can emerge through the formulation and adoption of appropriate policies. International organisations such as the UN, the OSCE, the Council of Europe and recently the European Union have called upon Member states to adopt and implement national strategies with a view to combating discrimination and ensuring equal access for Roma communities to employment, education, housing and healthcare.

It is however important to mention that while the right to non-discrimination is recognised and guaranteed by law and is therefore an entitlement; any policy will remain utterly dependent on the political will of state actors at national, regional or local level. Policy frameworks on Roma social inclusion can constitute instruments for advancing human rights but only as long as their basis is defined and implemented as such. Without addressing the root causes of the spectrum of Roma rights violations and identifying concrete, measurable and effective actions to redress discrimination and to promote equality, complementing prohibitive anti-discrimination legislation, these policies will remain elusive.

Human rights bodies and international organisations calling for rights-based policies to fight discrimination against Roma and promote equality

Several international human rights bodies have acknowledged the extent of discrimination faced by Roma communities and urged States to tackle the situation and to redress discrimination through law, policy and practice. Some of their initiatives are listed below.

5 ECRI *General Policy Recommendation N° 3: Combating racism and intolerance against Roma/ Gypsies*, (Strasbourg, 6 March 1998) available at: http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N3/Recommendation_3_en.asp#TopOfPage.

6 *Ibid.*

7 The Committee on the Elimination of Racial Discrimination, *General Recommendation XXVII on Discrimination against Roma*, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b).

ECRI General Policy Recommendation on combating racism and intolerance against Roma

In March 1998 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted its General Policy Recommendation no. 3 on combating racism and intolerance against Roma. The Recommendation was adopted in view of the Commissions' recognition that Roma suffer throughout Europe from persistent prejudices that lead to discrimination against them in many fields of life, and that such discrimination is a major factor in the process of social exclusion affecting many Roma. Roma are also victims of deeply-rooted racism, and are targeted by sometimes violent demonstrations of racism and intolerance.⁵ ECRI recommended a number of legislative measures intended to counter racism and discrimination. Secondly, ECRI targeted the justice system, outlining measures aimed to ensure legal aid for Roma; investigate and prosecute violations of rights; provide training schemes for stakeholders in the justice system as well as the police; develop confidence-building measures related to Roma and to the general population; ensure access to citizenship and free movement of Roma; and tackle multiple discrimination faced by Roma women, and the phenomenon of segregation in education. Not least, ECRI brought up a very important aspect of the issue by recommending measures for the empowerment of Roma communities and Roma civil society.⁶

CERD General Recommendation 27 on discrimination against Roma

In August 2000, the United Nation's Committee on the Elimination of Racial Discrimination (CERD) adopted its General Recommendation XXVII on discrimination against Roma.⁷ This recommendation provides for measures of a general nature as well as specific measures for protection against racial violence, measures in the field of education, living conditions, employment, health, media and measures concerning participation in public life. The general recommendation constitutes to a great extent a tool for

the development of a more comprehensive and effective framework policy by States with respect to the fundamental rights of Roma. Indeed, *the Committee recommended that States parties to the Convention⁸ should adopt and implement national strategies and programmes* and express determined political will and moral leadership, with a view to improving the situation of Roma and ensuring their protection against discrimination by State bodies, as well as by any person or organisation.⁹

The OSCE Action Plan on improving the situation of Roma and Sinti

In December 2003, the Organisation for Security and Co-operation in Europe (OSCE) Ministerial Council endorsed the Action Plan on Improving the Situation of Roma and Sinti¹⁰ within the OSCE area.¹¹ The Action Plan is a comprehensive policy document that undertakes effective measures in order to eradicate discrimination against Roma and to bring about equality. It addresses key areas and recommends action by participating States in combating racism and anti-discrimination, and ensuring equal access and opportunities for Roma and Sinti in the areas of education, employment, housing and health services, enhancing Roma participation in public life, and assisting Roma in crisis and post-crisis situations.¹²

The Chapter on combating racism and discrimination of the OSCE Action Plan includes the specific recommendation to Participating States to “*develop comprehensive national strategies or action plans to improve the situation of Roma and Sinti, which include specific measures to tackle discrimination in all fields of life*”. Inspired to a large extent by the UN CERD Recommendation 27 on discrimination against Roma, the OSCE Action plan outlines legislative measures designed to combat discrimination as well as specific measures such as ensuring that there is no impunity for perpetrators of discriminatory or violent acts by taking prompt

and effective investigative and punitive action; facilitating access to justice for Roma through legal aid; promoting awareness among law-enforcement institutions regarding the situation of Roma; developing training programmes to prevent excessive use of force and to enhance awareness of and respect for human rights; developing policies to improve relations between Roma communities and the police and to increase trust and confidence in the police among Roma; developing policies and procedures to ensure an effective police response to racially motivated violence against Roma; considering in all measures and programs multiple discrimination faced by Roma women; assessing the gap between international policing standards and existing national practices in consultation with national police forces, NGOs and representatives of Roma communities; and elaborating policy statements, codes of conduct, practical guidance manuals and training programmes. Another set of actions refer to mass media and includes information and awareness-raising campaigns to counter prejudices and negative stereotypes of Roma; and encouraging the media to show positive aspects and present a balanced portrayal of Roma life, to refrain from stereotyping Roma and Sinti people and to avoid inciting tension between different ethnic groups.

Council of Europe’s Committee of Ministers recommendation on policies for Roma

In February 2008 the Committee of Ministers of the Council of Europe adopted one of the most comprehensive recommendations regarding addressing the human rights challenges faced by Roma communities throughout Europe. The Recommendation 2008/5¹³ refers specifically to policies for Roma and/or Travellers in Europe and starts from the premise that discrimination and social exclusion can be overcome most effectively by comprehensive, coherent and proactive policies targeting both

8 The United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

9 CERD General Recommendation XXVII, 1. Measures of a General Nature, point 2.

10 OSCE, *Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, adopted by the Permanent Council in its Decision No. 566 on 27 November 2003, available at: <http://www.osce.org/odihr/17554>.

11 OSCE comprises 57 participating States that span the globe, encompassing three continents - North America, Europe and Asia.

12 OSCE, *Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, adopted by the Permanent Council in its Decision No. 566 on 27 November 2003, available at: <http://www.osce.org/odihr/17554>.

