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International Action to Prevent Discrimination: The Situation of the Roma Community in the Field of Education

Judith Gimenez



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Abstract

This article discusses why recent discriminatory incidents against the Roma community, one of the biggest minorities in Europe, rise in racism and anti-Roma hate speech in public discourse concerns international organizations. The first part of this article briefly outlines human rights bodies' definition and regulation on the principle of equality and non-discrimination generally and in particular with regard to Roma education. The second part compares recent international human rights' conclusions on Croatia, the Czech Republic, the Former Yugoslav Republic of Macedonia, and Slovakia with regard to the human rights developments of the Roma minority, and to the implementation of their national anti-discrimination legislation. In addition, the latter traces the debate on the access of Roma children to education in those countries, as well as reviews the European Court of Human Rights' case law, in particular with regard to two cases of Roma segregated education in Croatia and the Czech Republic. Finally, some conclusions are drawn as to how overcome the vicious circle of poverty and discrimination faced by the Roma population, in particular in the field of Roma education.

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Minority Rights - Roma - Discrimination - Racism - Principle of Equality and Non-Discrimination - International Human Rights Bodies - Croatia - Czech Republic - the Former Yugoslav Republic of Macedonia - Slovakia - Access to Education - Case Law of the European Court of Human Rights - Segregated Education.

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International Action to Prevent Discrimination: The Situation of the Roma Community in the Field of Education

Judith Gimenez

1. Introduction

With a population of roughly eleven million, Roma¹ constitute the biggest minority² in Europe and are characterized by discrimination, social exclusion, unemployment, poverty, and restricted access to education and health care. In the last two decades, high levels of discrimination against the Roma population have led to severe implications which today are becoming visible.

What happened in Italy in May 2008, when a series of attacks on Roma culminated in a mob burning down a Roma settlement in Naples after a young Roma woman living in the settlement was accused of kidnapping a baby from a local couple, is not an isolated event. This incident, and the subsequent response of the Italian government to introduce a number of measures affecting specifically the Roma population in Italy,³ has raised concern among international human rights organizations and civil society. The crisis in Italy has received widespread media attention and has been commented on with concern by a number of international and regional monitoring bodies. However, similar incidents against the Roma community have occurred in

¹ All reference to the “Roma community” in this article shall be understood to be in full compliance with the terms used by the different international organizations *i.e.*, the term “Roma and Sinti” as used in official Organization for Security and Cooperation in Europe (OSCE) documents according to the 2003 Action Plan on Improving the Situation of Roma and Sinti within the OSCE area, the term “Roma and Travellers” as used by the Council of Europe (CoE), and the term “Roma” as used by the European Union (EU) referring to “a variety of groups of people who describe themselves as Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti, as well as other titles”. In this respect, the term “Roma” is used in the study as a convenient abbreviation of the terms used by the different human rights instruments, and bodies and the different States.

² With regard to the term “minority”, it is important to note that there is no generally recognized legally binding definition of the term. However, it is acknowledged that the existence of a minority depends on a combination of objective and subjective factors. In this respect, see Roberta Medda-Windischer, *Old and new minorities: Reconciling diversity and cohesion. A human rights model for minority integration* (Nomos, Baden-Baden 2009), 55-60.

³ Further details in the jointly report issued by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Assessment of the Human Rights and Situation of Roma and Sinti in Italy: Report of a fact-finding mission to Milan, Naples and Rome on 20-26 July 2008* (Warsaw, The Hague March 2009), available at: http://www.osce.org/documents/odhr/2009/03/36620_en.pdf. See also EU Fundamental Rights Agency (FRA), *Incident Report - Violent Attacks against Roma in the Ponticelli district of Naples, Italy* (05 August 2008), available at: http://fra.europa.eu/fraWebsite/home/home_en.htm.

Hungary in 2009,⁴ in Romania,⁵ in the Czech Republic,⁶ as well as in other countries in the past and in recent years.

These examples clearly illustrate continued discrimination and a rise in racism against the Roma community, particularly in South and Central Europe. Moreover, it appears that in times of economic crisis, communities such as Roma tend to become easy scapegoats for extremist movements and populist politicians. Human Rights bodies such as the European Commission against Racism and Intolerance (ECRI) have expressed their concern about the rise in racism and anti-Roma hate speech in public discourse as well as the repeated demonstrations made by extreme right-wing groups against the Roma population.⁷ Another disturbing example of this trend is the establishment of the “Alliance of European Nationalist Movements”, established by extreme-right political parties with the aim of representing their interests in the European Parliament. Currently, out of 736 Members of the European Parliament, around 32 belong to an extreme-right political party.

This paper will first present an overview of reports, issued by different international and national human rights organizations, describing how the situation of discrimination against the Roma community has come to the forefront as an international concern, especially in view of the consequences and security implications of such discriminatory attitudes. The analysis will then explore how international human rights instruments and bodies generally, and specifically in the field of Roma education, tackle the principle of non-discrimination. Further, the study will describe and compare the situation of the Roma population in four countries—Croatia, the Czech Republic, the Former Yugoslav Republic of Macedonia (FYROM), and Slovakia—through an analysis of the concluding observations made by the human rights bodies of the anti-discrimination instruments in the UN treaty series, including the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC), as well as the reports of the Council of Europe (CoE), human rights institutions such as the ECRI, the Commissioner for Human Rights (CHR), and the opinions of the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC). Additionally, recent judgments on Roma education cases issued by the European Court of Human Rights (ECtHR) will be reviewed. Among other issues, the comparative study will analyze the status of international human rights standards, the national human rights structures in the four above-

⁴ Further details in the report issued by the OSCE/ODIHR, *Addressing violence, Promoting integration. Field Assessment of violent incidents against Roma in Hungary: Key Developments, Findings and Recommendations, June-July 2009* (Warsaw, 15 June 2010), available at: http://www.osce.org/documents/odihr/2010/06/44569_en.pdf.

⁵ See Amnesty International, *Report 2010, The State of the World's Human Rights*, 268.

⁶ *Ibid*, 12; European Roma Rights Centre (ERRC), *Attacks against Roma in the Czech Republic: January 2008-May 2010*, available at: <http://www.errc.org/cms/upload/file/attacks-list-in-czech-republic.pdf>.

⁷ See, among others, European Commission against Racism and Intolerance (ECRI), *Report on Czech Republic* adopted on 2 April 2009, CRI(2009)30; ECRI *Report on Croatia* adopted on 17 December 2004, CRI(2005)24, and ECRI *Report on Slovakia* adopted on 19 December 2008, CRI(2009)20, available at: http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp.

mentioned countries, as well as the challenges faced by the anti-discrimination bodies established in these countries. Finally, some conclusions will be drawn as to how human rights bodies and treaties, as well as State policies, should contribute in the future to overcome the vicious circle of poverty and discrimination faced by the Roma population.

2. Discrimination Against the Roma Community: An International Concern

Today, more than ten million Roma live in Europe,⁸ a large proportion of them in the European Union (EU). Precise data on the Roma population is unavailable. Nevertheless, some broad parameters are known. According to a recent report on Roma migration in Europe,⁹

... a number of countries in the OSCE region are likely or certain to have Romani or related communities numbering over 100,000. These include Bulgaria, Hungary, Romania, Serbia, Slovakia, FYROM, the United States, Russia, the Czech Republic, Italy, Spain, France, the United Kingdom, Turkey, Greece, Ukraine, Germany, Albania, Moldova, and possibly others. Of these, the following have Romani populations of possibly or certainly more than five per cent of the population as a whole: Bulgaria, Hungary, FYROM, Romania, Serbia, and Slovakia. In fact, in Bulgaria, Romania, and Slovakia there are Romani communities possibly approaching 10% of the general population ...

