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**COMPARATIVE ANALYSIS OF THE INTERNATIONAL, EUROPEAN AND
UKRAINIAN STANDARDS ON THE RIGHT TO EDUCATION OF NATIONAL
MINORITIES: THE CASE OF ROMA PEOPLE**

Master's Thesis

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INTRODUCTION

This thesis is aimed at carrying out a comparative research of the international, European and Ukrainian legal standards on the right to education of national minorities. Analysing the right to education of the Roma¹ ethnic minority is of particular interest since this right, as well as other basic human rights, remains a distant dream to many Roma despite extensive legal and policy frameworks on both national and international levels. The main focus of this research lies on the Roma national minority in Ukraine. Ukraine is chosen for several reasons. Firstly, while there are various in-depth studies on the right to education of Roma in the European Union (EU) Member States, the situation of Roma on the right to education in Ukraine has not been duly scrutinized despite the difficulties that young Roma face when attempting to receive quality education on equal footing. The context of the right to education of Roma in Ukraine is under-researched, and, therefore, there is a value in complementing the research gap by analysing the Ukrainian context of the right to education of Roma by means of carrying out a comparative analysis. Secondly, in light of both Ukraine's ongoing transition to the EU and the EU-Ukraine Association Agreement² (hereinafter AA), it is of great value to compare the domestic anti-discrimination standards and those of the EU, as well as the instruments providing the right to education, since a higher provision of human rights and fundamental freedoms is among the structural changes foreseen by the AA.

Since the thesis is concerned with the right to education of Roma as a national minority group, it is of great use to emphasize in which way the term "minority" is understood in the course of writing this study because when it comes to finding one internationally unified definition, it has to be pointed out that there is none. Namely, the term "minority", in this research, refers to the minimalist approach³ proposed by Gaetano Pentassuglia, a modern minority rights scholar, who ultimately built such an approach by endorsing a definition proposed by Francesco Capatori, the former Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, as early as in 1977. The minimalist

¹ In this research "[t]he term "Roma" [is used in the same way as it is] used at the Council of Europe [documents and] refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies." Ad Hoc Committee of Experts on Roma Issues (CAHROM). Thematic Report of the Group of Experts on Inclusive Pre-School Education for Roma children. – CAHROM (2015)6, Strasbourg 09.07.2015, p.49.

² The Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Brussels 21.03.2014 (Preamble, Article 1, Titles I, II & VII), 27.06.2018 (Titles III, IV, V & VI, related Annexes and Protocols) e.i.f. 01.09.2017.

³ G. Pentassuglia. Minorities in International Law. Strasbourg: European Centre for Minority Issues Handbook Series 2002.

approach implies that there is an inextricable link between a minority group and State through established historical ties: it should be stressed that this approach does not consider such groups as foreigners, migrant workers and refugees within the scope of “minorities”.

In this research, the author resorts to two concepts that are of particular use in carrying out this study. The first one is the right to inclusive education. This concept has been widely recognized by numerous States and intergovernmental organizations as a viable approach to improving educational outcomes and better integration of marginalized groups, including Roma. In its analysis, the author gives a particular attention to the comparison of the concept of inclusive education under international, European and Ukrainian legal frameworks. The author submits that the Ukrainian policy⁴ on inclusive education, based on the recently updated domestic law on education⁵ with specific references to inclusive education⁶, though refers to the Roma minority, ultimately may result in the practice of placing Roma children into separate classes and/or groups, which by itself may further contribute to even higher stigmatization and segregation. The author submits that inclusion of Roma children in mainstream education is a beneficial way to improving their educational outcomes and high school drop-out rates. Given the poly-ethnic landscape of Ukraine, inclusion of marginalized groups in mainstream education system is a key to ending segregated and unequal education. Generally, the author is of the view that inclusive education is fundamental for integration of different marginalized groups and not only for the Roma. The author further elaborates on the comparison of the international and domestic concepts of inclusive education and provides the analysis of the Ukrainian concept of inclusive education in relation to placing the Roma minority under the scope of this concept.

The second concept utilized in this research is multiculturalism. This concept is of great value for the research, in particular, for discussing the insufficiencies of State policies and their respective implementation when addressing the minority rights. In its plain understanding multiculturalism can be defined as the matter of mere coexistence of groups of different backgrounds. The author refrains from viewing the concept of multiculturalism from such an angle due to the fact that it has a rather narrow vision which neglects the importance of social interaction within a society. Moreover, such a narrow approach contributes to the division of

⁴ The concept of inclusive education and Inclusion Index, Ministry of Education and Science of Ukraine, available at: <https://mon.gov.ua/ua/tag/inklyuzivne-navchannya> (10.11.2017)

⁵ The law of Ukraine “On Education”. Adopted 05.09.2017, e.i.f. 06.09.2017.

⁶ The law of Ukraine “On Amendments to the Law of Ukraine "On Education" regarding the peculiarities of access of persons with special educational needs to educational services. Adopted 27.05.2017, e.i.f. 28.05.2017.

society into more closed groups, leading to social segregation and poor integration of national minorities.

The notion of multiculturalism favoured by the author takes a different stance. In author's view, multiculturalism should be aimed at promoting and fostering a dynamic discourse between people of diverse cultural and ethnic backgrounds in all spheres of social relations. The author also submits that having such an understanding of the concept of multiculturalism at State level necessitates the adoption of affirmative actions and positive discrimination measures to remedy the situation of disadvantaged and marginalized groups. In essence, the concept used by the author resonates with the vision of Will Kymlicka, a proponent of liberal multiculturalism⁷. Taking such a perspective, contributes to the idea that minority groups should feel themselves as part of the social fabric while still enjoying the possibility of preserving their culture, traditions, language as part of their unique historical heritage.

The primary object of this study is the legal framework of the right to education of Roma as national minority, based on international, European and Ukrainian human rights standards. Yet, bearing in mind that human rights are indivisible, interrelated and interdependent follows that the right to education cannot operate in vacuum and needs to be considered in a holistic approach, hence also in connection to the practice of implementation of States' legal obligations in ensuring this and other human rights. Having said this, the object of this study needs to be extended. Therefore, not only human rights instruments and normative base of the right to education, but also the socio-economic context of Roma in Ukraine and Europe, relevant policies and programs in the same area, as well as good practice on ensuring the right to education of Roma in Europe have to be taken into account.

There are several hypotheses put forward by the author while elaborating on this research. Firstly, the international and European standards on the right to education are in contradiction to each other when addressing the concept of inclusive education: this further complicates full and effective realization of right to education for Roma at the domestic level. It is particularly said in relation to the right to inclusive education. While the Council of Europe recognizes inclusive education as a tool for remedying the situation of Roma in Europe, the Committee

⁷ W. Kymlicka. Liberal Multiculturalism as a Political Theory of State–Minority Relations. – Vol. 46 Political Theory 2018(1).

on the rights of persons with disabilities⁸ is of the opinion that inclusive education is to be predominantly understood as the concept for the people with disabilities. At the same time, the UN Educational Scientific and Cultural Organization (UNESCO) endorses a broader definition of the concept of inclusive education similar to the vision of the Council of Europe.

Secondly, although the European Union standards provide a rather extensive framework of anti-discrimination laws, its implementation still lags behind and is met with resistance, especially by some Central and Eastern EU Member States. Therefore, in case of Ukraine, the author submits the hypothesis that little can be expected towards the improvement of the situation of Roma unless a paradigm shift is made towards a liberal multiculturalism, also serving as an important condition for ensuring inclusive education system, in line with the aforementioned vision of multiculturalism offered by Kymlicka.

Thirdly, within the AA concluded between the EU and Ukraine, it is foreseen that not solely the establishment of closer economic ties, but also Ukraine's obligations in relation to the approximation, also known as harmonization, of its national laws are to be fulfilled. A higher provision of fundamental rights is among the structural changes that have to come, hence, the standards of treating the national minorities need to be streamlined and more efficient. Yet, the author submits a hypothesis that the real effect of the harmonization process could only be achieved holding on the premise that the political climate becomes stable and a genuine political will is expressed towards minority rights at the national level.

The author has used a comparative method to answer the research questions linked to the submitted hypotheses. So, in relation to the first hypothesis, the research question is the following: are the international and European standards on the right to education indeed in contradiction between each other?

As to the second hypothesis, there are several research questions that are to render help in finding the causes of poor implementation of the National Roma Integration Strategies, so, the research questions are the following ones: why despite a host of anti-discrimination laws within the EU does the situation of Roma remain unchanged; is it so due to the lack of political will of the Member States or it is the matter of other concerns?

⁸ Committee on the Rights of Persons with Disabilities. General Comment No. 4 on the right to inclusive education, 02.09.2016, para 10.

As to the third hypothesis, which addresses the questions of the EU-Ukraine relations in light of the AA concluded between them, the research questions are the following: how is the AA to affect the national minorities in Ukraine, particularly the Roma minority; what are the repercussions of the crisis situation – the ongoing armed confrontation in the East of Ukraine, annexation of Crimea, and the rise of pro-nationalistic groups – for the situation of national minorities; and how will the AA affect the national legislation on education and national minorities?