13 Council of Europe Committee of Ministers, *Recommendation (2008)5 on policies for Roma and/or Travellers in Europe*, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1253509&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Roma and the majority, which ensure integration and participation of Roma and Travellers in the societies in which they live, and respect for their identity. In line with the recommendation, Governments of member states should *adopt coherent, comprehensive and adequately resourced national and regional strategies with short-and long-term action plans, targets and indicators for implementing policies that address legal and/or social discrimination against Roma and enforce the principle of equality and monitor and publish regular evaluation reports on the state of the implementation and impact of strategies and policies to improve the situation of Roma and/or Travellers.*¹⁴ The recommendation not only refers to different type of approaches and measures but provides to member states guidance as to the necessary legislative frameworks¹⁵ and particularly the steps and processes to adopt and implement effective state policies.¹⁶

ECRI General Policy Recommendation on combating anti-Gypsyism

In June 2011, the European Commission against Racism and Intolerance (ECRI) adopted the first international document to acknowledge and combat anti-Gypsyism and discrimination against Roma. This is the ECRI General Policy Recommendation no.13.¹⁷ ECRI refers to anti-Gypsyism as a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among other things, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.¹⁸

With a view to effectively combating anti-Gypsyism, ECRI addresses the governments of member states with a set of

17 points, most of them containing concrete sub-measures. Among these points, ECRI refers to adopting a national plan as a comprehensive multidisciplinary approach to issues concerning Roma and involving them at all levels, enhancing mutual trust between Roma and public authorities and introducing measures in the field of education, employment, housing and health. ECRI also refers to measures aimed at combating racist violence and crimes against Roma, combating manifestations of anti-Gypsyism likely to come from the Police, combating anti-Gypsyism expressed in the media and combating anti-Gypsyism in access to public services.

ECRI also outlines three specific recommendations for Governments. For example, in order to better assess the problems with the aim of combating them more effectively and to adapt policies to be undertaken, ECRI recommends that Member states collect statistical data on Roma, in particular in the fields of education, employment, housing and health, while ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent. In line with the principles of the Additional Protocol to the Convention on Cybercrime, ECRI encourages Member states to set a monitoring system of expressions of anti-Gypsyism on the internet and to ensure effective prosecution. Equally important, ECRI recommends Member states to condemn all public discourse which publicly incites direct or indirect discrimination, hatred or violence against Roma.¹⁹

The European Union's Framework for National Roma Integration Strategies up to 2020

Recently it has been recognised that European institutions and EU countries have a joint responsibility to improve the social

¹⁴ *Ibid.*

¹⁵ Anti-discrimination standards, a legal duty on public authorities to promote equality and non-discrimination, racial motivation as an aggravating circumstance in prosecuting criminal offences etc.

¹⁶ For example with regard to **developing a strategy on Roma** to consider the following key aspects that are explained in detail: 1. Establishing needs; 2. Developing a coherent and co-ordinated strategy; 4. Risk management; 5. Continuous monitoring and evaluation and 6. Funding. Related to the **adoption of the strategy** to consider 1. Legislative framework and 2. Publicising the strategy and awareness raising. In terms of **Implementing the strategy to consider**: 1. Implementation mechanism; 2. Positive action; 3. Mediators or assistants; 4. Guidance of and training for performance, and effective complaints procedures are useful tools for securing institutional change and 6. Mainstreaming. In relation to **Monitoring and evaluating the implementation of the strategy** to consider 1. Monitoring guidelines; 2. Publication of monitoring reports and 3. Evaluation.

¹⁷ ECRI *General Policy Recommendation no.13 on Combating anti-Gypsyism and Discrimination against Roma*, available at: http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

inclusion and integration of Roma by using several instruments and policies for which they are responsible²⁰ and it has been equally acknowledged that in spite of some progress achieved in the Member states over the past years, little has changed in the situation of most Roma. Therefore the European Commission proposed an EU Framework for National Roma Integration Strategies which was later endorsed at political level by the EU and Member states.²¹ With this EU Framework, the Commission encouraged Member states, in proportion to the size of the Roma population living in their territories, to adopt or to develop a comprehensive approach to Roma integration, tackling the issues of access to education, employment, health care and housing.²² It is important to note that the endorsement of the Framework by EU Heads of States and Governments was an important political step towards addressing Roma inclusion²³ but it is equally important to state that further steps are necessary to ensure progress.

The EU Framework encouraged Member states to ensure that all Roma children complete at least primary school; to cut the employment gap between Roma and the rest of the population; to reduce the gap in health status between the Roma and the rest of the population and to close the gap between the proportion of Roma with access to housing and to public utilities (such as water, electricity and gas) compared to the rest of the population.²⁴

With a view to combating discrimination and adopting relevant measures, the EU Framework stated that Member states should ensure that all Roma children have access to quality education and are not subject to discrimination or segregation; that Member states should grant Roma people full access in a non-discriminatory way to vocational training, to the job market and to means of self-employment; that Member states should provide access to quality healthcare at a similar level

and under the same conditions to the Roma as to the rest of the population and that Member states should promote non-discriminatory access to housing, including social housing.²⁵

What is the missing element in the EU framework for Roma inclusion?

The basis for the European Commission making a case for a social and economic imperative to improve the situation of Roma lies in the degree of prejudice, intolerance, discrimination and social exclusion that Roma communities are faced with in Europe, complemented with marginalisation and poor socio-economic conditions.²⁶ It is from this specific starting point, as well as from the acknowledgment that virtually no progress has yet been seen, that the European Commission has uttered a clarion call to Member states to address the social exclusion of Roma.

If we consider the objectives of the EU framework it is clear that non-discriminatory access to education, non-discriminatory access to the job market, equal access to healthcare and equal access to housing are all guaranteed by national constitutions and relevant national legislation in the European Union's Member states. Discrimination on the basis of race or ethnicity in access to education, employment, healthcare and housing is prohibited at national level by anti-discrimination frameworks adopted in line with the EU Race Directive.

Thus one can argue that Roma communities in Europe are already officially protected from discrimination and it is only a matter of these communities exercising their own rights rather than of ensuring others' rights. Is this the case? Can one then argue that the EU framework has any missing elements in addressing Roma inclusion? If we

20 European Commission – Justice - Tackling discrimination, *EU and Roma; a Joint Responsibility*, available at: http://ec.europa.eu/justice/discrimination/roma/index_en.htm.

21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2011, *An EU Framework for National Roma Integration Strategies up to 2020*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0173:en:NOT>.

22 *Ibid.*

23 European Commission, *National Roma Integration Strategies: a first step in the implementation of the EU Framework*, available at: http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf.

24 *Ibid.*

25 *Ibid.*

26 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2011, *An EU Framework for National Roma Integration Strategies up to 2020*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0173:en:NOT>.

take a closer look at other international recommendations on the same topic, the encouragements to member states to tackle discrimination and the social exclusion of Roma will nevertheless point out the difference.