According to the joint statement issued by the OSCE/ODIHR and the OSCE/HCNM on Roma International Day, “despite the existence in many countries of stronger anti-discrimination legislation and policies to promote inclusion for Roma and Sinti and to combat their social segregation [...] often [the Roma population] have only limited access to education, employment, health care, suitable housing, and public services ...”.¹⁰ In a similar vein, the CHR stated that: “Anti-Gypsyism continues to be a major human rights problem in Europe—governments must start taking serious action against both official and inter-personal discrimination of Roma.”¹¹ In this respect, the European Commission (EC), in a communication of April this year, highlighted the extreme marginalization in which Roma people live in Europe facing discrimination, social exclusion, and segregation. This communication also noted that: “Roma exclusion entails not only significant human suffering but also significant direct costs for public budgets as well as indirect costs through

⁸ The CoE provides an “average estimate” of Roma in Europe of 11,353,600. See Council of Europe Roma and Travellers Division, *Number of Roma and Travellers in Europe, November 2009 Update*, available at: http://www.coe.int/t/dg3/romatravellers/default_en.asp.

⁹ Further details in the joint report issued by the OSCE/HCNM and the Commissioner for Human Rights of the CoE, *Recent Migration of Roma in Europe: A study by Mr. Claude Cahn and Professor Elspeth Guild* (10 December 2008), 30.

¹⁰ Statement available at: http://www.osce.org/documents/pdf_documents/2010/04/43380-1.pdf

¹¹ See Viewpoint of the CHR of 27 April 2009, available at: http://www.coe.int/t/commissioner/Viewpoints/090427_en.asp.

losses in productivity”.¹² With regard to the economic consequences of discrimination against Roma, one of the key messages of a recent report of the World Bank noted that: “The vast majority of working-age Roma lack sufficient education to participate successfully in the labor market. As a result, European countries are losing hundreds of millions of Euros annually in productivity and in fiscal contributions to the governments”.¹³ Another source which reveals the problematic discriminative situation faced by the Roma population, and in turn confirms the rise of international concern over the Roma situation, is the survey conducted by the EU Fundamental Rights Agency (FRA) among minorities, including Roma, which aims to analyze how minorities feel about their situation in society.¹⁴ This survey reveals that of all the groups surveyed, Roma emerged as the most vulnerable to discrimination and racist crime. Many other international human rights bodies such as the CERD, HRC, ECRI, and the ACFC have also raised concern about the rise in discrimination and racist crime against the Roma minority. All these issues will be further developed later in this paper.

2.1 Tackling the Principle of Non-Discrimination in International Human Rights Instruments and Bodies

What follows is an overview of how international human rights instruments and bodies tackle the principle of non-discrimination in general, and in particular in the field of Roma education. In this respect, international sources referring to the principle of non-discrimination, as well as to the legal obligations and political commitments of states regarding this principle, are numerous.

Articles 2 and 7 of the Universal Declaration of Human Rights provide for the principle of equality and non-discrimination.¹⁵ Other texts of interest for the study in hand are: Article 4 of the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the UNESCO Convention against Discrimination in Education (UNESCO Convention). The relevant part of Article 4 paragraph 1 provides that: “States shall take

¹² See EC Communication to the Council, European Parliament and the European Economic and Social Committee and the Committee of the regions: *The social and social integration of Roma in Europe*, 7 April 2010. COM/2010/0133 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0133:FIN:EN:HTML>.

¹³ See World Bank Report, *Economic costs of Roma exclusion*, April 2010, available at: http://siteresources.worldbank.org/EXTROMA/Resources/Economic_Costs_Roma_Exclusion_Note_Final.pdf.

¹⁴ See EU Fundamental Rights Agency (FRA), *EU Minorities and Discrimination Survey* (EU-MIDIS), December 2009, available at: <http://fra.europa.eu>.

¹⁵ Article 2 of the Universal Declaration reads: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.

measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.¹⁶ The UNESCO Convention recalls that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims the right of every person to education.¹⁷

Moreover, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) requires equality with regard to the rights set out in the Covenant. According to Article 26 of the ICCPR, all persons are entitled to equal protection under the law with regards to rights in general, whether or not they are set out in the Covenant on the grounds described in that provision.¹⁸ This entitlement demands that States not only refrain from any discrimination when enacting laws, but also prohibit discrimination when enacting laws and afford effective protection against discrimination. It is important to note that Article 2(1) ICCPR uses the term ‘distinction’, whilst Article 26 ICCPR uses the term “discrimination”, although neither Article gives a definition of these terms. The HRC defines the term “discrimination” in such a way as to include any distinction, exclusion, restriction, or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹⁹

According to the definition of racial discrimination provided by Article 1(1) of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), four types of activities could be regarded as discriminatory: distinction, exclusion, restriction, and preference. For any of these acts to constitute discrimination, in addition to being based on one of

¹⁶ Article 4.1 of the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly resolution 47/135 of 18 December 1992.

¹⁷ See Articles 1 and 3 of the UNESCO Convention: 1. “For the purposes of this Convention, the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (a) Of depriving any person or group of persons of access to education of any type or at any level; (b) Of limiting any person or group of persons to education of an inferior standard; (c) ... of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man” 3. “In order to eliminate and prevent discrimination [...], the States Parties thereto undertake: (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions.”

¹⁸ Article 26 ICCPR reads: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

¹⁹ See points 7 and 12 of the HRC General Observations no. 18 on Non-Discrimination, 10 November 1989.

the grounds listed,²⁰ they should have the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.²¹ In conclusion, the scope of the ICERD, in comparison to the ICCPR, is more limited as it only deals with racial discrimination, with any discrimination based on grounds of religion, sex, or political opinion falling outside its scope.

Furthermore, States parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are, according to Article 1, obliged to secure for everyone within their jurisdiction the rights and freedoms defined in the Convention. Consequently, if a state fails to take the necessary legislative and other measures to ensure the rights and freedoms mentioned in Section I of the ECHR, it may violate an obligation under Article 1. In this respect, a general prohibition of discrimination on prohibited grounds is contained in Article 14 of the ECHR.²² This Article guarantees freedom from discrimination with respect to the “rights and freedoms” guaranteed by the Convention. Article 14 of the ECHR is an accessory right, meaning that it does not stand on its own. Thus, the discrimination must occur in the context of another right. As stated by the ECtHR: “Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions.”²³ In conclusion, in order for any individual to challenge discriminatory treatment, they must first establish that it falls “within the ambit” of one of the other rights and freedoms guaranteed by the Convention.

The lack of an independent prohibition of discrimination in the ECHR was the main reason for drawing up the separate Protocol, *i.e.*, Protocol No. 12 to the ECHR.²⁴ This Protocol enshrines a ban on discrimination and provides a wider duty on states to ensure non-discrimination as regards any right set forth by law. The list of grounds for discrimination included in Article 1(1) of Protocol 12 is identical to that in Article 14. In fact, the grounds for

²⁰ “race, colour, descent, or national or ethnic origin”.