The national minorities are often the ones who suffer the most from being excluded from the dominating discourse of mainstream societies they live in.⁹ The Roma people, the largest and yet one of the most marginalized minority groups in Europe whose number is roughly estimated to vary around 10 to 12 million¹⁰ people, is largely deprived of a vitally important prospect – its educated representatives. One may wonder why it is the case, and one may find an answer that rests in facts: exclusion and marginalization practised for centuries by mainstream European societies contributed to the current state of affairs where the Roma simply reside on the margin of societies they are part of.

It is particularly worth to mention the still pervasive practice of school segregation across Europe: it hinders the opportunities of Roma children and youth to pursue quality education, as well as diminishes the progress of social inclusion and increases the chances of being subjected to child labour. This particular situation and its consequent repercussions can be exemplified by the following statement:

“Beyond the human rights violations involved in segregated schooling, research shows that it is not simply a moral need to do something about segregated education, but there is also an economic need. There is a huge potential in Romani pupils, and in few years’ time the economies of Central and Eastern European Member States will heavily depend on those who are now pupils, many of whom are Roma.”¹¹

Clearly, quality education, as such, is a viable tool to improve the situation of marginalized communities, in particular, that of the Roma people. This has been recognized by various

⁹ UN OHCHR. *Minority Rights: International Standards and Guidance for Implementation*, New York and Geneva 2010, p.1.

¹⁰ EU and Roma, the Fundamental Rights Agency, (10.11.2017), Available at: <http://fra.europa.eu/en/theme/roma>.

¹¹ Roma Education Fund. *Making Desegregation Work! A Desegregation Toolkit Developed by the Roma Education Fund – 2015*, (25.11.2017), p. 2, available at: http://www.romaeducationfund.org/sites/default/files/publications/desegregation_toolkit__2015_web.pdf.

international and regional intergovernmental organizations as well national governments and non-governmental organization (NGOs). Yet, how can it be achieved given that a high level of discrimination, flourishing far-right extremist rhetoric in Europe and Ukraine, and exclusion as a political precondition are inherent to the societies in which the Roma reside? What should be the response of State actors to such challenges? Are the State actors the only ones who should respond?

Therefore, the main concern of this study is to stress the need of finding legal solutions to improving the deteriorated situation of Roma and recognizing the right to education as a key to achieving this goal. The right to education should be realized in line with the concept of 4As, which stands for availability, accessibility, acceptability and adaptability, as was stressed as early as 1999 by the special reporter on the right to education¹². For this end, the concept of inclusive education is particularly useful in approaching the international, regional and Ukrainian standards while evaluating their effectiveness in regard to the right to education of Roma within the vision of the concept of 4As. The concept of multiculturalism, in turn, serves a vantage point for analysing the socio-economic context of the countries the Roma minority lives in, particularly, this concept is useful to address the issue of growing nationalism in Ukraine and its repercussions on ensuring inclusive education for the Roma national minority.

The current state of knowledge on the right to education of Roma is rather extensive, given that the troubled situation of the Roma, for nearly three decades, has been enjoying a high degree of attention of the European societies and, in particular, that of intergovernmental organizations, scholars and intellectuals, as well as civil society organizations.

The scholarly works of Istvan Pogany serve as a valuable contribution when approaching the situation of Roma from a minority rights perspective. As early as 2006, he submits that the Roma in Central and Eastern Europe are facing severe discrimination and violence, as well as are in a socio-economically disadvantaged position. He also considers why minority rights regimes have had a marginal impact on the situation confronting the Roma minority, and explores both the limits and potential of the international regime of minority rights. Pogany calls the Framework Convention for the Protection of National Minorities as an “ambitious liberal project” for Europe, and according to him, probably too ambitious due to the deeply rooted image of Roma overwhelmingly associated with negative stereotypes. On the other

¹² Commission on Human Rights. Preliminary report of the Special Rapporteur on the right to education, 13.01.1999, pp. 15-23.

hand, he underlies that a broader institutionalization of minority rights may contribute to humanization and change of attitudes towards Roma. In relation to the right to education, Pogany, stresses that Central and Eastern European States are likely to resist the minority rights regime. He also discusses whether the current conceptions of minority rights, as recognized by international law, are suitable at all to fit the Roma rights. Pogany asserts that the deeply rooted negative beliefs about the Roma in Central and Eastern Europe are likely to result in a long, difficult and uncertain process when attempting to counter such beliefs.¹³ With all the criticism provided by Pogany towards whether the Roma rights fit the international framework of the minority rights, the step taken by the EU by introducing the EU Framework for National Roma Integration Strategies in 2011, with a significant emphasis on enhancing the access to education of Roma, proved that Roma rights should be seen within the concept of minority rights. Yet, his prediction that the process of combating negative connotations related to the Roma will be a long and difficult task has proved to be indeed a challenge, particularly in Central and Eastern Europe.

Another prominent scholar, whose contribution to the debate over the widely accepted practice of institutional discrimination of the Roma ethnic minority, namely through school segregation, is Iulius Rostas. Rostas possesses extensive experience working in various realms such as in academia, government institutions, and also working as an independent expert. His research on school segregation and anti-Gypsyism, as a specific type of discriminatory attitude towards the people of Roma origin, renders great help in viewing the insufficiencies of legal and policy frameworks on desegregation of Roma in education.¹⁴ Thus, Rostas puts forward a claim in this regard:

“In effect, stipulated anti-discrimination laws do not impose positive duties on the authorities to desegregate what in the end renders efforts undertaken by specialised anti-discrimination bodies ineffective. Although national governments and donors appear committed to combating segregation, they often work in segregated environments, and show reluctance to unleash nationwide reforms. Undertaken approaches continue to be grossly undermined by lack of data, absence of partnership with local authorities, provision of limited resources, and inadequate monitoring and evaluation schemes.”¹⁵

¹³ I. Pogany. *Minority Rights and the Roma of Central and Eastern Europe*. – Vol. 6 *Human Rights Law Review* 2006(3).

¹⁴ I. Rostas. *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe*. Budapest: Central European University Press 2012 I edition.

¹⁵ *Ibid.*, p. 255.

Importantly, there is a number of legally binding human rights treaties relevant in relation to the right to education, also applicable to the Roma minority, such as the International Covenant on Economic, Social, and Cultural rights (ICESCR)¹⁶, Council of Europe Framework Convention for the Protection of National Minorities (Framework Convention on National Minorities)¹⁷ as well as the European Convention on Human Rights (ECHR)¹⁸. These human rights instruments shape the international and regional legal frameworks for minority rights, in general, and the right to education, in particular. A closer scrutiny of the aforementioned instruments is further carried out in the course of writing this study in the following chapter one. The principles of equality and non-discrimination, the right to education and the concept of inclusive education are therefore discussed in the same chapter.

Chapter two closely focuses on the situation of the Roma minority in Europe, particularly in Central and Eastern European countries. It firstly covers the general situation of the Roma in both the EU and Council of Europe Member States. Then, the research proceeds with the EU policies set up for the integration of Roma by particularly looking at the EU Framework for National Roma Integration Strategies¹⁹, which addresses four key areas: education, employment, healthcare and housing. In this regard, the area of education and respective achievements and challenges are analysed with a specific attention to the right to inclusive education and its recognition at the EU and Council of Europe levels. It also covers the practice of segregated schooling of Roma which exists at odds with the EU and European regional anti-discrimination legal standards. It then proceeds with the case-law of the ECtHR in the area of education of Roma by critically analysing its effects from both legal significance and implementation success.

Chapter three proceeds the analysis by, firstly, presenting the situation of Roma in Ukraine – it provides a detailed overview of national laws on minority rights as well as focuses on the Strategy²⁰ on the protection and integration of the Roma minority into Ukrainian society up to

¹⁶ The International Covenant on Economic Social and Cultural Rights. New York 16.12.1966, e.i.f. 03.01.1976.

¹⁷ The Framework Convention on the Protection of National Minorities. Strasbourg 11.11.1994, e.i.f. 01.02.1998.

¹⁸ The Convention for the Protection of Human Rights and Fundamental Freedoms. Rome 04.11.1950, e.i.f. 03.09.1953.

¹⁹ The EU Framework for National Roma Integration Strategies up to 2020. Brussels, 05.04.2011.

²⁰ The Decree of the president of Ukraine on the Adoption of the Strategy on the Protection and Integration of the Roma National Minority into Ukrainian Society for the period until 2020. Adopted 08.04.2013, e.i.f. 08.04.2013.

2020 and the National Action Plan²¹ on the implementation of the Strategy. By doing so, the author will attempt to provide the analysis of the positive steps undertaken by the government in the direction of implementation the Strategy and National Action Plan. Ukraine's international and national commitments on ensuring equal education for the Roma national minority are discussed too. Additionally, the Law on Education and the law on Inclusive Education are being reviewed to assess their compliance with the international and regional standards. This chapter also touches upon the challenges facing Ukrainian national minorities in light of the ongoing crisis situation and how its pernicious repercussions, emanating violence and radicalization, affect the rights of vulnerable groups. Yet, most importantly the crisis itself has a host of negative consequences affecting not only the most vulnerable layers of society, but the Ukrainian society as a whole.

The last chapter particularly addresses the EU-Ukraine relations in light of the AA and compares the existing ant-discrimination legislation in Ukraine with that of the EU. Generally, Ukraine's approximation with the EU is being discussed, and a particular attention is given to understanding how higher provision and observance of Roma rights can benefit the State and mainstream society, as well as the Roma community.