First of all, Member states should promote genuine dialogue, consultation or other appropriate ways to improve relations between Roma communities and the rest of the population at local level with a view to promoting tolerance and overcoming prejudice and negative stereotyping on both sides; to enhance mutual trust between Roma and central, regional and local public authorities; to develop measures that raise awareness of the challenges faced by Roma among state authorities as well as the wider public; to counter prejudice and negative stereotypes; and to encourage appropriate arrangements for communication and dialogue between the police and Roma communities and civil society with a view to preventing conflicts based on racial prejudice and combating acts of racially motivated violence.²⁷

Secondly, Member states should develop policies and procedures to ensure an effective response to racially motivated violence against Roma; to ensure the security and integrity of Roma, by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary in investigating and punishing such acts; to assess the gap between international standards on police and existing national practices in consultation with police forces, NGOs and representatives of Roma communities; and to elaborate in partnership with international organisations and Roma NGOs policy statements, codes of conduct and training programmes for law enforcement institutions and the judiciary.²⁸

Thirdly, Member states should adopt measures to eliminate hate speech and incitement to discrimination in the media, encouraging awareness among media professionals with a view to countering prejudices and negative stereotypes of Roma; to encourage the media to show positive aspects and present a balanced portrayal of Roma, refraining from stereotyping, and to avoid inciting tension between various ethnic groups. All public discourse which incites direct or indirect discrimination, hatred or violence against Roma should be condemned.²⁹

Fourthly, in areas such as employment, healthcare, housing and education Member states should design measures aimed at addressing the root causes of structural discrimination faced by Roma communities and measures aimed at eliminating and preventing such practices. To take education and housing as examples, Member states should take urgent measures to put an end to the segregation which Roma children are subjected to at school; abolish the placing of Roma children in special schools; and develop and implement comprehensive school desegregation programs and facilitate Roma children's access to mainstream education. Member states should take measures to prevent and combat stereotypes, prejudice and harassment experienced by Roma children in schools, also by making parents of non-Roma children aware of it and by training teaching staff for intercultural education; include Roma history and culture in educational texts; consider measures to promote the Romani language and its teaching; develop and implement anti-racist curricula for schools; pay special attention to providing Roma girls with equal opportunities in education; and eliminate financial and administrative obstacles to Roma children's access to education. In the area of housing, Member states should take measures that combat *de facto* or forced segregation in respect of housing and ensure that Roma are not evicted without notice and without opportunity for rehousing in decent accommodation. Member states should put in place mechanisms and institutional procedures to clarify property rights, resolve questions of ownership and regularise the legal status of Roma living in circumstances of unsettled legality and promote coexistence and mutual understanding between persons from different cultures in neighbourhoods in which Roma and non-Roma live.³⁰

When all these aspects are taken into consideration, it is hardly surprising that human rights organisations and Roma rights organisations consider that the EU Framework for Roma inclusion falls far short of fully tackling the challenges of Roma exclusion, which are intimately linked to widespread hostility and discrimination against the Roma people.³¹ The Framework recognised the need to fight discrimination against Roma and to ensure their equal access to all fundamental rights, but it failed to specify measures to combat discrimination, intimidation, anti-Gypsyism,

27 ECRI *General Policy Recommendation no. 3 and no. 13*, UN CERD *Recommendation no. 27*, OSCE *Action Plan on Roma and Sinti*.

28 *Ibid.*

29 *Ibid.*

30 *Ibid.*

31 The European Roma Policy Coalition (ERPC), *EU Framework Weak on Discrimination against Roma*, available at: <http://www.errc.org/cikk.php?cikk=3824>.

hate speech or violence against Roma. In this respect, the Framework was far from fulfilling even the European Parliament's recommendation on the very same subject.³²

Implementing national Roma integration strategies in EU Member states

In 2012 the European Roma Rights Centre looked specifically at how Member states have articulated a strong commitment to non-discrimination, awareness-raising to tackle prejudice, discrimination and the fight against anti-Gypsyism. Non-discrimination was indicated as a governing principle of some of the national strategies. However, the anti-discrimination measures reported in relation to education, employment, health, and housing were weak, and lacking in substance and coherence. The strategies envisaged improvements in these areas without offering a clear plan to effectively combat racial or ethnic discrimination. Most of the strategies did not include a complete section dedicated to anti-discrimination issues, apart from four Member states (Belgium, Finland, Slovenia and Sweden). Out of 27 strategies only six (those of Poland, Portugal, Romania, Spain, Sweden, the UK and, to some extent Germany) acknowledged that the situation of Roma in their country is a historical consequence of long-lasting discrimination. Only Hungary and Slovakia included data about the extent of discrimination against Roma. Other countries did not provide any data on discrimination, or did not explicitly mention that Roma in the country have been or are currently subjected to discrimination.

The strategies of Belgium, France, Denmark, Estonia, Greece, Hungary, Luxemburg, the Netherlands, Portugal, Romania, Slovenia and Northern Ireland failed to make any reference to international human rights instruments (United Nations, Council of Europe, OSCE), which are relevant to ensure the protection of civil, economic, social and cultural rights. Most of the strategies did not explicitly refer to the Charter of Fundamental Rights of the European Union; this was missing in the texts of the strategies from Belgium, Bulgaria, Estonia, France, Denmark, Greece, Hungary, Lithuania, Luxemburg, the Netherlands, Poland, Romania, Slovenia and the UK.

Violence and anti-Gypsyism

Violence against Roma was only mentioned in the strategies of eight Member states (Bulgaria, the Czech Republic, Finland, Germany, Hungary, Italy, Poland and Sweden). Hate speech and hate crime against Roma was mentioned only in the Finnish, German, Italian, Swedish and UK strategies. The phenomenon of anti-Gypsyism was only indicated on a descriptive basis in the strategies submitted by Italy, Finland, Slovakia and Sweden, and as a form of racism in the strategy submitted by the Czech Republic. Only the strategy submitted by Spain had a clear reference to tackling discrimination against Roma and anti-Gypsyism, in line with international human rights instruments and recommendations.

Multiple discrimination and rights of Romani women

Only the strategies of Austria, Belgium, the Czech Republic, Finland, Portugal, Spain, Slovakia and Sweden used the concepts of direct, indirect and multiple discrimination in relation to Roma. Hungary's strategy mentioned multiple discrimination in the context of Romani women. The strategies of Estonia, France, Germany, Ireland, Lithuania, the Netherlands, Poland, Northern Ireland, Latvia, Luxemburg and the UK failed to take into consideration the rights of Romani women at all. The Romanian strategy included as a governing principle equal opportunities and gender awareness, but it was not substantiated as a clear, cross-cutting issue applicable to all the areas addressed by the strategy.