²¹ See CERD General Recommendation no. 14 of 22 March 1993 on the definition of discrimination which obliged States “... to nullify any law or practice which has the effect of creating or perpetuating racial discrimination”. See also the CERD General Recommendation no. 19 of 18 August 1995 on racial segregation and apartheid where the Committee affirms “that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities.” Finally, also the CERD General Recommendation no.27 of 16 August 2000 on Discrimination against Roma recommends, *inter alia*, in the education sphere: “to support inclusion of all Roma children, in particular girls; to prevent segregation of Roma students, and to involve Roma parents when adopting any measures in favour of Roma children.”

²² Article 14 of the ECHR reads: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

²³ See ECtHR, Appl. No. 15766/03, *Oršuš and others v. Croatia*, judgement of 16 March 2010, para 144.

²⁴ Explanatory Report of Protocol No. 12 to the ECHR, 2000, available at: <http://conventions.coe.int/>.

discrimination listed vary broadly compared to other international instruments: religion and national origin are included alongside race and colour. However, the ECtHR has recognized, when interpreting Article 14 ECHR, additional grounds, such as sexual orientation or marital status.

With regard to the definition of discrimination, it is worth mentioning that there is no specific definition of this term as well as no express distinction between direct and indirect discrimination under both Article 14 and Protocol 12. However, the best guidance for the interpretation of the Protocol is the Court's case law on the meaning of discrimination. According to the ECtHR's case law, Article 14 guarantees that persons in similar situations should be treated in a similar manner with respect to Convention rights,²⁵ unless there are objective and reasonable justifications for different treatment. Nevertheless, Article 14 also guarantees the right of persons in different situations to be treated differently.²⁶ This reasoning is especially important in Roma cases. In the case of *Chapman v. United Kingdom*,²⁷ the ECtHR specifically recognized the different lifestyle of the Roma and the State's positive obligation to facilitate that lifestyle, which could in some cases require different treatment for Roma because of their different situation.

Moreover, the ECtHR, in a series of decisions since 2004, has applied the Article 14 ban on discrimination in a number of findings against CoE Member States in cases concerning Roma in the following areas: inadequate investigation of possible racial motivation in police killings;²⁸ inadequate investigation of racial motive in other police abuse cases;²⁹ inadequate investigation of racial motive in cases of vigilante "skinhead" violence against Roma;³⁰ and racial segregation or other racial discrimination in education, in the case of *D.H. and others v Czech Republic*.³¹ The latter, and the judgement in the case of *Oršuš and others v. Croatia*, will be analyzed below.

Given the particular focus of this report on the right to education, it is worth mentioning the ECRI general policy recommendation no. 3 on Combating Racism and Tolerance against Roma/Gypsies of 6 March 1998. With regard to Roma education, this document recommends, *inter alia*, "to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education."³² Moreover, the ECRI general policy recommendation no. 7 on National Legislation to Combat Racism and Racial Discrimination of 13 December 2002 provides for definitions for the terms "racism" and "direct

²⁵ See ECtHR, Appl. No. 12875/87, *Hoffman v. Austria*, judgement of 23 June 1993.

²⁶ See ECtHR, Appl. No. 34369/97, *Thlimmenos v. Greece*, judgement of 6 April 2000.

²⁷ See ECtHR, Appl. No. 27238/95, *Chapman v. United Kingdom*, judgement of 18 January 2001.

²⁸ ECtHR, Appl. No. 43577/98 and 43579/98, *Nachova v Bulgaria*, judgement of 6 July 2005.

²⁹ ECtHR, Appl. No. 48254/99, *Cobzaru v Romania*, judgement of 26 July 2007.

³⁰ ECtHR, Appl. No. 40116/02, *Secic v Croatia*, judgement of 31 May 2007.

³¹ ECtHR, Appl. No. 57325/00, *D.H. and others v Czech Republic*, judgement of 13 November 2007, Appl. No. 15766/03, *Oršuš and others v. Croatia*, judgement of 16 March 2010.

³² See ECRI general policy recommendation no. 3 on Combating Racism and Tolerance against Roma/Gypsies of 6 March 1998.

and indirect racial discrimination”.³³ Finally, it is worth mentioning the Committee of Ministers of the CoE Recommendations (2009) 9 on the education of Roma and Travellers in Europe of 17 June 2009, and Recommendation (2000) 4 on the education of Roma/Gypsy children in Europe of 3 February 2000. The latter recommends, *inter alia*, “that the education of Roma/Gypsy children should be a priority in national policies in favour of Roma/Gypsies.”³⁴ It also contains guiding principles towards an education policy for Roma/Gypsy children in Europe, stressing the importance of the curriculum and teaching materials which, according to those principles, “should therefore be designed so as to take into account the cultural identity of Roma/Gypsy children. Romani history and culture should be introduced in the teaching material in order to reflect the cultural identity of Roma/Gypsy children.”³⁵

The Treaty of Amsterdam was the first treaty to categorically proclaim the challenge of tackling discrimination at the European level. At that time, a new article, Article 13, was added to the Treaty, establishing the European Community (TEC) as the competent body to authorise the Council to take “appropriate action” to combat discrimination based on, *inter alia*, racial or ethnic origin. This provision neither prohibits racial discrimination nor obliges member states to enact legislation containing such prohibition. The concept of discrimination is not defined in this Treaty provision. As a result of Article 13, which was added to the TEC by the Treaty of Amsterdam, two new Directives were adopted in the year 2000, *i.e.*, the EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin (Racial Equality Directive), and the EU Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Employment Framework Directive). The first Directive requires all EU states and, following their accession, all EU applicant states, to forbid discrimination on grounds of racial or ethnic origin in the fields of employment, education, health care, social protection, housing, and

³³ “a) ‘racism’ shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons; b) “direct racial discrimination” shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised; c) “indirect racial discrimination” shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.”

³⁴ See CoE Recommendations (2009) 9 on the education of Roma and Travellers in Europe of 17 June 2009, and Recommendation (2000) 4 on the education of Roma/Gypsy children in Europe of 3 February 2000.

³⁵ See also CoE Parliamentary Assembly Recommendation no. 1203 (1993) on Gypsies in Europe, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta93/EREC1203.htm> and CoE Parliamentary Assembly Recommendation no. 1557 (2002), *The legal situation of Roma in Europe*, available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/erec1557.htm>.

access to goods and services, thus providing for equal treatment on grounds of racial and ethnic origin. It is worth mentioning in this respect that the terms “racial or ethnic origin”³⁶ are neither defined anywhere in the Directive nor in any of the accompanying official documents. The Employment Framework Directive forbids discrimination on the basis of religion or belief, disability, age, or sexual orientation, as regards employment or occupation and membership of organizations. Both of the directives ban “any direct³⁷ and indirect³⁸ discrimination” and both define these two concepts in similar wording. Moreover, both directives also forbid harassment³⁹ and instructions to discriminate.⁴⁰

At the Organization for Security and Co-operation in Europe (OSCE) level, paragraph 40 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE) calls upon participating States “to condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds”,⁴¹ recognizing the particular problems of Roma. In the 1991 Geneva Report on National Minorities, participating States committed themselves “to undertake effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinarily resident in their State and the rest of the resident population ...”⁴² Moreover, the 1999 Istanbul Summit reinforces the previous commitments of States towards the Roma community, whereas the Berlin Declaration of the OSCE Parliamentary Assembly refers to the Istanbul Summit’s commitment to adopt anti-discrimination legislation and urges participating States to promote anti-discrimination measures. In addition to the previous CSCE/OSCE commitments pertaining to Roma, all participating States adopted the OSCE Action Plan of the 2003 Ministerial Council on Improving the Situation of Roma and Sinti within the OSCE Area, providing governments of all participating States with a set of principles to be followed in dealing with Roma issues.