In regard to the methodology used in this study, it has to be underlined that the author primarily uses the comparative-analytical legal method. This means that the international, regional and domestic standards providing and ensuring the right to education for national minorities are being analysed and compared against throughout the text in order to establish to what extent the Ukrainian standards on the right to education meet the international and regional ones. Using this method, the author also explores how the concept of inclusive education is understood in Ukrainian education policy. The concept of liberal multiculturalism is used in carrying out the analysis to support the claim that its profound acceptance is a necessary condition to ensure that inclusive policies and, particularly, inclusive education policy, can be realized.

For purposes of this study, the author has analysed and worked on the international human rights instruments, which represent a body of primary sources used for carrying out the research. Additionally, the author has utilized secondary sources which in this case constitute

²¹ The Decree of the Cabinet of Ministers of Ukraine on the Adoption of the Action Plan on the implementation of the Strategy on the Protection and Integration of the Roma National Minority into Ukrainian Society for the period until 2020. Adopted 11.09.2013, e.i.f. 11.09.2013.

the soft laws of the intergovernmental organizations presented in the form of general comments of the UN treaty bodies, various reports and surveys of regional intergovernmental organizations. Also, reports and documents of relevant NGOs, particularly those of local Roma NGOs, and scholarly works in the area of the minority rights and the right to education of Roma have been used to conduct the research. Also, a verbal communication has been used between the author and a Ukrainian Roma NGO, “Chiricli”. The publications of the Roma Education Fund have also served as an important contribution, given that this organization has dealt with the issues of education of Roma for more than a decade and has succeeded in many ways.

Last but not least, the relevance and value of this study lies in reinforcing the axiom that no one shall be constrained from the enjoyment of his or her fundamental right to education, regardless of race, national or ethnic origin, language, religion, social origin etc.; its novelty lies in that it addresses the right to education of Roma national minority in linkage with the Ukrainian realities in light of both the ongoing crisis with its effect on the enjoyment of the right to education and the EU-Ukraine approximation process. Therewith, this thesis addresses the need of having inclusive education in Ukraine, as well as it appeals to the concept of multiculturalism to be recognized and reflected in the Ukrainian ethnic policy. Ultimately, building inclusive education is beneficial not only for minorities but also for a mainstream society. Having stated this, the thesis attempts to bring a valuable contribution to the arguments that go in support of an inclusive, open, democratic and prosperous society for all.

Keywords: right to education, inclusive education, national minorities, the Roma minority, multiculturalism, Ukraine.

1. THE RIGHT TO EDUCATION OF NATIONAL MINORITIES

Discussing the right to education of national minorities requires to firstly look at the legal framework that forms international minority rights regime and protection offered to minority rights, as such. This chapter will elaborate on the international definition of national minority, as well as the international legal framework of the right to education will further be discussed with a specific focus on the Council of Europe standards, given that Ukraine is a member State of the Council of Europe and is a State party to both the ECHR and FCNM. The principles of equality and non-discrimination will be discussed as the overarching elements of international human rights law, in general, and equal education, in particular. The concept of inclusive education will be described from both international and European perspective as an applicable concept to improving the access to education, as well as educational outcomes, of Roma. The concept of multiculturalism will be also discussed in this chapter as an inevitable precondition to ensure inclusive education.

It is necessary to stress the value of equal education that has evolved significantly throughout the last century. Therefore, it is worth making a reference to a famous case of the Supreme Court of the United States of America, *Brown v. Board of Education of Topeka*²²:

“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”²³

The role of the civil rights movement of the African American community in the United States has made a tremendous step forward in ensuring that segregated schooling is a hotbed of further social inequality and marginalization. Stressing the importance that the primary impetus to make a change should come from people themselves, and, therefore, when it

²² *Brown v. Board of Education of Topeka*, U.S. Supreme Court, Vol. 347, 483, 1954.

²³ *Ibid.*, para. 494.

comes specifically to a particular minority group, a direct participation of a minority group in question has to be a first condition prior to the adoption of specific legal or policy frameworks on education. In this regard, it can be seen that Roma have significantly succeeded in institutionalizing the narrative of illegal practice of segregated schooling and that it should be eventually abandoned: the unceasing work of Roma civil society organizations has paved a path to the fact that segregated schooling is deemed illegal by intergovernmental organizations and States. Nonetheless, the process of desegregation is ongoing and is often met with resistance.²⁴ The implementation of the institutional frameworks on both desegregation and inclusion still lags behind in most of the European countries, and Roma continue to remain subject to unequal treatment with its all subsequent repercussions. It is so due to many factors such as discrimination towards Roma in public life, lack of trust to public authorities by Roma, and weak representation of Roma in political life. Inclusive education for Roma, in turn, is recognized²⁵ as a tool for better integration and as a result a key element for the improvement of their participation in public life and political participation.

Throughout the years, education has become a central tool for individuals and groups in pursuing their better future. This vision is driven by the fact that education is a human right operating on the basis of the fundamental human rights principles. Hence, in an idealistic world, it should be enjoyed by all, based on the principles of equality and non-discrimination, which form a foundation for the international human rights instruments. In essence, every human right should be enshrined within a framework holding that people “are born free and equal, in dignity and rights”.²⁶ Nonetheless, a simple verity of harsh reality has always been in a dichotomy between what has been declared *de jure* and what has been experienced *de facto*. Namely, while the international, regional and domestic legal instruments provide the right to education as a basic human right, there is a host of those being distant from the quality education by virtue of such factors as discrimination, social exclusion and segregation. Economic factors, however, such as historically trans-generational poverty of the Roma people and the overall economic decline in States where they live, explicate their already disadvantaged being today.²⁷

²⁴ I.Rostas. Structural Dimensions of Roma School Desegregation Policies in Central and Eastern Europe. – Vol. 13 European Educational Research Journal, 2014(3), p.273.

²⁵ Roma Education Fund. Supra note 11, pp.1-6.

²⁶ The Universal Declaration of Human Rights, Paris 10.12.1948, Art.1.

²⁷ Rostas. Supra note 14. p. 268.

1.1. Defining national minority

Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”²⁸. Therefore, the UN Member States expressed their commitment to ensure that minorities should enjoy all range of rights on equal footing with the majority population. Part two of the same article specifies in which way the States are to provide such protection, namely they “shall adopt appropriate legislative and other measures”²⁹ to protect minority rights and achieve those ends.

The rights of persons belonging to national minorities have been deemed to be an important element of preservation of peace and security. On the one hand, minority rights are aimed at securing their right to enjoy their culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. On the other hand, however, the value of minority rights can be explicated from a different side, namely, stressing the protection of minority rights as a tool to prevent conflicts. In its report³⁰ presented to the UN General Assembly, the independent expert on minority issues, Gay McDougall, emphasized that it is of paramount importance to not only ensure that the rights of minorities are respected, but also to reconsider the role of the protection of minority rights as a conflict prevention mechanism. In his report, the independent expert on national minorities also underlined the experience of regional intergovernmental organizations in following such an approach. It was particularly reflecting on the experience of the OSCE wording out and establishing a broad concept of security, beyond traditional military security, disarmament and border issues. The OSCE concept of security deals equally with human rights and democracy issues. All OSCE participating States have agreed that lasting security cannot be achieved without respect for human rights and functioning democratic institutions. (reference to Ministerial decisions) The Contact Point for Roma and Sinti (CPRSI) is a specific programmatic department of the Office for Democratic

²⁸ UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, New York 18.12.1992, Art.1.

²⁹ Ibid, part 2, Art. 1.

³⁰ United Nations General Assembly. Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Note by the Secretary-General, “[...] the report of the independent expert on minority issues, Gay McDougall, in accordance with General Assembly resolution 63/174”, New York 12.08.2010.

Institutions and Human Rights (ODIHR) tasked with providing assistance to participating States in fulfilling their Human Dimension commitments towards the Roma and Sinti communities in Europe. Notably, cooperation with the civil society organizations within the geographic OSCE area is yet another component vital in ensuring.

Ultimately, the benefits of placing more emphasis on minority rights as a tool for conflict prevention may result in that it “not only facilitates earlier warnings of troubled societies, but also that the corresponding corrective measures are relatively less costly politically”.³¹ That adds to the value of securing minority rights in time, ensuring that equal and non-discriminatory treatment is taking place in a society. Discussing minority rights from such a perspective is relevant in light of the Ukrainian context, which is to be taken into account.

Moreover, speaking about the Roma rights as a minority group, the report of the European Commission on “Roma and the enforcement of anti-discrimination law”³² is to be mentioned. The report emphasizes the backslide in ensuring full realization of rights of the Roma people in the EU, nevertheless some positive and encouraging developments can still be noted, whether in legislation, case law or policy. Among other countries, the report provides that the deteriorated situation of Roma communities remains in Eastern European Countries such as Slovakia, Hungary, Czech Republic and Poland.³³ Relying on the findings of the report, the author takes a liberty to further submit an assumption that building inclusive education policies aimed at integrating Roma communities is fraught with a setback in light of the growing anti-Roma sentiments present in Central and Eastern Europe³⁴, as well as in Ukraine, especially since the crisis situation that is ongoing for already four devastating years. Far-right rhetoric and the crisis situation in Ukraine radiate violence and aggression and do not only contribute to the stranded situation of vulnerable groups but also make it difficult to ensure that inclusive education can be realized in under such a status quo.