Role of the equality bodies and financial tools

Only the strategies of 11 Member states (Bulgaria, Germany, France, Italy, Lithuania, Romania, Spain, Slovenia, Northern Ireland, Slovakia and the UK) included references to equality bodies or other relevant human rights bodies, but in most cases their role was not substantiated in connection with the implementation process of the strategies. In general, details of financial resources for implementing anti-discrimination measures were missing in the national strategies.

³² European Parliament Resolution of 9 March 2011 *On the EU Strategy on Roma Inclusion*, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0092>.

Steps forward in implementing Roma integration strategies

The European Commission's 2012 progress report quite briefly outlined that Member states should ensure that anti-discrimination legislation is effectively enforced in their territories and that they should fight discrimination convincingly.³³ In 2013 while assessing the Member states national Roma integration strategies, the European Commission came to the conclusion³⁴ that despite the commitments made by the Member states and the anti-discrimination legislation, racism towards and discrimination against Roma continued with manifestations such as the segregation of Roma children in education as well as less favourable access to health, police protection and housing compared to the majority population.³⁵

The European Commission acknowledged that without systemic measures to fight discrimination and racism towards Roma, the implementation of the national Roma integration strategies cannot yield the expected results. Furthermore the Commission underlined that “to step up the fight against discrimination, it is also necessary to raise awareness about rights, duties and opportunities among Roma themselves ... and the Member states must do more to combat stereotyping and deal with racist or otherwise stigmatising language or behaviour that may constitute incitement to discrimination against Roma”.³⁶ Comparing the conclusions of the 2012 and 2013 assessments, it is quite clear that the Commission has decided to shift its discourse to a much stronger emphasis on tackling discrimination beyond the enforcement of the law.

Instead of a conclusion

The European Commission is very right to underline that in the absence of systemic measures to fight discrimination the implementation process of national strategies

will achieve no results. As stated before, without addressing the root causes of the spectrum of Roma rights violations and identifying concrete, measurable and effective actions to redress discrimination and promote equality these policies will remain elusive. But it is the Commission's role to hold the Member states accountable in this regard. On the other hand, the Commission itself needs to evaluate the EU Framework objectives and proposed measures with a view to adapting and responding to existing realities on the ground. The fact that this year the Commission put forward a Recommendation for the Council of the EU on effective measures for Roma integration with a much stronger anti-discrimination approach is to be welcomed. It remains to be seen whether, and in what form, the Council will endorse this further political document and how Member states will adjust their national strategies in response.

Nevertheless, there is one crucial element that must not be ignored when talking about Member states' commitments to addressing discrimination and social exclusion of Roma. Any strategy, programme or action plan designed to improve the Roma situation will require an expression of determined political will and leadership at all levels. The reality shows us that when speaking about Roma integration in Europe we are far from translating commitments from the European level to the local level. The key for success is at the local and regional level. There lies the need for genuine dialogue, to improve relations, to overcoming prejudice, to enhance mutual trust, to put an end to segregation at school, to forced evictions and to spatial segregation ... and the list goes on and on. There lies the need for Roma to be involved, to be consulted and to participate fully in the process on an equal footing with the authorities and the rest of the public. There lies the need for support, trust and full engagement. All these are still a “work in progress” that needs to become reality. It is possible but genuine will is needed.

33 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *National Roma Integration Strategies: a first step in the implementation of the EU Framework*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0226:en:NOT>.

34 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Steps forward in Implementing National Roma Integration Strategies*, June 2013, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013DC0454:en:NOT>.

35 *Ibid.*

36 *Ibid.*

Horváth and Kiss v Hungary - The Misdiagnosis Case

JUDIT GELLÉR¹

Since the 1970s, scientific research has shown that the practice of misdiagnosis and consequent transfer of Romani children into special schools has been used as a tool to segregate Romani children from non-Romani students and to keep them away from mainstream schools. This practice was a response to the quickly growing number of Romani children of primary school age.² The transfer was legitimised by psychological and educational arguments. Moreover the concept of ‘familial disability’ was developed, arguing that socio-economic deprivation of Roma creates special needs falling within the definition of mental disability and serving as a ground for transfer to special schools. In addition, in Hungary until 2004³ IQ scores on mild mental disability did not comply with WHO standards. Roma children with IQ scores between 70 and 86 were regularly placed into special schools – even though since the late 1970s Hungary has adhered to the World Health Organisation’s standards, which set the upper limit of mild mental retardation at an IQ of 70.⁴

In line with this practice, the two Romani applicants in the *Horvath and Kiss case* were victims of misdiagnosis and subsequently placed in special school despite their sound mental ability. As a result of the misdiagnosis, they could not access mainstream education. Instead, they were educated in a segregated remedial school created for children with mental disabilities. Their education followed a lower curriculum than in mainstream schools, preventing them from accessing secondary schools where they could have acquired a baccalaureate. This subsequently limited their future opportunities in higher education.

The applicants exhausted domestic remedies without securing redress for the systematic nature of the problem. In its

judgment, the Supreme Court found that the Hungarian State failed to create an appropriate professional protocol which considers the special situation of Romani children and alleviates the systemic errors of the diagnostic system; as a result the applicants’ human rights may have been violated by the State. However, the Supreme Court found that it had no competence to decide on the merits of the case with regard to the violation of substantive rights. It pointed to the European Court of Human Rights (ECtHR) as a forum that has the competence to judge this matter and provide effective remedy to the applicants with regard to the potential violation of their fundamental rights due to the systematic errors of the existing diagnostic system. This suggestion by a domestic court that the applicants seek justice in the ECtHR suggests serious failings in the Hungarian legal order to comply with the principle of subsidiarity: human rights issues should be resolved at the domestic level if possible, with recourse to the European level being exceptional.

The application to the ECtHR and arguments of the applicants

In 2011, the applicants submitted an application to the ECtHR, asking the Court to establish that their misdiagnoses and consequent education in the remedial school amounted to primarily direct, or alternatively indirect, discrimination under Article 2 of Protocol No.1. (right to education) read in conjunction with Article 14 (non-discrimination) of the European Convention on Human Rights.

The applicants claimed that Roma were uniquely burdened by the failures of the testing and placement system,

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2 G. Havas, I. Kemény, and I. Liskó, *Cigány gyerekek az általános iskolában*, Oktatáskutató Intézet, Új Mandátum, (Budapest, 2002).

3 In 2004, Bálint Magyar, Minister of Education wrote to Expert Panels to urge them to stop transferring children with scores above IQ70 to special schools.