³⁶ However, recital 6 of Preamble to the Racial Equality Directive clarifies that the use of the term “racial origin” in no way implies an acceptance of theories based on alleged existence of separate races.

³⁷ Article 2(2) (a) of the Racial Equality Directive; Article 2(2) (a) of the Employment Framework Directive.

³⁸ Article 2(2) (b) of the Racial Equality Directive; Article 2(2) (b) of the Employment Framework Directive.

³⁹ Article 2(3) of the Racial Equality Directive; Article 2(3) of the Employment Framework Directive.

⁴⁰ Article 2(4) of the Racial Equality Directive; Article 2(4) of the Employment Framework Directive.

⁴¹ See paragraph 40 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE), 1990, available at: http://www.osce.org/documents/odihr/2006/06/19392_en.pdf.

⁴² See paragraph VI of the Report of the CSCE Meeting of Experts on National Minorities, Geneva (1991), available at: http://www.osce.org/documents/osce/1991/07/14125_en.pdf.

3. Country Studies: Croatia, the Czech Republic, the Former Yugoslav Republic of Macedonia, and Slovakia

3.1. An Overview of the Situation of the Roma Communities

A common denominator of all four countries reviewed in this section is that they have a significant Roma minority in their population. According to the CoE Roma and Travellers Division,⁴³ the Roma population in Slovakia and the FYROM represents respectively 9.17% and 9.59% of the total population, whereas in the Czech Republic it represents 2.94% and in Croatia 0.78%. In this respect, however, the CERD in its concluding observations expresses concern about “discrepancies between statistical data and qualitative estimates” in the case of the Czech Republic,⁴⁴ “divergence in statistics” in Slovakia,⁴⁵ and “lack of information as to how such data is gathered and the criteria on which it is based”⁴⁶ in Croatia.

All four countries have put in place an international⁴⁷ and national legal framework to protect and promote the rights of national minorities. In Croatia, Roma have been present for more than 600 years and are recognized as a national minority; however, the preamble of the Croatian Constitution does not expressly mention them among the “autochthonous national minorities.”⁴⁸ On the domestic level, Croatia has put in place a solid legal basis to protect and promote the rights of national minorities, including the Constitutional Law on the Rights of National Minorities,⁴⁹ the Law on the Use of a National Minority Language and Script, and the Law on Education and Schooling in a National Minority Language and Script. The Roma community in the FYROM is considered an ethnic group, as referred to in the Preamble of the Constitution,⁵⁰ with the Macedonian Constitution guaranteeing the protection of the ethnic, cultural, linguistic, and religious identity of all

⁴³ See Council of Europe Roma and Travellers Division, “Statistics:”, available at: http://www.coe.int/t/dg3/romatravellers/default_en.asp.

⁴⁴ CERD *concluding observations on the Czech Republic*, CERD/C/CZE/CO/7, 11 April 2007, para. 7.

⁴⁵ CERD *concluding observations on Slovakia*, CERD/C/SVK/CO/6-8, 25 March 2010, para.7.

⁴⁶ CERD *concluding observation on Croatia*, CERD/C/HRV/CO/8, 24 March 2009, para.10.

⁴⁷ All four countries have ratified the Framework Convention for the Protection of National Minorities (FCNM). With regard to the European Charter for Regional or Minority Languages (ECRML), Croatia, the Czech Republic and Slovakia have ratified it, whereas the FYROM has signed the ECRML but not ratified it yet. With regard to the ECRML, it is worth mentioning that Croatia made a reservation in respect of Article 7, paragraph 5, of the Charter, which results in the non application of the protective provisions of the Charter to ‘non-territorial’ languages, including the Romani language.

⁴⁸ The Preamble of the Croatian Constitution reads: “the Republic of Croatia is established as the national state of the Croatian nation and the state of members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are its citizens”.

⁴⁹ Official Gazette no. 155/2002, 13 December 2002

⁵⁰ See Amendment IV, replacing the Preamble to the Constitution which was adopted on 16 November 2001.

communities.⁵¹ Moreover, the basic protection of national minorities in the Czech Republic is determined by the 1993 Constitution, the Charter of Fundamental Rights and Basic Freedoms, and the Law on Ethnic and National Minorities which was adopted in 2001. This Minority Act specifies the rights of members of national minorities, including the Roma community, and the competence of ministries, administrative authorities, and authorities of territorial self-administration units in relation to these rights. In the Czech Republic many thousands of Roma are Slovak citizens as a result of internal migration in Czechoslovakia, combined with the widespread denial of Czech citizenship to Roma of Slovak origin in the new Czech state. Migration of Roma from Slovakia to the Czech Republic has nevertheless continued since 1993.⁵²

Finally, Roma are the second-largest ethnic minority in Slovakia after Hungarians and they live mostly in the eastern parts of the country. The 1992 Constitution recognizes that the citizens of national minorities or ethnic groups shall be guaranteed the right to minority language education, the right to use a minority language in official communications, and the right to participate in decision-making in matters affecting national minorities and ethnic groups. Slovakia has no comprehensive law on minorities but a Law on the Use of Languages of National Minorities,⁵³ which grants all minority languages equal status with the Slovak language in all towns and villages where the minority represents at least 20% of the overall population. In 1995, the Slovak Parliament approved the Law on the State Language of the Slovak Republic,⁵⁴ which was amended in July 2009 by the Slovak authorities.

The ECRI report on the Czech Republic⁵⁵ stated that victims of the most violent racist crimes are reported to be predominantly Roma. In addition, incidents of police ill-treatment of minorities, particularly Roma, continue to be reported. The report of the CHR in his visit to Croatia⁵⁶ showed concern about the rise of the number of anti-Roma demonstrations and cases of police ill-treatment against Roma. With regard to the FYROM, the HRC in its concluding observations was concerned about: "... persistent reports of police misconduct, particularly against Roma and other vulnerable groups, especially at the time of arrest and detention ...".⁵⁷ In the same line, the CERD concluding observations on the Slovak Republic noted with concern: "the persistence of prejudice and negative attitudes against Roma in the State

⁵¹ See Amendment VIII, replacing Article 48 of the Constitution which was adopted on 16 November 2001.

⁵² In this respect, the Czech authorities amended the Acquisition and Loss of Citizenship Act (Act No. 40/1993), simplifying the acquisition of Czech citizenship by persons who were citizens of the former Czechoslovakia and had been long-term or life-long residents on Czech territory.

⁵³ Act No. 184/1999 on the Use of Languages of National Minorities.

⁵⁴ Act No. 270/1995 on the State Language of the Slovak Republic, as amended in 2009.