While The UN Minorities Declaration establishes the commitment of States to protect minorities, it does not elaborate on the definition of a minority. As was mentioned in the introduction, there is no unified internationally agreed definition as to which groups constitute

³¹ Ibid, para. 89.

³² European Commission. Roma and the enforcement of anti-discrimination law. Luxembourg 06.10.2017

³³ Ibid., pp. 7-10.

³⁴ 31st Session of the Congress of Local and Regional Authorities of the Council of Europe. The situation of Roma and Travellers in the context of rising extremism, xenophobia and the refugee crisis in Europe, Strasbourg 20.10.2016, pp. 8-11,28.

minorities. It should be stressed that regardless of any type of definition, it must include both objective and subjective factors. Objective factors imply the members of a group would enjoy a shared ethnicity, language or religion, while subjective factors establish that individuals must identify themselves as members of a minority.³⁵

Francesco Capotorti, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, offered his definition of “minority”, offered a definition, with regard to Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and elaborated by Article 57 of the same treaty, in 1977 which extrapolates “minority” as:

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”³⁶.

This definition has also been favoured by a prominent minority rights scholar, Gaetano Pentassuglia. According to Pentassuglia, this definition conveys the core principles of the term minority and specifies that, although belonging to this group is a matter of an individual’s choice to preserve his or her heritage, a subjective element must be substantiated by objective criteria relevant to a person’s identity.³⁷

In this research, the author follows the same vision of “minority” that acknowledges that minority status is not solely for the State to decide, but should be based on both objective and subjective criteria, as specified in the Pentassuglia’s explanation of the term. Yet, the author stresses that formal recognition of a minority group by a State is pivotal as it provides legal grounds to claim their rights to be protected by a State.

In this regard, the principles of equality and non-discrimination form a solid basis for the enjoyment of human rights without any prejudice by minority groups. The concept of multiculturalism can be linked with the principles of equality and non-discrimination. In the following sub-chapter, the author will elaborate on the principles of equality and non-discrimination in more details.

³⁵ UN OHCHR Minority Rights Guideline. Supra note 9, p. 3.

³⁶ UN OHCHR Minority Rights Guideline. Supra note 9, p. 2.

³⁷ G.Pentassuglia. Supra note 3, chapter III.

In substance, the principle of equality and non-discrimination are firmly established by such instruments as the UN Charter, the Universal Declaration of Human Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Yet, there is no explicit mentioning of this concept in the aforementioned documents. Although minority groups are not the primary beneficiaries of equality and non-discrimination norms, indirectly they still reap a wide degree of protection from the prohibiting grounds of distinction, which though differ in the aforementioned treaties, repeatedly include references to race, national or ethnic origin, language, religion, social origin.³⁸ Essentially, they cover most areas of minority identity.

At the same time, realization of these principles in practice lags behind and makes it so that Roma are particularly at risk of being excluded from primary education because the right to education is confined to certain conditions. the Ukrainian citizenship is one of such conditions only. Due to the low level of possession of identity and civil registration documents among Roma, it affects their access to education. The lack of identity and civil registration documents significantly complicates enjoyment of all rights of Roma, including the right to education.

Linking minority rights with the right to education, the 4As formula has to be born in mind. Having said this, a holistic approach will be applied when discussing the right to education. The holistic approach relates to the fundamental principles of all human rights - indivisible, interrelated and interdependent. It also means that

On the European level, there are two primary documents related to the Roma minority in Ukraine. The first one is the ECHR. The second one is the Framework Convention on National Minorities. Both are the instruments of the Council of Europe, and, if compared, then the most important element is that though minority rights are not directly addressed in the former, Article 14 of the ECHR guarantees the enjoyment of the rights and freedoms set forth in the Convention on a non-discriminatory basis and that the rights enshrined in the Convention should be respectively secured. In the practice of the European Court on Human Rights this prohibition of discrimination, in conjunction with other rights established under the Convention, was used to make claims before the Court on violations of rights of minority groups: the Roma have particularly succeeded in doing so.

³⁸ Ibid.

Accordingly, the Framework Convention on National Minorities is a specific document aimed at protecting minorities in Council of Europe's area. The Council of Europe's Framework Convention, among other things, is aimed at transforming negative images of national and ethnic minorities. Namely, Article 6(1) of the Convention states that:

“The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.”

In addition, Article 12 (1) provides:

“The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.”

1.2. Equality and non-discrimination

Basing on its Constitution, UNESCO defines³⁹ the principles of equality and non-discrimination, along with other principles such as solidarity, equality of opportunity and treatment and universal access to education, as a bottom-line in understanding equal education.

“That a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind...For these reasons, the States Parties to this Constitution, believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives.”⁴⁰

³⁹ UNESCO. Right to Education - Fundamental principles. Available: <https://en.unesco.org/themes/right-to-education/fundamental-principles>.

⁴⁰ The Constitution of UNESCO, London 16.11.1945, e.i.f. 04.11.1946, Preamble.

Equality and non-discrimination smoothly go hand in hand and even complement each other, however, what makes the latter rather distinct is basically the reverse side of equality: inequality of opportunity, inequality of treatment. Application of these principles can be clearly explained through a usual example: the situation would be deemed discriminatory or unequal if the analogous situations are treated differently or different situations are treated alike.

Equality in practice, presuming *de jure* equality, does not necessarily result in *de facto* equality. In other words, treating two profoundly different subjects equally may account for worsening of the situation of the one who is in more disadvantaged position. As a countermeasure, to avoid such outcomes, the realization of *de facto* equality may rely on affirmative actions and positive discrimination policies: discrimination in favour of a person or a group of people who are in a more disadvantaged position is permitted and goes in line with international human rights standards, however remaining to a certain degree controversial.⁴¹

The controversy can be explained by rejection of majority population to accept such measures due to placing a disadvantaged group in a better, or allegedly more privileged position. Yet, in fact, such affirmative actions and positive discrimination are aimed at setting the same standards of treatment as for the majority population. Equal treatment, quality education, and subsequent acceptance of diversity - these are, generally, the main overarching ideas of affirmative actions doctrine and equality of opportunity.

As to the principle of non-discrimination, it has been evolving throughout the years along with the development of global society. It has found its reflection in various international human rights treaties, however, their wording may somewhat differ. In more long-standing human rights treaties, the list of prohibited grounds of discrimination is rather more limited compared to that of relatively more recent treaties with more extensive and thoroughly elaborated grounds. The drafting of the Universal Declaration of Human Rights in 1940 with its non-gender specific language, back then was thought to be as fairly admirable, while it had had in its earlier drafts somewhat different wording that “all men are brothers”.⁴² Nowadays, discrimination has evolved into an essentially extensive notion, and even covers specific

⁴¹ R.K.M. Smith. Textbook on International Human Rights. – Oxford University Press, 2012, p.193.

⁴² Ibid, p.194.

groups such as ethnic, linguistic, national minorities, as well as women, children, LGBT groups etc.

Racial discrimination, among other grounds of discrimination, is probably the most solid ground. It deals with features that are out of control of an individual subjected to discrimination. For example, if the skin is of different colour than that of majority population, or the ethnic origin comes from other descent. Humanity witnessed mass atrocities during the Second World War where the race played a crucial role. The lessons of the past make it clear that the horror of being treated differently because of one's different skin colour or ethnic origin must not be experienced today. Nowadays, race discrimination is deeply and solidly entrenched in international law as an example of *ius cogens norm*, from which no derogation is permitted. Nonetheless, still, it is unfortunately a widely used practice in all parts of the globe.

The laws prohibiting racial discrimination are nothing more than a deterrent to avert the horrors of the past. Racial discrimination, on its early stage, has been addressed in different international documents such as the 1958 International Labor Organization's Convention concerning Discrimination in respect of Employment and Occupation and the Convention against Discrimination in Education 1960. Even despite the 1949 Draft Declaration on the Rights and Duties of States having a provision obliging States "to treat all persons without distinction as to race, sex, language or religion", it was not enough to secure people from being discriminatory treated; there was a vital need for an instrument that would deal with race discrimination comprehensively.

The 1963 Declaration and the following 1966 Convention on the Elimination of All Forms of Racial Discrimination became those highly needed instruments. Clear definition of racial discrimination flowed out of the Convention which was later said to be enough broad to accommodate all forms of racial discrimination. Article 1(4) mentions positive discrimination which is of great value on the path to achieve full equality without any distinction.

The broad approach in dealing with racial discrimination helped to make a huge step forward: prohibition of discrimination has become one of the fundamental bases in many constitutions and further adoption of regional instruments dealing with racial discrimination. Nevertheless, the universal recognition remains remote and not fully achieved, yet there is much made by States in fulfilling their obligations to ensure equality and no discrimination in reality.

“Absolute respect for human rights must reconcile unity with diversity, interdependence with liberty” - said E. Odio Benito, special rapporteur of the UN Sub-Commission on Human Rights, eliciting the essence of the principles of equality and non-discrimination system.

As to the principle of equality, and more specifically the principle equality of opportunity and treatment, it is embedded in the Convention against Discrimination in Education⁴³, which primarily aims at eliminating discrimination in education and promote equality of opportunity and treatment.

The Convention provides that actions at national level to create equal education opportunities for all are crucial, and measures taken by Member States to implement the Convention should contribute to the enforcement of the right to education as a fundamental human right. Ukraine is also a state party to the Convention, hence bears respective legal obligations to ensure equal education to all entitled to this right without discrimination.