4 According to DSM-IV classification, IQ 71-84 is classified under the code V62.89 as Borderline intellectual functioning, whereas under code 317 is Mild Mental retardation, going from 50-55 to approximately 70. See *Diagnostic and statistical manual of mental disorders: DSM-IV* (Washington, DC: American Psychiatric Association. 2000).

that Roma children were put at a particular disadvantage because of the culturally-biased and knowledge-based placement tests, and that their socially and culturally disadvantaged background resulting from their ethnicity was not taken into account when assessing the results. In addition to the inadequate tests used and the non-compliance with WHO standards, the applicants claimed that the whole testing process was flawed as the tests were not sufficiently individualised (§ 91-93).⁵

Argument of the Government

In its argument the Government denied that the applicants had been treated less favourably than non-Roma in a comparable, socially and economically deprived situation. The Government also asserted that inasmuch as the applicants had been treated differently, the different treatment had an objective and reasonable justification (§ 94). The Government argued that the tests were not biased and applicants were tested with a complex method, not with a single test or process (§ 95). Relying on expert opinions, the Government claimed that the socio-cultural background of the children had been decisive for the mental development of the child. The Government claimed that as a consequence, the disproportionate representation of Roma children in special education was due to their disproportionate representation among those living in social and economic deprivation and therefore they were deprived of “the beneficial effects of modernisation on the mental development of the children” (§ 96). The Government further argued that the testing of the applicants’ abilities had been sufficiently individualised (§ 97) and that procedural safeguards had been in place under Hungarian law. The Government did not dispute the fact that in the applicants’ case these procedural requirements had not been respected, as this had already been established by domestic courts (§ 98). The Government also emphasised that the testing was not carried out for medical purposes but to assess learning abilities, and so the testing did not constitute a medical diagnosis of mild mental retardation as defined by the World Health Organisation (WHO) (§ 100).

Judgment

Based on ECtHR case law, treating persons differently in a comparable situation without an objective and reasonable justification amounts to discrimination; however article 14 does not prohibit States from treating groups differently in order to correct factual inequalities, and in fact under certain circumstances the failure to do so may itself amount to discrimination and a violation of Article 14. According to the Court the practice of misdiagnosis resulting in segregation amounted to indirect discrimination in relation to the applicants.

In its assessment the Court reinforced its position that discrimination on account of a person’s ethnic origin is a form of racial discrimination that requires from the authorities special vigilance and a vigorous reaction. It also noted that there is no objective justification for race discrimination. It held that “no difference in treatment which is based on exclusively or to a decisive extent on a person’s ethnicity or origin is capable of being objectively justified in a contemporary democratic society built on the principle of pluralism and respect for different cultures” (§ 101).

The Court referred to the vulnerable position of Roma, who have historically suffered from exclusion, and therefore require special consideration to be given to their different need (§ 102). When it comes to Article 2 of Protocol No.1. (the right to education), States are not only required to refrain from interference but required to implement positive measures. In particular, in line with judgment delivered in the case of *Orsus and Others v Croatia*,⁶ the ECtHR emphasised the need for positive measures in the context of the right to education, when a certain group, such as Roma, has historically suffered from discrimination in the field of education (§ 103-104). The Court also emphasised the long history across Europe of the inappropriate placement of Roma children into special schools (§ 115).

Applying these principles to the case, the Court found that the misplacement of Romani children constitutes an indirect discrimination and therefore a violation of Article 2 of Protocol No.1. in conjunction with Article 14.

5 These failures had been established by the domestic courts.

6 European Court of Human Rights, *Orsus and Others v Croatia*, no. 15766/03.

Since the applicants did not claim damages as they had already received damages in the domestic proceedings the Court ordered the Hungarian State to pay 4,500 Euros jointly for the applicants' costs.

Comments

This is not the first time that the ECtHR has found that the misdiagnosis of Romani children and their subsequent segregation into special schools amount to discrimination. Already, in 2007, the Grand Chamber of the Court in the *D.H. and Others v the Czech Republic* case established that such a practice amounts to indirect discrimination. Six years later that judgment is still waiting for adequate implementation.

In *Horvath and Kiss* the Court clarified and developed its position in relation to misdiagnosis. Moreover, it went further concerning the positive obligations on States to remedy past and current discrimination. Regrettably, however, it did not depart from its main approach elaborated in *D.H.*; in particular, it refused to find direct discrimination. Alarming, on closer examination, it appears to require proof of intent for finding direct discrimination. Thus, the Court found indirect discrimination despite the arguments presented by the applicants that, unlike in *D.H.*, in this case there was no general policy or measure which was apparently neutral: since the 1970s it was well documented and widely-known among experts in Hungary that the tests were not neutral but biased against Roma. The applicants also relied on the EU Racial Equality Directive (Council Directive 2000/43/EC of 29 June 2000, 'RED'), claiming that they suffered direct discrimination as that term is defined in EU legislation (and, by analogy, as it should be defined under Article 14). The applicants argued that, unlike under the Court's jurisprudence, under RED and Hungarian law, there can be no justification for direct ethnicity-based discrimination in public education, except for the purposes of positive action. In addition, they invoked the case law of the Court of Justice of the European Union (CJEU) which has condemned as direct discrimination

situations in which a formally neutral criterion in fact affects one group only.⁷ The Court summarily refused this argument. It did not accept that if a practice only affected Romani children – as did misdiagnosis – then it ought to have constituted direct discrimination, because such practice could not be ethnically neutral (§ 110).

It is equally unfortunate that the Court sidestepped the alleged violation resulting from structural problems with biased testing by declaring the complaint about this point – which was inherently linked to the rest of the complaint – inadmissible for failure to exhaust domestic remedies (§ 87). Similarly to *D.H.*, it left it within the State's margin of appreciation to decide whether to maintain a special education system and whether to preserve a system of testing children.