⁵⁵ ECRI report on the Czech Republic, CRI (2009) 30, 2 April 2009.

⁵⁶ See report of the CHR on his following visit to Croatia from 6 to 9 April 2010, CommDH(2010)20, paras.136-137.

⁵⁷ UN Human Rights Committee (HRC) Concluding observations on the Former Yugoslav Republic of Macedonia, CCPR/C/CZE/CO/2, 9 August 2007, para. 9.

[and] racist statements in the discourse of public officials and political parties, targeting this minority.”⁵⁸

3.2. Anti-Discrimination Legislation

This section contains an outline of the international human rights instruments on anti-discrimination accepted by all four countries to combat discrimination, a summary of the constitutional provisions on the principle of equality and non-discrimination, as well as an overview of the challenges faced by human rights institutions, in particular the Office of the Ombudsman, in order to both promote human rights and combat anti-discrimination.

In this respect, all four countries have ratified the 1961 European Social Charter (ESC), but only Slovakia has ratified the 1996 revised Charter.⁵⁹ Moreover, with regard to one of most important international instruments for combating racial discrimination, Protocol No. 12 to the ECHR, only Croatia and the FYROM⁶⁰ have ratified it, whereas Slovakia and the Czech Republic have only signed it. With regard to the official position of the Czech Republic, this country will refrain from ratifying the Protocol until its ambit is formulated more precisely by the case law of the ECtHR. Slovakia appears not to have any particular objections to the ratification of this Protocol.

With regard to the principle of equality and non-discrimination in the domestic legislation of all four countries, Article 9 of the Macedonian Constitution⁶¹ sets out the principle of equality. Furthermore, Articles 1 and 3 of the Czech Charter of Fundamental Rights and Freedoms (Czech Charter) are the main provisions regarding those principles. Whereas Article 1 of the Czech Charter establishes the principle of equality, Article 3 of the Czech Charter prohibits discrimination, providing that: “fundamental human rights and freedoms are guaranteed to everybody irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth or other status”.⁶² Despite these two provisions, it is of the utmost importance to mention that Articles 1 and 3 of the Czech Charter and Article 9 of the Macedonian Constitution have yet to be applied in practice to cases of racial

⁵⁸ CERD concluding observations on Slovakia, CERD/C/SVK/CO/6-8, 25 March 2010, para. 13.

⁵⁹ Croatia ratified the European Social Charter (ESC) on 26 February 2003, the Czech Republic on 3 November 1999, the FYROM on 31 March 2005, and Slovakia ratified the revised ESC on 23 April 2009.

⁶⁰ Both, Croatia and the FYROM have ratified the Protocol No.12 on 1 April 2005.

⁶¹ Article 9 of the Macedonian Constitution reads: “Citizens of the Republic of Macedonia are equal in their freedoms and rights regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status [and] all citizens are equal before the Constitution and the law”.

⁶² A translation of Article 3 of the Czech Charter is available at: <http://www.legislationline.org/documents/section/constitutions/country/35>.

discrimination.⁶³ In this respect, Article 14 of the Croatian Constitution provides for the principle of equality and the general prohibition of discrimination. Initially, this Article did not specifically refer to discrimination on the grounds of belonging to a national minority. However, the Croatian Constitutional Law on the Rights of National Minorities established a solution by providing that under Article 4.4 “any discrimination by reason of belonging to a national minority shall be prohibited. Members of national minorities shall be guaranteed equality before the law and equal legal protection”.⁶⁴ Finally, Article 12 of the Slovak Constitution foresees the principle of equality and non-discrimination.

All four countries have been required to adopt Anti-Discrimination Acts to transpose the Racial Equality Directive and the Employment Framework Directive. In this respect, the Slovakian authorities adopted the Anti-Discrimination Act on 1 July 2004, since amended several times, most recently in April 2008. This Act prohibits discrimination based on, among other things, race, religion or belief, national or ethnic origin, colour and language, and covers the areas of employment, social security, health care, the provision of goods and services as well as education. It contains provisions on direct and indirect discrimination, as well as on instruction to discriminate, incitement to discriminate, and victimisation. Further, the law provides the introduction of special measures on grounds, *inter alia*, of social and economic disadvantage.⁶⁵

In 2008, the Law on Prevention of Discrimination entered into force in Croatia. The Law further provides for

*... protection against discrimination on the grounds of race, ethnic affiliation, colour, gender, language, religion, political or other belief, national or social origin, property, membership in a trade union, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation ...*⁶⁶

In 2008, the Czech Parliament also enacted the Equal Treatment and Legal Measures of Protection from Discrimination and amendments to Some Laws Act. This Act was vetoed by the President of the Republic and returned to the Chamber of Deputies. Finally, the Act was passed on 17 June 2009. The Law provides definitions of discrimination, harassment, victimisation, and disability on seven prohibited grounds: gender, racial/ethnic origin, religion or belief, disability, age, and sexual orientation. According to the requirements of the Racial Equality Directive, it covers work and employment relations, access to employment, self-employment and occupation, health care, education, social security and social protection, social advantages and

⁶³ ECRI *report on Czech Republic* adopted on 2 April 2009, CRI(2009)30 and ECRI *report on FYROM* adopted on 28 April 2010, CRI (2010)019.

⁶⁴ ECRI *report on Croatia*, CRI (2005)24, 17 December 2004, para.10.

⁶⁵ ECRI *report on Slovakia*, CRI(2009) 20, para. 19.

⁶⁶ CHR report following visit to Croatia from 6 to April 2010, CommDH (2010), 17 June 2010, para. 133.

services, including housing, to equal extent for all prohibited grounds.⁶⁷ Recently, in April 2010, the Macedonian Assembly adopted the Law on Prevention of Discrimination, which does not include discrimination based on sexual orientation.⁶⁸

One of the main challenges faced by the Offices of the Ombudsmen as described by the recent reports of several international human rights bodies, such as the CERD and the ECRI, are, among others, the low number of complaints alleging racial discrimination received by these institutions. At the same time, the need to ensure the independence and transparency of those bodies has been highlighted.⁶⁹ Additionally, the different human rights sources reviewed highlighted the importance of the establishment at the national level of an independent and specialised body to combat racism and discrimination, *i.e.*, an institution which has competence, *inter alia*, assisting victims, conducting investigations, initiating and intervening in court proceedings, monitoring legislation and advising the legislative and executive authorities, public awareness-raising of issues of racism and racial discrimination, and promotion of policies and practices to ensure equal treatment. Out of the four countries analyzed, only Slovakia appears to have fulfilled this requirement with the establishment of the Slovak National Centre for Human Rights.⁷⁰ This body monitors the implementation of the Anti-Discrimination Act as well as represents the victims of racial discrimination in court. In the Czech Republic, plans to create a Centre for Equal Treatment appear to have been abandoned according to the last ECRI report on the Czech Republic.⁷¹ At the time of the last ECRI reports, neither Croatia⁷² nor the FYROM⁷³ reported any plans to set up a specialised body to combat racism and racial discrimination. Croatia has instead set up an inter-ministerial working group in 2004, the so-called Commission of Experts Working on Combating Discrimination, which has elaborated a national strategy against all forms of discrimination, including racial discrimination.