1.3. The right to inclusive education

The right to education is comprehensively covered in the Article 13 of the ICESCR. State parties have the principal responsibility for the direct provision of education, with core obligations directly related to the principle of equality of opportunity: ensuring the access to public educational institutions and programmes on a non-discriminatory basis and to provide primary education for all in accordance with the Article 13 (2) (a) of the Covenant.⁴⁴

Yet when it specifically comes to the right to inclusive education, its legal framework has to be clarified. As the author submits in the introduction, one of the hypotheses of this study asserts that the standards of inclusive education are in a discrepancy among international, European and Ukrainian levels. In order to confirm this statement the legal frameworks will be analysed and compared against each other.

In essence inclusion is meant to embrace the special educational needs of a group: without doing so, assimilation and forced adaptation may come salient, as well as stigmatization of a group by means of distinguishing it into a separate class or group. It also has to be born in

⁴³ UNESCO Convention against Discrimination in Education. Paris 14.12.1960, e.i.f. 22.05.1962.

⁴⁴ Committee on Economic Social and Cultural Rights. General Comment No. 13 on the right to education, 08.12.1999, para. 6.

mind that the concept of inclusive education refers to various groups whose position is marginalized, or who can be grouped by a vulnerability element linking these groups. Yet, delving into inclusive education as a specific right, it is commonly accepted as the right mostly attributed to persons with disabilities. So, the question arises then how can the concept of inclusive education be transported and adapted to the needs of Roma children. The ‘special needs’ education, seen as a ‘targeting’ strategy, can render help for Roma children”.⁴⁵ Basing on special needs education, inclusive education helps to avoid separation into special schools, classes or groups. It also stresses that “the targeting of marginalized groups through programming without corresponding transformations of education systems results in the creation of more separate responses to the needs of different groups”.⁴⁶ More segregation may emerge unless the education system is adapted to accommodate children with special educational needs. Therefore, the education policies should be accordingly tailored in line with the principle of adaptability in education, and, most importantly, provide truly quality education.

The “special needs” education approach has been also underlined in the Salamanca Statement and Framework for Action on Special Needs Education⁴⁷. This document addresses inclusive education as a viable tool to ensure equal education for all, as well as it calls on the international community to endorse inclusive education. Providing support to the development of special needs education is considered to be an integral part for education programmes as such. Particularly, the Salamanca Statement calls on UNESCO and other international actors to undertake measures in assisting States in realizing their commitments.

The UN and its specialised agencies, in turn, are obligated to “strengthen their inputs for technical co-operation” and improve their networking for more efficient support to integrated special needs provision. Non-governmental organisations are urged to strengthen their collaboration with official national bodies and become more involved in all aspects of inclusive education.

In general, the Salamanca Framework highlights that States alone are the primary duty bearers to ensure that the right to education is enjoyed by all, yet it also stresses the role of the international community and local actors such as civil society organizations in channelling the

⁴⁵ Inclusion International. Better Education for All: When We’re Included Too, - Instituto Universitario de Integración en la Comunidad, Salamanca 2009, p. 40.

⁴⁶ Ibid.

⁴⁷ The Salamanca Statement and Framework for Action on Special Needs Education, Salamanca 07-10.06.1994.

work on building inclusive education. In this sense, it is important that States remain accountable and do not shift the duties on non-State actors alone - the synergy of all is vital in ensuring that education is accessible.

The guiding principle enshrined in the Salamanca Framework is that schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. Such an approach includes various disadvantaged or marginalized groups such as “disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities”⁴⁸. Another fundamental principle of the inclusive school is that all children should receive education together, regardless of any differences they may have. Inclusive schools must recognize and respond to the diverse needs of students by accommodating different styles of learning, as well as by ensuring quality education to all through appropriate curricula, organizational arrangements, teaching strategies, and, last but not least, partnerships with children’s parents and communities.⁴⁹

In this regard, UNESCO remains the key actor in the area of inclusive education on international level. Yet speaking about inclusive education on European level, then the Council of Europe needs to be mentioned. Particularly, there is a specific guideline⁵⁰ with the focus on early childhood education for Roma as a necessary precondition for successful transition into primary education. It was produced as a result of joint efforts of the two aforementioned organizations. Moreover, that the guideline specifically looks at the pre-school education speaks for itself, stressing the need to accommodate Roma children in their further educational path. In its introductory part, the guideline makes it explicitly accurate that early childhood education is “an important stepping stone toward inclusive participation in school and society”⁵¹ and, therefore, should come as a priority in State policy and legal frameworks on integration of Roma.

On the other hand, it has to be recalled that inclusive education is required to be predominantly understood by the Committee on the rights of persons with disabilities as the concept predominantly for the people with disabilities. If inclusive education indeed were

⁴⁸ Ibid, the Framework for Action on Special Needs Education, p.6.

⁴⁹ Ibid, pp. 10-12.

⁵⁰ UNESCO, Council of Europe. Inclusion from the start: guidelines on inclusive early childhood care and education for Roma children, Strasbourg 2014

⁵¹ Ibid, p.11.

accepted as only addressing the needs of persons with disabilities, this would contradict non-discrimination element of the principle of accessibility of the right to education explained in the General Comment No. 13⁵² on the right to education. So, the Council of Europe, in turn, accepted a broader vision of this concept. Therefore, there is some ambiguity between the right to inclusive education of persons with disabilities and that of socially marginalized groups: this may ultimately lead to the exclusion of socially marginalized groups. As a solution, a broader concept of inclusive education, favoured by the Council of Europe, has to be further advanced and promoted.

Equality in diversity - this is what is aimed to be achieved by a broader vision of inclusive education tailored to the needs of Roma on the European level. It has to be said that such an approach addresses the core idea of education inclusive education for all. In Ukraine, in turn, inclusive education is understood, based on the Law on Education of 2017, in a way that contradicts the international legal framework. Namely, it is in part where it stipulates that separate classes and groups are to be made for children with special educational needs.⁵³ The author further elaborates on the analysis of the Ukrainian standards in the chapter three of this thesis.

1.4. Multiculturalism and the right to education

“Diversity that somehow constitutes itself as a harmonious ensemble of benign cultural spheres is a conservative and liberal model of multiculturalism, that [...] deserves to be jettisoned because, when we try to make culture an undisturbed space of harmony and agreement where social relations exist within cultural forms of uninterrupted accords we subscribe to a form of social amnesia in which we forget that all knowledge is forged in histories that are played out in the field of social antagonism.”⁵⁴

Liberal multiculturalism has been criticized from various ways, as well as has been addressed as a cause for the rise of extremism. It was even argued by some public figures⁵⁵ that multicultural policies result in further segregation of cultural groups, placing minorities in their social boxes and detaching them from affiliation with the values of majority population.

⁵² General Comment No 13 on the Right to Education. Supra note 44, para. 6, (b), (i).

⁵³ The law of Ukraine “On Education”. Supra note 5, Article 20, part 1.

⁵⁴ Expression by McLaren, R.Slee. Social justice and the changing directions in educational research: the case of inclusive education. - Vol. 5 International Journal on Inclusive Education 2001(2/3), p.175.

⁵⁵ M. White. Trevor Phillips says the unsayable about race and multiculturalism. The Guardian, (15.01.2018).

Such vocal assertions have been often made by proponents of strong sense to national identity and idea of a nation-state⁵⁶ as a threat to their beliefs as multiculturalism allegedly erases the national identity.

Interestingly enough, most of contemporary States are poly-ethnic, hence when the supporters of the classical definition of “nation-state” refer to it, one can argue that it harks the discourse back to the ideas of the nineteenth century. In modern times, nation is recognized as “the political community that ensures the legitimacy of the state over its territory, and transforms the state into the state of all citizens. The notion of “nation-state” emphasizes this new alliance between the nation and state.”⁵⁷ Nationality is supposed to be a binding element between the citizens and the state: such a linkage that ensures that the social welfare is given to State’s citizens or nationals. Multiculturalism makes a strong reference to the increasingly common fact that humanity, as such, has become much more heterogeneous and diverse. Hence, new approaches should be found to address these changes and old views are simply constrained and of little help.

Multiculturalism, however, has not been reflected as a term or, at least, in its explicit meaning in neither of the human rights instruments; conversely, it has been addressed in a rather implied way. In fact, one may argue that the principles of equality and non-discrimination form the very foundation for addressing multiculturalism as a concept in international human rights law.⁵⁸ The author makes an assertion that the recognition of equality in diversity is equally a kind of assumed recognition of multiculturalism.

In author’s view, given a degree to which globalization has become ubiquitous in the modern world, understanding multiculturalism in its broader meaning and its application, particularly in the realm of education, is vital, as education is one of the first steps of a child in joining the social interaction. Having said this, ensuring that liberal multiculturalism is addressed in a domestic context paves the path for the improvement of situation of marginalized communities and their further acceptance as part of the overall social fabric, as well as is a useful step to building societies with stronger social justice and critical thinking, which

⁵⁶ The classical understanding of the definition of nation-state proposed by the Merriam-Webster dictionary: A form of political organization under which a relatively homogeneous people inhabits a sovereign state; especially: a state containing one as opposed to several nationalities.

⁵⁷ N.J. Smelser. *International Encyclopaedia of the Social and Behavioural Sciences*. – Oxford Science(15) 2001, definition of “nation-state”.