The Court nonetheless reaffirmed several important principles, while indicating its willingness to find discrimination in relation to the segregated education of disabled children as well:

- First of all, although the Court does not define or establish segregation *per se*, it clearly stated that the arrangements of special schools in Hungary constituted a segregated setting, where the more basic curriculum was followed and “where [the children] were isolated from pupils from the wider population” (§ 127).
- Secondly, when analysing the guarantees stemming from the positive obligations of the States the judgment goes further than in *Orsus and Others v Croatia*, and explicitly defines the *substance* of the positive obligation that the respondent State must fulfil. While in *Orsus* the Court called for putting in place “safeguards”,⁸ in *Horvath and Kiss* the Court explicitly imposed an obligation on states to introduce positive measures to combat discrimination in public education: States have “specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices (...)” (§ 116) and must “undo a history of racial segregation in special schools” (§ 127).
- Thirdly, the Court elaborated on the State's narrower margin of appreciation and stricter scrutiny when

7 See: *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen*, Case C-267/06, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0267:EN:HTML>. The case concerned a German law that permitted life partnership to same sex couples, but same sex couples cannot marry. Mr Maruko survived his life partner who had been making payments into an occupational pension fund. He applied for a survivor's pension from the fund but was refused. In a preliminary referral procedure the ECJ ruled that the Framework Employment Directive applied to his case. It also ruled that in relation to a survivor's pension paid out of an occupational pension fund, life partnership between persons of the same sex was a comparable situation to that of spouses.

8 European Court of Human Rights, *Orsus and Others v Croatia*, no. 15766/03 § 183.

considering fundamental rights of vulnerable groups and took note of another vulnerable and historically discriminated group: the ‘mentally disabled’. By reiterating its findings in the case of *Alajos Kiss v Hungary*⁹ (§ 42 and 44), the Court suggested that, as it has done with Roma, it is ready to introduce specific positive obligations in cases of other vulnerable groups such as intellectually disabled children.

The judgment demonstrates that the ECtHR is willing to take a more robust approach to the segregation of Roma

children. This represents an evolution in the case law since *D.H.*, although even that earlier judgment is still awaiting implementation six years later. Clearly the time has come for cases such as this to be resolved at the domestic level. It is a welcome development that national judges now have a clear indication from the ECtHR as to what standards of scrutiny are required. It is unfortunate that the ECtHR did not seize the opportunity to expand its notion of direct discrimination. The existence of different standards under EU law and the ECHR will however become apparent over time and likely lead to a more flexible understanding of this concept.

⁹ European Court of Human Rights, *Alajos Kiss v Hungary*, no. 38832/06, § 42, 44.

Sulukule: Renovation or Destruction?

HILAL KÜEY¹

Sulukule was the setting of the first of many urban renovation projects in Turkey. The project was carried out with so little respect for the law in general and the rights of those concerned in particular that no good result could ever come out of it. Law No. 5366 enabling new land development investments in neighbourhoods rich in historic heritage was passed in 2005. It is titled *the Law on Renovation, Conservation and Active Use of Dilapidated Immovables with Historical and Cultural Wealth*. **As the name itself suggests, the ostensible aim of the law was to conserve historical heritage and culture while renovating old buildings.**

We won a number of court cases on the Sulukule renovation. Despite this, there is not the slightest trace of history or Roma culture in Sulukule, Istanbul, which has been a Roma neighbourhood since Byzantine times. Following the passage of Law No. 5366 the Council of Ministers issued Decree No. 2006/1029, dated 04.04.2006 declaring the Neslişah Sultan and Hatice Sultan neighbourhoods (i.e. Sulukule) in the Fatih District of Istanbul as a “Renovation Zone”. All the parcels in the renovation zone

were subject to a “swift expropriation” under another Council of Ministers Decree No. 2006/11296, dated 19.10.2006. **This “swift expropriation” (Article 27 of the Law on Expropriations), a practice to be resorted to only in emergency cases and war, enabled the Municipality to seize the plots and initiate the renovation project.** Demolition work started in the neighbourhood while legal actions were underway against the project.

On behalf of my clients, the Association for Promoting Roma Culture and Solidarity in Sulukule, and three persons who had been living their in the house they inherited from their grandparents, I started the legal action at the Istanbul Administrative Court for a stay of execution of decision No. 20, dated 02.11.2007 of the Regional Board for the Conservation of Cultural and Natural Wealth in Renovation Zones in Istanbul. The effect of the decision was to endorse the Preliminary Plans for the renovation project. We based our claim on the violation of international conventions, the Turkish Constitution and the Law on Expropriations.² Our case for a stay of execution was rejected by the court on

1 Hilal Küey is a lawyer and member of İzmir Bar Association.

2 International conventions signed by the Republic of Turkey used for the justification of our case:

- UNESCO Operational Guidelines / ICOMOS – International Council of Monuments and Sites (Renovation zones should be managed in compliance with the criteria indicated in the Guidelines)
- Malta Convention – Conservation of archaeological heritage
- Granada Convention – Conservation of the Architectural Heritage
- Paris Convention – Protection of Cultural and Natural Heritage
- Vienna Memorandum - The principle of seeking the endorsement of all interested parties
- Venice Charter – Protection of cultural diversity
- Nara Document of Authenticity – Acknowledgment of the legitimacy of the cultural values of all parties. (The principle of “the cultural heritage of each is the cultural heritage of all”)
- Charter on the Built Vernacular Heritage - Respect to be paid to vernacular buildings, groups and settlements, and their cultural values and traditional character while carrying out contemporary work.
- Washington Charter (on the Conservation of Historic Towns and Urban Areas) – Avoiding rigidity in implementations for the conservation in a historic town or urban area.
- Convention for the Safeguarding of Intangible Cultural Heritage
- ECHR Article 8 on the right of respect for one’s private and family life and one’s home, Article 14 on prohibition of discrimination, Additional Protocol 1, Article 1.

National legislation taken as the basis of our case:

- Constitution, Article 35: Right to property.
- Violation by the Law No. 5366 of Articles 20, 21, and 25 of the Turkish Constitution: private life, immunity of residence, equality before law, and right to property.
- Turkish Law No. 5366
- Turkish Law on Confiscation (confiscation without any public benefit)
- Turkish Law No. 2863 on Protection of Cultural and Natural Wealth.

the grounds that the two requirements to stay execution of the decision were not met: firstly the court found there was no explicit violation of the law; and secondly, the impugned measure was not difficult or impossible to remedy.

In November 2009, two years after the case started and just after the demolition of the last house in the neighbourhood, the court ordered a panel of experts to carry out a survey and inspection in order to assess the merits of our case. **In the Report of the Panel of Experts submitted to the court in October 2010** they noted that the development plan for Istanbul had been annulled, and therefore no development plan could possibly be implemented in Sulukule, which was situated in the historical peninsula. Furthermore, the report stated **that no “public benefit” was served by the project we were challenging in our case.**

Based on this report, we requested that the Court issue a stay of execution, but this request was rejected. Instead the Court sent the case once more to a panel of experts to be assessed on the basis of Law No. 5366. **However, it is settled law that if there is no development plan in a region, there can be no development project and no construction work can be undertaken. The Council of State’s rulings for similar cases are all to this effect.**

The second report prepared by the panel of experts submitted to the court in September 2011 also stated that the project in question was not in compliance with the purpose of Law No. 5366 and that there was no “public benefit”. The aspects of the project which were found to be contrary to Law No. 5366 in the Panel of Experts Report are as follows:

- The protection belt for the historic city walls established in line with UNESCO criteria was changed by the project in question and the area under protection was reduced by some 50%.
- There were discrepancies in the preliminary plan in terms of the existing network of streets and the structure of the blocks of building; the original shape of the blocks of buildings in the area and the street pattern for the neighbourhood were not adequately preserved.
- The Vegetable Garden allocated for public use was completely eliminated in the plan, blocks of buildings were planned in its place and the area was opened to construction work; the roads were widened resulting in a change in the characteristics of the streets.