When it comes to the protection of Roma rights in Slovakia, the Office of the Plenipotentiary for Roma has been established and entrusted with managing funds allocated to programmes and projects dealing with Roma

⁶⁷ European Network of Legal Experts in the non-discrimination field, "News from the EU Member States", *European Anti-Discrimination Law Review* No.9, December 2009, 54-55, available at: <http://www.non-discrimination.net/content/media/Review%2009%20EN.pdf>

⁶⁸ More information available at: <http://oneworldsee.org/Weekly-Report-Anti-Discrimination-Legislation-in-Western-Balkans>.

⁶⁹ See, among others, HRC Concluding observations on the FYROM, CCCPR/C/MKD/CO/2, 17 April 2008; CERD concluding observations on the Czech Republic, CERD/C/CZE/CO/7, 11 April 2007.

⁷⁰ The Slovak National Centre for Human Rights has informed ECRI that since the passing of the Anti-Discrimination Act, it has received a total of 3,500 complaints being the second highest number of complaints concerning discrimination relate to workplace discrimination filed mainly by Roma. The Centre has also received discrimination concerned access to goods and services, in particular filed by Roma. The centre also received complaints concerning discrimination in education, and in the areas of healthcare and social security.

⁷¹ ECRI *report on Czech Republic*, CRI (2009)30, 2 April 2008, para. 36.

⁷² ECRI *report on Croatia*, CRI (2005)24, 17 December 2004, para. 49.

⁷³ ECRI *report on FYROM*, CRI (2010)19, 28 April 2010, para. 31.

issues. However, according to the ECRI report on Slovakia,⁷⁴ it appears that this office does not currently have the necessary tools, including human and financial resources, to carry out this task. In addition, this office has been actively involved in the standardisation of the Romani language. In this respect, in the Council for Roma Community Affairs in the Czech Republic, one of the governmental bodies is carrying out activities aimed at fighting racism and intolerance against the Roma population.⁷⁵

Finally, it is also worth mentioning that all of the four countries are taking part in the Decade of Roma Inclusion. Each country has developed a national Decade Action Plan⁷⁶ that specifies goals and indicators in priority areas. Currently, Slovakia holds the Decade Presidency, which rotates annually. As a central pillar of the Decade, a Roma Education Fund was established in 2005 to expand educational opportunities for Roma communities in Central and South Eastern Europe. This fund receives resources from governments, multilateral organizations, and private sources. A report prepared by Roma activists on progress of the Decade of Roma Inclusion revealed that the FYROM and the Czech Republic have provided “an example for increased government pro-activeness in introducing systemic change even over the short-term”.⁷⁷ In this respect, the FYROM, according to this assessment, began to seriously tackle the Roma inclusion agenda, whereas the Czech Republic established the Governmental Department for Roma Social Inclusion of Excluded Romani Communities. However, this report highlighted serious shortcomings as regards the lack of data on Roma when it comes to education, employment, health, and housing, noting that “the Decade has launched a process towards making a difference, but it has not yet had the impact that Roma in Europe need—tangible and real integration into mainstream societies”.⁷⁸

3.3. Access of Roma to Education

The choice of education as a topic for this study requires no specific justification since reports from all over Europe show evidence of constant gaps in the educational attainment of Roma when compared to the statistical average. Reports have repeatedly documented that Roma drop out from formal education at high rates and that their literacy levels remain low. There are general studies addressing the issue of discrimination against the Roma

⁷⁴ ECRI *report on Slovakia*, CRI (2009)20, 19 December 2008.

⁷⁵ Other governmental councils are the Council for Human Rights and National Minorities.

⁷⁶ Twelve countries are currently taking part in the Decade and a thirteen has observer status. More information available at: <http://www.romadecade.org/>

⁷⁷ Roma activists assess the Progress of the Decade of Roma Inclusion 2005-2006, 16, DecadeWatch, 2007, available at: [http://www.romadecade.org/files/downloads/DecadeWatch/DecadeWatch%202007%20Update%20-%20Final%20\(30-07-08\).pdf](http://www.romadecade.org/files/downloads/DecadeWatch/DecadeWatch%202007%20Update%20-%20Final%20(30-07-08).pdf)

⁷⁸ *Ibid.*, 17.

community in the field of education,⁷⁹ and extensive studies have been produced with regard to access to education of the Roma population.⁸⁰ All studies have highlighted the perpetuation of segregated schooling and the over-representation of Romani children in special school facilities; additionally, they have revealed indications of denial of education rights in the high rates of illiteracy and very low school attainment among Roma. According to the ACFC second opinion on the FYROM: “[The Roma] school attendance is still very low and the drop-out rate remains particularly high, with only a small proportion able to reach secondary education. Thus, according to official data for 2005, out of a total of 8,000 Roma children enrolled in primary schools, fewer than 700 completed their primary education. Various sources point out that girls account for over 50% of drop-outs.”⁸¹ Moreover, the ACFC second opinion on the Czech Republic noted that:

Estimates as to the number of Roma children who remain outside the school system vary. It appears that those who do attend school rarely advance beyond primary school [moreover] [m]aterial conditions in some of the schools they attend are reportedly precarious and the teaching they receive is still, in most cases, insufficiently adapted to their situation.⁸²

The subject of Roma education is by no means new. The following analysis of the situation of the Roma community in the field of access to education will present an overview of the international provisions describing the right to education, the domestic legislation in the field of education of the four countries under review, and the measures taken by those authorities, taking into account the recommendations and concerns expressed by human rights bodies. Furthermore, the recent case law of the ECtHR in the area of segregated education will be commented on.

As regards the right to education, the Universal Declaration of Human Rights was the first international instrument to declare education to be a human right. In particular, Article 26 of the Declaration makes clear that the objective of education should be the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. Further to this Article, other international instruments, in particular Article 27 of the ICCPR and Article 28 and 30 of the Convention on the Rights of the Child, develop the right to education, with specific reference to minorities.⁸³ These articles guarantee the right of

⁷⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), *Commentary on Education under the Framework Convention for the Protection of National Minorities*, 2 March 2006, ACFC/25DOC(2006)002, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_CommentaryEducation_en.pdf.

⁸⁰ See, among others, European Commission, DG Employment and Social Affairs, *The Situation of Roma in an Enlarged European Union*, 2004, 20; Thematic documentation available at: <http://www.lex.unict.it/eurolabor/documentazione/altridoc/situation.pdf>.

⁸¹ ACFC second opinion on the the FYROM, adopted 23 February 2007, ACFC/OP/II(2007)002.

⁸² ACFC second opinion on the Czech Republic, adopted on 24 February 2005, ACFC/INF/OP/II(2005)002

⁸³ Article 28 of this Convention reads: “1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity...”.

minorities to use their language in community with other members of their group, while provisions of other human rights instruments⁸⁴ provide guarantees for national minorities to learn their mother tongue or learn in their mother tongue.