⁵⁸ E. Britton. *The Right to Education of Roma Children in the Czech Republic, Hungary, Romania and Slovakia*. Birmingham: PhD Thesis, University of Birmingham 2013, pp. 43-44.

contributes to both more vibrant democracies and enlightened citizenry with its consequent proactive social interaction and public participation.⁵⁹

As to the link between inclusive education and liberal multiculturalism, the author contends that while inclusive education is a specific form of policy instrument to remedy the situation of marginalized communities, such as Roma, multiculturalism is a precondition to ensure that this instrument could operate in a particular social context.

⁵⁹ F. Rios, S. Markus. Multicultural Education as a Human Right: Framing Multicultural Education for Citizenship in a Global Age. - Multicultural Education Review. Vol. 3, No. 2, 2011, pp. 1-3.

2. THE ROMA IN EUROPE

Throughout more than two decades various international organizations have been paying increasingly more attention to the issues of the Roma minority in Europe. In this regard, there are particularly relevant institutions that have committed themselves to ameliorate the disadvantaged situation of Roma in Europe, and among them one can primarily mention the OSCE, Council of Europe and the European Union. The case-law of the ECtHR has significantly contributed to the acceptance of the fact that States are to set up specific instruments for the improvement of the situation of Roma, where the area of education has been emphasized; it also helped to institutionalize the narrative that securing minority rights is beneficial for both States and minorities themselves.

This chapter will discuss the institutional framework on Roma in Europe, namely by looking at the specific programs, documents and institutions initiated to improve the situation of Roma. It will also elaborate on the practice of school segregation by mainly looking at the outcomes of the Decade of Roma Inclusion and research of the Fundamental Rights Agency - this will enable the author to refer to the data on school segregation. In the end of this chapter, the author will analyse the practice of the ECtHR and draw the conclusions in regard to the situation of Roma in Europe, which further provides a basis to proceed with the analysis of the right to education of Roma in Ukraine in the chapter three.

2.1. Institutional framework on Roma

The institutional framework on Roma in Europe consists of the EU and Council of Europe and OSCE instruments. Since early 2000, there has been a growing recognition of a marginalized situation of Roma which further led to the enactment of specific instruments to impose both political, mainly for the OSCE and Council of Europe Member States, and legal, for EU Member States. On the EU level, the Roma are generally covered by the existing EU anti-discrimination instruments. There is, however, no specific EU legislation on Roma minorities as such. Non-legislative resolutions have been developed, instead, by the European Parliament.

The urgent need of having inclusive education and abolishing forced segregated schooling has been reflected in various ways. One of which has found its reflection in the milestone case of

the Strasbourg Court: namely, it is the D.H Case⁶⁰ which confirmed that the Roma minority in Europe demands a “special protection approach” in terms of the right to education under Article 2 of Protocol No. 1 to the European Convention on Human Rights. Particularly, it has been stated as follows - “the Roma have become a specific type of disadvantaged and vulnerable minority[...] they, therefore, require special protection[...]”⁶¹. Though the concept of inclusive education has not been addressed here explicitly, the author assumes, that the recognition of the special protection for Roma, according to the principles of equality and non-discrimination, signals for its implied character in the present case by urging the reconsideration of state practices towards the integration of Roma in and through education.

Not only, however, has only the ECtHR’s remarkable decision pointed out the significance of the requirement of special protection for Roma, but also other bodies of the Council of Europe, such as the European Commission against Racism and Intolerance (ECRI) in its recommendation, as early as 1998, did so too, namely by calling upon the Member States of the Council of Europe to take measures “to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education”⁶². In a bit more than a decade later on, ECRI has once again referred to the situation of Roma in Europe. “Observing that in spite of everything, the situation of Roma in most member states remains alarming and that the signs of anti-Gypsyism are continually increasing and worsening”⁶³ ECRI urged the governments of member states, among other things, to combat anti-Gypsyism in the field of education by accordingly taking measure ranging from tackling stereotypes and prejudices with active role of Roma pupils’ parents to establishing legal and policy frameworks on national level on ensuring that education for Roma is accessible, equal and quality.

Special programs on the integration of Roma Europe have been gradually gaining momentum at the intergovernmental level, as was previously underlined. Among the most recent ones, for instance, the joint programs of the Council of Europe and European Union, the ROMED⁶⁴ and

⁶⁰ D.H. and Others v. Czech Republic, Merits, App. no 57325/00, ECtHR 13.11.2007.

⁶¹ Ibid., para. 182

⁶² ECRI. General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsy, Strasbourg 06.03.1998, p.5.

⁶³ ECRI. General Policy Recommendation No. 13: Combating Anti-Gypsyism and Discrimination against Roma, Strasbourg 24.06.2011, pp.4-6.

⁶⁴ ROMED 1 - Mediation for Roma. Council of Europe, Available: <http://coe-romed.org/romed1>.

ROMED 2⁶⁵, serve as examples showing that the marginalized Roma communities demand a special protection approach, and positive actions are needed to remedy such their situation. These programs are the social mediation programs aimed at establishing a bridge between a community and local government by means of training the Roma mediators for delivering quality mediation to represent the needs of specific communities a mediator works with. This program has proved to be a successful step on the path of integrating the Roma in Europe, and is a useful tool to help Roma families to be heard. Notably, Roma NGOs in Ukraine have been part of both phases of this program and managed to make positive steps in the area of integration of Roma and establishing fairly strong connection with the government of Ukraine.⁶⁶ There is, however, a major shortcoming that the author sees in these and alike programs which is that without the financial support of the international organizations such programs are not sustainable: the main reason of such a regrettable conclusion is the lack of genuine political will from the State.

The aforementioned EU Framework for National Roma Integration Strategies up to 2020 is the document endorsing the vitality of the integration of Roma across the EU Member States. Education stands among the key priorities for the effective integration of Roma.

“There is a need to strengthen links with communities through cultural/school mediators, churches, religious associations or communities and through active participation of the parents of Roma, to improve the inter-cultural competences of teachers, to reduce segregation and to ensure compliance with the duty to primary school attendance.”⁶⁷

With the enactment of the EU National Roma Integration Strategies, the Roma issues have become far more salient and the debate on protecting Roma as a minority group has become widely accepted.

It is important to stress that although the very fact of enactment of the EU Roma Framework is an achievement in itself, it still has major shortcomings. One of the main weaknesses is the non-binding character of the EU Roma Framework as a “soft” policy tool. Moreover, the absence of a response to anti-Gypsyism in the EU Roma Framework is another shortcoming. The EU Roma framework addresses four key areas such education, employment, housing and

⁶⁵ ROMED2 - Democratic governance and community participation through mediation, Council of Europe, Available: <http://coe-romed.org/romed2/about>.

⁶⁶ Evaluation of the Council of Europe and European Union Joint Programme “ROMED”, 2016, available at: http://coe-romed.org/sites/default/files/documentation/Country%20findings_Ukraine.pdf

⁶⁷ EU Framework for National Roma Integration Strategies up to 2020, Brussels, 2011, p.5.

healthcare, yet it fails to refer to not less important thematic areas of activity such as political participation, Roma arts and culture, identity and history that would address the issue of integration of Roma more comprehensively.

Therefore, speaking about the benefits of “soft” tools, one may argue that the soft law, as ECRI’s recommendations, for instance, has nothing to do with making States being compliant with their obligations. However, the non-binding nature of political tools, as those rendered by ECRI, in contrast to the binding case-law of the ECtHR or binding human rights treaties, might seem to be void, one can argue, yet it can be so only at first glance.

The so-called soft law, however, is said to be even more productive, especially in the matters of human rights, because these issues demand the changes to be implemented on the ground⁶⁸. The OSCE has a specific tool in its arsenal of soft laws – the human dimension commitments. The issues of national minorities also fall under the scope of the human dimension commitments within the framework of both bilateral and multilateral treaties on minority rights signed within the OSCE region – “The adoption of and reference to OSCE human dimension commitments in these treaties has turned “politically binding” obligations into legally binding ones. The use of OSCE commitments in these treaties can also be considered evidence of regional state practice.”⁶⁹ By referring to the regional state practice, Manton implies that it shapes the regional customary law, and hence, it proves the assumption that the soft law can virtually be stronger than it seems *prima facie*.

It has been important to make an appeal to the role of soft law in the OSCE area because the mandate of the Organization for Democratic Institutions and Human Rights/Contact Point for Roma and Sinti Issues (ODIHR/CPRSI) provided by the OSCE Action Plan on Roma and Sinti⁷⁰ is although of non-binding nature, yet is an important breakthrough for the recognition of the need to improve the situation of Roma; it also opens a wide range of mechanisms for interaction with both State and non-State actors. In relation to ODIHR/CPRSI’s mandate, ODIHR’s interaction with States, as inter-governmental level of cooperation, is aimed at assisting States in implementing their commitments on improving the situation of Roma. While cooperation of ODIHR with the civil society organizations opens a wide range of

⁶⁸ E. Manton. The OSCE Human Dimension and Customary International Law Formation. – OSCE Yearbook 2005, Institute for Peace Research and Security Policy at the University of Hamburg, p.19.

⁶⁹ Ibid. p. 8.