- No green areas or parks were envisaged in the project except within the central part of the blocks of buildings.
- Permission to build new three to four storey units which would not be in harmony with the street pattern and the existing registered buildings’ or with the maximum height levels and proportions of the existing registered buildings had been introduced.

Upon receipt of this report I filed a new application to the court for a stay of execution which was again rejected.

Following the statement of the Municipality’s attorney to the effect that they were working on some revisions in the project design and drawings, the case was again sent to the panel of experts. This was in violation of a clear rule of law: **decisions as to whether or not there is a violation of law in a given case should be taken on the basis of the date of the legal action. The Court therefore acted unlawfully in placing undue emphasis on what had happened after the case was lodged.**

The third expert report submitted in March 2012 again stated that none of the infractions identified in September 2011 had been corrected; that, on the contrary, these unlawful acts were already underway and that there was again no “public benefit” sought by the Project. It was this third expert report that led the Istanbul Fourth Administrative Court to annul all of the legal acts which formed the basis for the implementation of the Project: verdicts No. 2009/758 E. 2012/783, dated 26.4.2012 and No. 2009/719 E. 2012/789, dated 27.4.2012 respectively. In other words, the Court acknowledged the unlawful nature of the Project four years after we filed the case.

In accordance with basis rule-of-law principles, the Court ruling should have been obeyed, the construction work in the subject area stopped and a new project prepared in line with the reasons which the Court had based its decision of annulment. This is also what the Administrative Proceedings Law instructs should be done.

However the Municipality of Fatih did not abide by the Court ruling. They once more started to implement the same project with a few revisions in the street plans only. We opened another legal case against this project and the case is still being considered by the Eighth Administrative Court of Istanbul. Considering the fact that the first

case continued for four years, we anticipate it will be a long time before the Court makes a ruling on this case.

The municipality has adopted a clever and frustrating way of evading implementation of the Court's judgments. They make minor changes in the existing plans in order to present the plan as a new project, although in actual fact it is the same project which has already been rejected by the court. They also carry out certain formalities which are made to appear as steps taken in line with a new decision. The Court's unwillingness to accept our demands for a stay of execution only encourages - albeit unintentionally - such methods of evading the law.

We had two legal options in relation to the refusal of the Municipality of Fatih to abide by the court ruling annulling the project and we resorted to both of them. First, we filed a complaint with the Public Prosecutor's Office of Istanbul in July 2012 against the Mayor of Fatih. However, under Turkish law, in order to start a legal action against the Mayor, the Interior Ministry's permission must be secured. In May 2013 I received a notice from the Interior Ministry informing me that the Ministry refused to give such permission. **In response we filed an appeal with the Council of State for the annulment of the Interior Ministry's decision to withhold the permission for starting any legal proceeding against the Mayor. Our appeal is now waiting for a decision from the Council of State.**

The second option was to start a **legal action for damages** under Article 28/4 of Law on Administrative Proceedings citing the Municipality's failure to comply with the Court ruling. We started the legal action in June 2013, at which time we also requested legal aid to be provided to the complainants. **The Istanbul Administrative Courts accepted our legal aid requests in rulings dated July 2013.** The case is still being considered on the merits. As the court fees on legal actions for damages are excessively high in Turkey, it is hard to imagine how we could have opened such cases on behalf of my clients if our demand for legal aid had been rejected.

Fatih Municipality and the Ministry of Culture and Tourism appealed to the Council of State against the ruling of the Fourth Administrative Court of Istanbul for the annulment of the Project and demanded a stay of execution to this end. The Council of State rejected their demand for a stay of execution in August

2013. However, in the meantime the construction works were already finished and the new owners, few of whom are Roma, already moved to these new buildings - buildings built on the basis of a project which has been ruled unlawful by the Court.

This happened despite our legal achievements, i.e. the court rulings in our favour!

The construction work started in 2010 and it is now clear that the pace of serving justice lags behind the pace of construction. Our case filed with the European Court of Human Rights (ECtHR) is, unusually, being considered simultaneously with our case going on in Turkey. Regretfully, the ECtHR rejected our request for an interim measure under Rule 39 of the Rules of Court of the ECtHR. This was not unexpected: the Court normally only grants such measures in case where there is a risk of death, torture or inhuman or degrading treatment. However the story of Sulukule fully illustrates, to my mind, why requests for interim measures should also be accepted in cases related to the destruction of a whole neighbourhood with a rich cultural heritage and its subsequent reconstruction. These actions entail violations of Article 1 (right to property) of the Additional Protocol to the European Convention on Human Rights (ECHR), Article 8 (protection of private and family life) and Protocol 12 (prohibition of discrimination). Only on rare occasions have interim measures been given by the ECtHR to stop such evictions and demolitions (notably in *Yordanova and Others v. Bulgaria*, also involving the eviction of a Roma community).

The authorities are aware of the potential that applicants will ask for and courts will grant requests for a stay of execution. **It was for this reason that in Article 6/9 of Law No. 6306 on the Transformation of Areas Under Disaster Risk it is made clear that "... no stay of execution ruling can be made by the courts in such legal cases."** Depriving potential applicants of an effective remedy in this way is a cause for concern, as Turkey claims to be a country where the rule of law prevails. The separation of powers is a *sine qua non* of a State based on the rule of law - a principle which preconditions the separate and independent nature of all three powers - the legislature, executive, and judiciary.

However the greed for more unearned revenues to be gained from urban transformation projects is such that even violations of the Constitution are tolerated, because

any court ruling for a stay of execution, no matter how rare this happens, must give way to that greed.

In order to prevent any misunderstanding, I have to underline that Sulukule was declared a renovation zone under Law No. 5366 and it is this Law that applies to Sulukule. As the prohibition on stays of execution is stipulated in Law 6306 dated 2012, it does not apply to the Sulukule case. Law no.5366 is applicable only for protected areas with historical heritage, whereas Law No.6406 applies to all areas in Turkey with the exception of protected historical heritage areas. Law No. 6406 governs the identification of risky areas, demolition of buildings in such areas, and implementation of projects.