With regard to the domestic legislation on education, the Czech Republic Schools Act, Law No. 561/2004, no longer provides for special schools in the form that had existed prior to the law's entry into force. Primary education is now provided by primary schools and specialised primary schools, the latter being intended primarily for pupils with severe mental disabilities or multiple disabilities and for autistic children. The Act also contains provisions governing the education of children and pupils with special educational needs. These include children suffering from a social disadvantage. Additionally, the Decree No. 73/2005 on the education of children, pupils, and students with special educational needs and gifted children, pupils and students, provides that pupils and students with special educational needs are to be educated with the help of support measures that go beyond or are different from the individualised educational and organisational measures available in ordinary schools. In the same line, the Slovak School Act No. 245/2008 Coll. on Education and Training prohibits discrimination and segregation in education. This law was amended by Act. No. 37/2009. Furthermore, on 6 August 2008, the Slovak Ministry of Education issued the Decree No. 322/2006 on Special Schools, outlining the procedure for placing children in Special Elementary Schools. Additionally, they have also adopted a Concept of Education and Training of Roma Children and Pupils, including the Development of High School and University Education with the aim of decreasing the number of Roma children attending Special Elementary Schools for disabled children and of integrating them into mainstream education.⁸⁵ In the FYROM,⁸⁶ teaching at the primary level can be delivered in Macedonian, Albanian, Turkish, and Serbian. Roma, Bosnians, and Vlachs have no access to education in their languages, but some primary schools teach these languages as optional subjects. However, in practice the right of minority communities to teach of and in their language at both the primary and secondary levels had meant the gradual separation of pupils along linguistic and ethnic lines. With regard to Roma children, this segregation occurs within a separate class or establishment due to prejudice against them among other pupils' parents or teaching staff. On top of the above-mentioned segregation, school textbooks

Moreover, Article 30 reads: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

⁸⁴ See, among others, Article 5 of the UNESCO Convention Against Discrimination in Education, Article 4 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 14 of the FCNM, and paragraph 34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Commission on Cooperation and Security in Europe (CSCE).

⁸⁵ ECRI *report on Slovakia*, CRI (2009)20, 19 December 2008.

⁸⁶ In the FYROM, the language of teaching is Macedonian but the right of persons belonging to minorities to teaching of and in their language at both primary and secondary levels is recognized.

still contain ethnic stereotypes, particularly regarding Roma, and regardless of the language of instruction. In particular, history and literature teaching continue to be ethnically focused.⁸⁷ Finally, the Croatian Primary Education Act⁸⁸ includes the main relevant provisions in the area of education.

As stated by the ACFC Commentary on Education: “ ... all aspects and elements of education should ensure ‘a climate of tolerance and dialogue’. Such dialogue is hardly possible if persons belonging to different groups never meet even when they live in the same city, village or region [...] there is a dangerous grey zone between [the so-called ‘special’ schools/classes and ‘supportive’ or ‘additional’ or ‘remedial’ classes].”⁸⁹ Moreover, the CERD General Recommendation No. 27 of 16 August 2000 on Discrimination against Roma, made, *inter alia*, the following recommendations in the area of education:

*To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, [...], and, for these purposes, to cooperate actively with Roma parents, associations and local communities. [...] to prevent and avoid as much as possible the segregation of Roma students, [...] to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.*⁹⁰

The report on the visit of the CHR to Croatia showed that the number of Roma children enrolled in primary schools in Croatia has risen due to actions undertaken by the Croatian authorities.⁹¹ In this respect, the Croatian authorities have reported that in 2010 there were 5,000 Roma children enrolled in schools, while in 2005 this number was only 1,000. Moreover, the authorities have taken measures to provide textbooks, transportation, accommodation in dormitories, and scholarships for Roma students; the Ministry of Education has also employed teaching assistants from the Roma community due to the reported poor knowledge of the Croatian language among Roma children. However, the CHR noted that: “Progress on the successful completion of primary education is unsatisfactory [as] only 10 to 25% of Romani children finish primary school.”⁹² Furthermore, the HRC in its concluding observations on the FYROM, remains concerned about “the inadequate opportunities for members of minority groups, in particular Roma, to receive education at the primary and secondary levels in their language, as

⁸⁷ ECRI report on FYROM, CRI (2010)19, 28 April 2010, para. 31.

⁸⁸ Official Gazette Nos. 59/1990, 26/1993, 27/1993, 29/1994, 7/1996, 59/2001, 114/2001 and 76/2005.

⁸⁹ ACFC, *Commentary on Education under the Framework Convention for the Protection of National Minorities*, ACFC/25DOC(2006)002, 2 March 2006, 16, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_CommentaryEducation_en.pdf.

⁹⁰ See also CERD General Recommendation No. 19, 18 August 1995 on Racial Segregation and Apartheid

⁹¹ Report of the CHR on his visit to Croatia from 6 to 9 August 2010, CommDH(2010)20, para. 121.

⁹² Report of the CHR on his visit to Croatia from 6 to 9 August 2010, CommDH(2010)20, para. 124.

well as the high level of premature termination of schooling among Roma children.”⁹³

3.4. Case Law of the European Court of Human Rights: Roma Segregated Education

Roma rights litigation has achieved a remarkable success in expanding the legal protection to Roma in Europe. In the mid and late 1990s, racial discrimination was simply not a subject of enquiry in the ECtHR. However, as described earlier in this study and in the extensive relevant case law of the Court, much has been achieved as regards legal protection against racial and ethnic discrimination in Europe. The case law of the ECtHR has made clear that the most common problems facing Roma across Europe have involved police violence, racially motivated violence, and racial segregation in schools, and that these constitute violations of the law.

On 16 March 2010, the Grand Chamber of the ECtHR in the case *Oršuš and others v. Croatia*⁹⁴ adopted a very important judgment in a case which initially concerned alleged discrimination against the applicant’s right to education on account of the applicants having been assigned to special classes on the basis of ethnicity. Whereas the Croatian government claimed that applicants had been placed in separate classes on the basis of their inadequate command of the Croatian language, the Grand Chamber of the ECtHR held that the segregation of Romani children into separate classes based on language amounted to unlawful discrimination, violating the ECHR. The above-mentioned judgment preceded a previous judgment of the ECtHR, *i.e.*, the *D.H. and others v. Czech Republic*.⁹⁵ In this case, for the first time, the Court found a nationwide system of education in which children were being segregated on the basis of race. As argued by the ECtHR, the *Oršuš and others v. Croatia* case is to be distinguished from the *D.H. and others v. Czech Republic* case, “in particular regarding the relevance of the statistics in the [two] cases, which could have a bearing on whether there is *prima facie* evidence of discrimination and consequently on the burden of proof.”⁹⁶ In the *D.H. and Others v. Czech Republic* case, the Court established that between 50 and 70% of Roma children in the Czech Republic attended special schools for pupils with learning difficulties.⁹⁷ In the *Oršuš and others v. Croatia* case, the Court noted that: “statistics submitted do not suffice to establish that

⁹³ HRC Concluding observations on the Former Yugoslav Republic of Macedonia, CCPR/C/MKD/CO/2, 17 April 2008, para.19.

⁹⁴ ECtHR, Appl. No. 15766/03, *Oršuš and others v. Croatia*, judgement of 16 March 2010.

⁹⁵ ECtHR, Appl. No. 57325/00, *D.H. and others v Czech Republic*, judgement of 13 November 2007.

⁹⁶ ECtHR, Appl. No. 15766/03, *Oršuš and others v. Croatia*, judgement of 16 March 2010, para.152.