⁷⁰ The Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, adopted by the decision of the Permanent Council No. 566, 27.11.2003.

opportunities for working with Roma communities themselves, for example, by means of providing specific trainings on building their capacity. Nevertheless, the primary area of actions of ODIHR remains within the scope of intergovernmental level. However, that the civil society organizations are actively involved in cooperation is by itself of particular importance, due to the fact that NGOs, and particularly Roma NGOs, are both the vital pillars of a democratic society and agents of change on the ground.

Protecting minority rights can be generally seen as a critical element of preservation of international peace and security. This essentially is the rationale for the minority rights regime developed during the inter-war era.⁷¹ However, such an approach can also be accepted in modern times, and explains the current revival of interest in minority rights, particularly from the perspective of the OSCE. However, for some scholars, such as Will Kymlicka, the minority rights, as a concept, are viewed as serving not simply for the avoidance of international conflicts but rather as both an essential element of a “comprehensive theory of justice” and the precondition for having a liberal multiculturalism accepted in a State.⁷²

Ultimately, the fact that integration of Roma in Europe is addressed, at least at the political level, provides a range of tools for Roma themselves to claim their rights to be respected and ensured by the States they live in. The author contends that the difficulty to compel a State to comply with its obligations on improving the situation of Roma is not conditioned by the binding or non-binding nature of a document obliging to take respective actions, but rather it is provided by the mere existence of a genuine political will to ensure that Roma are part of the social fabric and have equal rights.

2.2. Pervasive practice of segregated schools

The connotation of poverty, poor education, and criminality has, unfortunately, become heavily associated with the mainstream image about Roma. However, namely, these distorted and prejudiced misconceptions eventually lead to nothing but segregation and exclusion. The widespread practice of school segregation hinders the access to quality education. Moreover, given that this practice still exists despite the efforts of various stakeholders, undermines the principles of equality and non-discrimination that form a foundation of international human

⁷¹ UN OHCHR Minority Rights Guideline. Supra note 9, p. 2.

⁷² W. Kymlicka. Supra note 7, p.82.

rights law. Profoundly unequal educational opportunities of Roma prevent them from realizing their full human capital.

Speaking specifically about the area of education within the EU, it can be said that there have been some achievements, but the remaining challenges are acute and are yet to be tackled. Namely, despite considerable attention and investment, the progress made is modest. The Decade for Roma Inclusion⁷³ between 2005 and 2014 and its end result, the Roma inclusion index⁷⁴, suggest that there has been a slight improvement in the situation of Roma in preschool, primary and secondary education. In countries like, for example, Hungary and Slovakia the preschool attendance rate of Roma children has increased since 2005 (Hungary: 42% in 2005 to 70% in 2014; Slovakia: 61% in 2005 to 81% in 2014).⁷⁵ Since 2011, there has been a slight increase in enrolment rates in compulsory schooling in most countries.⁷⁶ Despite some modest progress, the situation continues to be problematic or has even become worse. Most importantly, school segregation of Roma children continues to be high: 20% in Hungary, 26% in Bulgaria, 27% in Romania, 40% in the Czech Republic and 51% in Slovakia.⁷⁷ Also, the increase in over-representation of Roma pupils in special schools since 2005 in countries such as the Czech Republic and Slovakia remains to be the area of concern.⁷⁸

The overall situation as to access to education among Roma in Europe has a lot in common: prevalence of school segregation in Romania⁷⁹, Roma-only schools or Roma-only classes in Czech Republic⁸⁰, Romani segregation practice in Hungary⁸¹, denied access to education in

⁷³ The Decade of Roma Inclusion 2005-2015. Available at: <http://www.romadecade.org/about-the-decade-decade-in-brief>.

⁷⁴ Decade of Roma Inclusion Secretariat Foundation. Roma Inclusion Index 2015. Available at: <https://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>

⁷⁵ Fundamental Rights Agency. EU MIDS II - Second European Minorities and Discrimination Survey: Roma - Selected Findings, Brussels 2016, p. 24.

⁷⁶ The Decade of Roma Inclusion 2005-2015. Supra note 73.

⁷⁷ Fundamental Rights Agency. Supra note 75.

⁷⁸ Roma Inclusion Index 2015. Supra note 74.

⁷⁹ European Roma Rights Centre. The European Roma Rights Centre and Romani CRISS have sent an open letter calling the European Commission's attention to Romania's breaches of the Racial Equality Directive. 02.02.2018. Available: <http://www.errc.org/cms/upload/file/romania-letter-to-ec-school-segregation-in-romania-30-may-2016.pdf>

⁸⁰ European Roma Rights Centre. Will the EU Put an End to Segregation of Roma?. 02.02.2018. Available: <http://www.errc.org/article/will-the-eu-put-an-end-to-segregation-of-roma/4435>

⁸¹ European Roma Rights Centre. EU: Commission probe must spell the end of Romani segregation in Hungarian schools. 02.02.2018. Available: <http://www.errc.org/article/eu-commission-probe-must-spell-the-end-of-romani-segregation-in-hungarian-schools/4485>

France⁸² and many other countries resembling the very same situation. It can be clearly observed that the school segregation has a widespread nature and is a form of persistent manifestation of intolerance and discrimination throughout Europe. Moreover, after continuous and intensive work of the Roma civil society organizations and international organizations, the ECtHR has relatively recently acknowledged that there is indeed the indirect discrimination; the widely recognized disadvantaged situation of Roma in Europe and evidences provided in various cases helped significantly to forge a specific approach of the ECtHR. Ukraine, unsurprisingly, is no exception from the situation described above. It will be approached closely in the following chapter.

2.3. Case law of the European Court of Human Rights on the right to education of Roma

The ECtHR has emphasized, and continues to do so, that Roma “require special protection”⁸³ The special protection in terms of right to education of, Article 2 of the Protocol No. 1 to the ECHR, entails particular actions and conditions to be provided by the Member States of the Council of Europe which cover the sphere of education too. Particularly, actions “to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education” are one of the mentioned priorities.⁸⁴ To guarantee equal treatment for the Romany minority by “eradicating all practices of segregated schooling for Romany children”⁸⁵ is indeed of great importance in shaping the special protection approach, however, it must entail also a guarantee that such measures will be undertaken in good faith in achieving this goals.

The phenomenon of indirect discrimination is a stumble stone on the path to achieving objectives of European agenda on the integration of Roma. In cases where segregation of Roma children in schools originated from general policies on learning disabilities, such as the D.H. Case and Horváth and Kiss v. Hungary⁸⁶, or from difference in treatment due to language deficiencies like in the Case of Orsus and Others v. Croatia, indirect discrimination displayed itself in action.

⁸² European Roma Rights Centre. Why are Romani children denied access to education in France?. 02.02.2018. Available: <http://www.errc.org/blog/why-are-romani-children-denied-access-to-education-in-france/131?platform=hootsuite>

⁸³ D.H. and Others v. Czech Republic. Supra note 60, para 182.

⁸⁴ ECRI. General Policy Recommendation No. 3. Supra note 62, pp. 1-5.

⁸⁵ The Parliamentary Assembly of the Council of Europe. Recommendation 1557, The legal situation of Roma in Europe. Strasbourg 22.04.2002.

⁸⁶ Horvath and Kiss v. Hungary, Merits, App. no 11146/11, ECtHR 29.04.2013.

As a countermeasure, positive actions are essential in tackling indirect discrimination. In the D.H. Case the respondent State argued that it had made some efforts, which might be considered as sort of positive actions, to ensure that Roma had access to education, however, such practice had resulted in nothing but discriminatory treatment of the former and prevented their further possibility entering secondary education.

Several important questions arise when looking at the ECtHR practice as to the obligations to undertake positive actions in relation to Roma rights. One question is whether an applicant able to invoke the ECHR to claim that a State is to provide a specific favourable treatment. The answer to this question was equivocal and changed eventually. In *Chapman v. the United Kingdom Case*, for example, the Court stated that the applicant of Gypsy origin could not appeal to the special protection under the Convention and found no violation of Article 14. Nonetheless, the seven dissenting judges who stated that by failing “to recognize special needs of minorities”⁸⁷ it could “raise substantial problems under Article 14 of the Convention”⁸⁸. However, later on, the approach of the Court has significantly changed. The “emerging international consensus” on recognizing the special needs of and obligations towards minorities, mentioned in the *Chapman Case*, has been further developed and strengthened by other organs of the Council of Europe, such as the European Committee of Social Rights and its Parliamentary Assembly; it should be stressed that they have been much more persistent in putting forward the positive actions agenda on Roma rights, including right to education.

Another question concerns a rather ambiguous position of the Court as to whether a positive action automatically follow as required after determination of positive obligation. The Court’s position regarding obligations to take positive actions remains unclear: the Convention does not bind the Member States to adopt positive actions in favour of minorities as long as the difference in treatment is substantiated and proved in each case. However, the Court in its *Horváth and Kiss judgement* has once again emphasized the need of special considerations to be applied when dealing with Roma in segregated school facilities; the Court has spelled out that States Parties have a duty to implement positive measures in order to avoid structural discrimination. Nonetheless, “specific positive obligations to avoid the perpetuation of past

⁸⁷ *Chapman v. The United Kingdom*. Merits, App. No 27238/95, ECtHR 18.01.2001, para. 93.

⁸⁸ *Ibid.*, para. 95.

discrimination⁸⁹”, *per se*, do not constitute positive actions. Nonetheless, the question whether these actions will be implemented depends on both actions at the national level and economic capacity to take these actions. It is usually argued by States Parties that due to their financial inability to undertake necessary actions the situation cannot be changed. However, here inability must be distinguished from unwillingness, which addresses lack of political will to make a change⁹⁰, and, therefore, if the unwillingness to ensure equal quality education for Roma is proved it may result in violation of their right to education.