There is no doubt that it is the duty of a government to provide its citizens with adequate means to live in safe buildings. However Article 3/7 of Law No. 6306 **arouses suspicion that the underlying purpose is not just mitigating risk. The Article in question reads as follows: “Any building located within the boundaries of the areas identified to be within the scope of this Law but does not fall in the definition of risky buildings, shall be subjected to the provisions of this Law if and when deemed necessary by the Ministry for the integrity of the implementation of the Law.”**

In other words, even if a building is not considered risky at all, it can be demolished under this law if the Ministry of Environment and Urban Planning decides that it constitutes an obstacle to the implementation of a transformation project.

As our subject matter here is Sulukule, I will not go into details as regards the provisions of Law no. 6306 which are not compliant with the basic principles of law. However, keeping in mind that the project implemented in Sulukule did not aim for “transformation” but for “eradication”, the two articles mentioned above (6/9 and 3/7) highlight the scale of violations of legal rights that we may see in Turkey in the near future. In the light of the way transformation projects were implemented in Sulukule, Tarlabası, and Fener/Balat, without seeking the inhabitants’ views and with total disregard of the inhabitants’ preferences, the extent

of the potential threats faced by the disadvantaged groups is all the more worrying.

All these practices entail violations of not only Article 35 of the Turkish Constitution (guaranteeing the right to property), but also Articles 8 and 14 of the ECHR; Article 1 of Additional Protocol 1 to the ECHR; Article 2 of the **International Covenant on Civil and Political Rights**, prohibiting discrimination on the basis of, *inter alia*, “race and colour”, and Article 17 of the same Covenant prohibiting “arbitrary or unlawful interference with [individuals]’ privacy, family, home or correspondence”; and Article 11 of the **International Covenant on Economic, Social and Cultural rights**, guaranteeing “adequate housing”.

It is important that practices in connection with urban transformation should abide by General Comment No. 23 of UN Human Rights Committee (1994) which establishes that “the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.” **General Comment No 4 of the Committee for Economic, Social and Cultural Rights (CESCR)** also provides legal protection against forced evictions and guarantees the right to property. That General Comment, as well as **General Comment No.17** are also being violated.

The vital issue here is not only the right to property. The UN Human Rights Committee, in a resolution dated 2012, clearly establishes that a demolished house, regardless of whether or not it is the lawful property of the resident, should be considered the individual’s “home” if he or she is attached to the place with long-standing emotional, social and historical connections; and furthermore that demolition of such a building constitutes an interference with human rights. (**Naidenova v. Bulgaria / 2012**).

Looking at the outcome so far of this long process, following a dizzying variety of achievements at the courts, I would like to end this article by quoting the words of a Sulukule child: “I saw the dead body of my neighbourhood.” **Isn’t it ironic that the name of Law No. 5366 says its purpose is to “keep alive” our heritage?**

Book Review

Katharine Quarmby - No Place to Call Home - Inside the Real Lives of Gypsies and Travellers, One World, London, 2013

In October 2011 a traveller settlement in the south of England was forcibly evicted by police and bailiffs. Many of the residents had already left, knowing they could not stay on the site. Those who remained, along with other activists and supporters, were forced off the land in a violent clash at the site, called Dale Farm.

Katharine Quarmby spent seven years researching this book, and the care and attention she has taken shows through. She takes the Dale Farm eviction as a starting point, covering the events in details. Through this lens, she examines the long history of Gypsy, Roma and Travellers in the UK. She speaks to the main players in the Dale Farm drama; the families, the activists, the local community and others. This broad approach provides an in-depth picture of what happened. It's a complex situation, and the writer works hard to uncover the detail behind the headlines, including the difficult and sometimes uncomfortable relationships between those involved.

Quarmby is a writer, journalist and film-maker specialising in social affairs, education, foreign affairs and politics, with an investigative and campaigning edge. She has previously written on hate crime against disabled people. The book, therefore, presents a balanced, journalistic view. Although it is clear that Quarmby formed strong bonds with the families of Dale Farm, she allows us to make up our own mind, and doesn't shy away from describing the complex dynamics of life for English Gypsies and Irish Travellers in the UK. (The book focuses more strongly on these populations than on other communities, such as recently-arrived migrant Roma from across Europe.)

Although the book focuses very strongly on the UK, it's very easy to see echoes of evictions in other countries. Travellers

tried desperately to find a legal solution, but were unsuccessful. A change in government at a crucial moment made it even harder. Following on from the eviction, many of the families are worse off, facing mental health problems and living in worse conditions. (Quarmby has continued to report on their fate for the Guardian, among others.)

The book ends with a plea for tolerance for the new waves of migrant Roma from other parts of Europe – the UK can choose to make space for those fleeing intolerance and persecution in other parts of the world, just as it always has, says Quarmby. The book chooses to end on a positive note, with a snapshot of one of the Dale Farm families at a church ceremony for confirmation. Despite the difficulties of the eviction and life that followed the family remain together, battered but unbroken.

Quarmby sets out a hope for the future in the very first pages of the book, recognising the difficult history between Gypsies, Travellers and the settled population.

“Pitting local settled people against nomadic people (who are also often local too) benefits nobody. Both of the sides in this conflict have inherited a legacy of bitterness, contempt, and even in some cases hatred between each other. But we do not have to be bound and constrained by that common past. We need to find a way to talk to each other and to move beyond our historical differences.”

No Place to Call Home is a gripping portrait of a community facing extremely difficult circumstances. It's well-written and accessible. It's essential reading for those who work on Roma rights, but it's also an excellent book to give to a friend who wants to understand more about the history of Gypsies, Roma and Travellers in the UK (and beyond.)

This book was reviewed by Marianne Powell

EUROPEAN ROMA RIGHTS CENTRE

The European Roma Rights Centre (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development and training of Romani activists. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

The ERRC has been the recipient of numerous awards for its efforts to advance human rights respect of Roma: The 2013 PL Foundation Freedom Prize; the 2012 Stockholm Human Rights Award, awarded jointly to the ERRC and Thomas Hammarberg; in 2010, the Silver Rose Award of SOLIDAR; in 2009, the Justice Prize of the Peter and Patricia Gruber Foundation; in 2007, the Max van der Stoep Award given by the High Commissioner on National Minorities and the Dutch Foreign Ministry; and in 2001, the Geuzenpenning Award (the Geuzen medal of honour) by Her Royal Highness Princess Margriet of the Netherlands;

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