⁹⁷ ECtHR, Appl. No. 57325/00, *D.H. and others v Czech Republic*, judgement of 13 November 2007, para. 18.

there is *prima facie* evidence that the effect of a measure or practice was discriminatory.”⁹⁸

In reaching the conclusions of the *Oršuš and others v. Croatia* case, firstly, the Grand Chamber commented on whether a difference in treatment had taken place. In this respect, the Grand Chamber reviewed the Court's well-established case law related to the guarantee provided by Article 14 ECHR that persons in similar situations should be treated in a similar manner with respect to Convention rights, unless there are objective and reasonable justifications for the different treatment. The Court also referred to the further guarantee of Article 14 regarding the right of persons in different situations to be treated differently. This reasoning is important in Roma cases. In the case of *Chapman v. United Kingdom*,⁹⁹ the different lifestyle of the Roma and the State's positive obligation to facilitate that lifestyle was specifically recognized, implying that in some cases different treatment for Roma was required because of their different situation. Moreover, the Court mentioned the States' margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.¹⁰⁰ As regards whether the difference in treatment of the applicants had an objective and reasonable justification, the Grand Chamber commented on whether adequate steps were taken by the school authorities to ensure the applicants' speedy progress in acquiring an adequate command of Croatian and, once this was achieved, their immediate integration in mixed classes. In this respect, the Court also commented on the legal basis and practice as regards the initial placement of the applicants in separate classes, the selection test, the curriculum followed by the applicants, the procedures concerning the applicants' transfer to mixed classes, the monitoring procedure, and the involvement of the applicants' parents.

Initially, the Court argued that:

*Temporary placement of children in a separate class on the grounds that they lack an adequate command of the language is not, as such, automatically contrary to Article 14 of the ECHR. [...] However, when such a measure disproportionately or even, as in the present case, exclusively affects members of a specific ethnic group, then appropriate safeguards have to be put in place.*¹⁰¹

With regard to the legal basis and practice of initially placing applicants in separate classes, the Grand Chamber stated that: “there was no specific legal basis for placing children lacking an adequate command of the Croatian language in separate classes, [n]either this practice could be considered as part of a common and general practice applied by the Croatian authorities.”¹⁰² As concerns the selection test and reduced curriculum followed by the applicants, the Grand Chamber argued that those tests did

⁹⁸ ECtHR, Appl. No. 15766/03, *Oršuš and others v. Croatia*, judgement of 16 March 2010, para.152.

⁹⁹ ECtHR, Appl. No. 27238/95, *Chapman v. United Kingdom*, judgement of 18 January 2001.

¹⁰⁰ ECtHR, Appl. No. 15766/03, *Oršuš and others v. Croatia*, judgement of 16 March 2010, para. 149.

¹⁰¹ *Ibid.* para. 157.

¹⁰² *Ibid.* para. 158.

not take into account the special characteristics of Roma children,¹⁰³ and that the Croatian government failed to indicate the legal basis¹⁰⁴ for the reduction of the curriculum and to provide a specific program in order to address applicants' alleged insufficiencies.¹⁰⁵ Moreover, as regards the involvement of the applicants' parents, the Grand Chamber stated that the parents were not in a position to give informed consent, and that in any case "no waiver of the right not to be subjected to racial discrimination can be accepted".¹⁰⁶

Finally, the Grand Chamber, acknowledging the difficulty of addressing the learning difficulties of children lacking proficiency in the language of instruction, in reaching its conclusion commented upon the margin of appreciation in the following terms: "whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation."¹⁰⁷ Thus, the Court concluded that:

*The facts of the instant case indicate that the schooling arrangements for Roma children were not sufficiently attended by safeguards that would ensure that, in the exercise of its margin of appreciation in the education sphere, the State had sufficient regard to their special needs as members of a disadvantaged group [...] the Court considers that there were at the relevant time no adequate safeguards in place capable of ensuring that a reasonable relationship of proportionality between the means used and the legitimate aim said to be pursued was achieved and maintained. It follows that the placement of the applicants in Roma-only classes at times during their primary education had no objective and reasonable justification.*¹⁰⁸

Whereas this recent and pivotal judgment has demonstrated how the Roma rights movement can look to the future, the challenge still remains to find convincing arguments in parliaments, local governments, and political environments in order to translate judicial decisions into real facts on the ground.

4. Conclusion

Today, most European societies are more multi-ethnic and multicultural than ever before. This diversity applies to all levels in society, including in the area of education. Likewise, multi-ethnicity has never been a more significant fact

¹⁰³ *Ibid.* para 159-162. In this respect, see also Grand Chamber's argument in the *D.H. and others v. Czech Republic*, Appl. No. 57325/00, judgement of 13 November 2007, para. 200-201.

¹⁰⁴ *Ibid.* para. 165.

¹⁰⁵ *Ibid.* para. 166.

¹⁰⁶ *Ibid.* para. 178-179. In this respect, see also Grand Chamber's argument in the *D.H. and others v. The Czech Republic*, Appl. No. 57325/00, judgement of 13 November 2007, para. 202-204.

¹⁰⁷ *Ibid.* para. 182. In this respect, see also Grand Chamber's argument in the *D.H. and others v. The Czech Republic* Appl. No. 57325/00, judgement of 13 November 2007, para. 206.

¹⁰⁸ *Ibid.* para 182-184.

in Europe, for both public and policymakers alike. States are all committed to combating racial, religious, and ethnic origin discrimination and to ensuring that everyone in Europe has an equal chance of personal fulfilment within their community and the wider society. However, this study shows that despite wide European-level commitments to improve the education of Roma, as well as regular affirmations by States of the priority of efforts in this area, states' practices have often been inconsistent with these commitments.

Likewise, reports of the different human rights bodies and civil society reveal that there are still a disproportionately high number of Roma children in institutional care, poor school attendance, and a high drop-out rate among Roma children. Children continue to be removed from their families on economic and social grounds, and parents may also be rapidly deprived of their parental rights. In addition, these reports emphasise that considerable efforts are still needed to build trust and confidence between the majority population and the Roma population in all areas, in particular in the field of education. This, however, is a two-way process. Not only are efforts required to build the confidence of Roma families in the ordinary school system but also actions are needed to overcome prejudice amongst the majority population towards Roma pupils. On the one side, Roma parents perceive the ordinary school system as hostile and unsafe, with their children at risk of bullying by other children or teachers. Thus, these parents are highly unlikely to wish to expose their children to such an environment, which they distrust. Other parents who do choose to send their children to ordinary schools may still find their children placed in separate classes with different curricula. On the other side, overcoming prejudices and stereotypes among the majority population towards the Roma community is not an easy task. In this respect, authorities, in particular at the local level, should take the lead and give example. It is true that in their attempts to achieve the social and educational integration of disadvantaged groups such as the Roma, authorities may have to contend with a lot of difficulties. Nevertheless, if they take into consideration the cultural specificities of this vulnerable minority and their different lifestyle while drafting policies, this will perhaps help to overcome the negative image and stereotypes of Roma held by the majority population.

Finally, by comparing the situation of the Roma in the area of education in four countries from Central and South Eastern Europe, and by describing how this situation of discrimination has become an international concern with regard to the consequences and security implications of such attitudes, this study can conclude that education is key for the promotion and respect of the human rights of the Roma as well as for their successful integration into the wider society. It also shows the massive gap that still exists between, on the one hand, European efforts to challenge racial discrimination and, on the other hand, policies concerning Roma population in all areas of public life, but in particular the area of education, which indeed presents a real challenge for the years to come.

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