Generally speaking, the Court’s far-reaching discourse of equality under Article 14 has produced a fairly in-depth and proactive approach to minority issues. The institutional recognition of indirect discrimination has been expanded by the Court’s practice and accentuated a special protection towards the Roma minority in the area of the Council of Europe. Moreover, by accepting ‘less strict evidential rules’, emerged in the D.H. Case, in cases dealing with indirect discrimination, the Court reaffirmed its greater attention to the impact of the measures in question towards the Roma minority; not merely on individual dimension but on broader community scope. It can be considered as a prominent achievement for those dealing with Roma rights as well as such an approach broadens the interpretation and progress in the field of equality and non-discrimination internationally.⁹¹

The Court considers Roma as members of specific type of disadvantaged and vulnerable minority and that specific approach should be provided when dealing with issues of equality and non-discrimination has been recognized. Equality for Roma as one of the most vulnerable groups in Europe necessitates positive or affirmative action policies to be applied by States. Despite apparent underprivileged situation of Roma, it appears that the positive actions, however, remain “permitted, but not required”⁹². Various programs for improvement and inclusion of Roma have been introduced across Europe, including the Roma Decade⁹³ and a host of National strategies; thorough judgements of the ECtHR have made significant contributions towards equality and non-discrimination of Roma. Nevertheless, the situation

⁸⁹ Horvath and Kiss v. Hungary. Supra note 86, para. 116.

⁹⁰ European Roma Rights Centre. Roma Rights 1, 2010: Implementation of Judgments. 02.02.2018. Available at: <http://www.errc.org/article/roma-rights-1-2010-implementation-of-judgments/3613>

⁹¹ G. Pentassuglia. Protecting Minority Groups through Human Rights Courts - the Interpretive Role of European and Inter-American Jurisprudence. - Oxford University Press 2013.

⁹² European Roma Rights Centre. Towards Realising a Right to Positive Action for Roma in Europe: Connors v. UK. 02.02.2018. Available: <http://www.errc.org/article/towards-realising-a-right-to-positive-action-for-roma-in-europe-connors-v-uk/2160>

⁹³ Supre note 73, Decade of Roma Inclusion.

remains exceptionally complex. As it has already been argued above, only political will to genuinely tackle the issues of Roma can put the end of continuous discrimination.

Nonetheless, the profoundly impoverished situation of Roma in Europe, has to be tackled on various levels – from international and regional to national and local. It is the States who should clarify and undertake all necessary measures to improve the situation of Roma. Without making it, the decisions of the Strasbourg Court or National Roma Strategies will remain declarative and nothing will be changed. The implementation of the D.H. judgement faces limited government reform and no significant change has been achieved. It is an appalling fact, however an acute vigilance from the side of various NGOs, intergovernmental organization and, particularly, EU bodies gives a hope for further improvement.

The role of Roma themselves has to be clear in this regard; their participation is overwhelmingly important. Because only their persistent struggle to eradicate the fences of inequality by actively taking part in decision making and presenting their insights can create better future for following generations. European States should acknowledge and take their obligations seriously. There has been much efforts dedicated to building the new generation of highly educated Roma⁹⁴ that are to lead the international Roma movement and help those in more disadvantaged positions: this eventually will result in building prosperous societies where equality reigns in diversity. It is of great importance that a wider recognition and more firm approach on ensuring equal education should be backed and improved.

Tackling Roma rights is a challenge for Europe as well, particularly today when issues of discrimination are especially troubling. “In times of economic crises and strong anxieties over national and sub-national identities, being able to tackle Roma’s poor living conditions and appalling marginalization while respecting their distinctive way of life is bound to prove one of the most challenging tests: not only for individual countries, but also for Europe’s chances to survive as a meaningful transnational project.”⁹⁵

⁹⁴ Roma Education Fund. Closing the gap in educational outcomes between Roma and non-Roma. (26.02.2018), Available: <http://www.romaeducationfund.hu/scholarship-program-tertiary-education>

⁹⁵ G. Pentassuglia. It’s time to take the human rights of Roma seriously. 26.02.2018. Available: <https://theconversation.com/its-time-to-take-the-human-rights-of-roma-seriously-19633>

3. UKRAINE AND THE ROMA MINORITY

The Roma minority in Ukraine represents a rather heterogeneous community – there are approximately twelve different ethnic groups – and its situation varies in different regions across the country. Negative attitudes towards Roma in Ukraine remain: if before the crisis situation these attitudes were already spiteful, in the current situation they have become more salient and even more degraded. Nonetheless, the recognition of discrimination Roma face in many areas of life has become more ubiquitous. In general, however, the situation of Roma in Ukraine remains problematic. The main challenges facing Roma are similar to those in its neighbouring countries. Accessing quality education is among such challenges and is one of the key areas to ameliorate the situation of Roma in Ukraine.

This chapter is focusing on the institutional framework providing the basis for the integration of the Roma minority into Ukrainian society and establishing the right to education for Roma. It aims to conduct an analysis of relevant national laws regulating the area of education, in general, and inclusive education, in particular. It will also reflect on the ongoing crisis situation and its effects on the enjoyment of the basic rights by Roma: this will enable the author to draw the linkage between the ongoing crisis situation in Ukraine and possible prospects for the right to inclusive education by Roma. This chapter underlies the main successes and shortcomings of the overall policy and legal framework on the Roma national minority and the right to education.

3.1. Ukraine and the National Roma Strategy

According to the requirement of the Protocol No.9 to implement actions concerning the liberalization of the EU visa regime for Ukraine, the government of Ukraine had to develop and approve the National Roma Strategy, as an affirmative action for the integration and inclusion of Roma national minority into Ukrainian society. The Ministry of Culture of Ukraine is responsible for national minority issues, and, in 2012, has started the development of the “Strategy on the Protection and Integration of the Roma national minority into Ukrainian Society up to 2020”. The Strategy⁹⁶ was signed by the President of Ukraine on 8

⁹⁶ The Decree of the president of Ukraine on the Adoption of the Strategy on the Protection and Integration of the Roma National Minority into Ukrainian Society for the period until 2020. *Supra* note 20.

April 2013, and was followed by the adoption of the National Action Plan⁹⁷ for the implementation of the Strategy in September 2013. The aim of the Strategy is to define the principles of protection and integration in the Ukrainian society of the Roma national minority by ensuring equal rights and opportunities for its participation in the socio-economic and cultural life of the state, as well as intensifying cooperation with Roma civil society. Implementation of the Strategy should be carried out taking into account the following principles:

- the priority of human rights and freedoms;
- ensuring the rights of national minorities, taking into account that the political, civil, economic, social and cultural rights are universal, indivisible, interdependent and interconnected;
- equality of citizens before the law;
- compliance with the requirements of the legislation in the field of interethnic relations and protection of the rights of national minorities;
- non-discrimination and tolerance;
- interaction of executive authorities, local authorities with Roma non-governmental organizations in solving issues related to the integration into the Ukrainian society of the Roma national minority;
- observance of obligations under international treaties of Ukraine in the field of protection of human rights and national minorities.

Both the Strategy and the National Action Plan have five main priorities in the areas of legal protection of Roma social security and employment, enhancing the level of education, health care, improving living conditions and meeting the cultural and information needs of Roma⁹⁸.

The adoption of this Strategy and the National Action Plan was the first and highly important step to the recognition of the range of problems that exist among the Roma population in Ukraine. However, without effective mechanisms of implementation both of these documents cannot be the solution of the problems. The leading Roma NGOs⁹⁹ together with the

⁹⁷ The Decree of the Cabinet of Ministers of Ukraine on the Adoption of the Action Plan on the implementation of the Strategy. *Supra* note 21.

⁹⁸ *Ibid.*

⁹⁹ European Roma Rights Centre. Written Comments of the European Roma Rights Centre and Chiricli, Concerning Ukraine For Consideration by the UN Committee on Economic, Social and Cultural Rights at the 52nd Session - 28 April to 23 May 2014.

international organizations, such as the OSCE/ODIHR¹⁰⁰ and Council of Europe¹⁰¹ have been raising their concerns regarding the measures set up in the National Action Plan: they do not take into account the specificity of the Roma population tendency to migrate, the lack of identification documents of the large section of the Roma, the difference in the official and non-official data about Roma population in Ukraine. The last census in Ukraine was conducted long ago in 2001 and the figures are clearly outdated: according to it about 48 000 Roma people live in Ukraine¹⁰², while the statistics provided by the number of Roma NGOs and the Council of Europe says that in Ukraine lives from 200 000 to 400 000 Roma¹⁰³.

Another major concern raised by the international organizations is that the Strategy and the National Action Plan has been developed without the participation of Roma representatives. The National Action Plan does not have the budget allocations and does not outline indicators for its successful implementation. In addition the experts point out the shortcomings in the implementation of the Strategy and Action Plan, namely, the lack of coordination between the ministries responsible for the implementation of certain areas.¹⁰⁴

Addressing the issues raised by the Roma NGOs and the European institutions, the Cabinet of Ministers issued the order stipulating that regional administrations have to develop Regional Action Plans with the concrete measures based on the needs of Roma communities, indicators and budget allocations. Unfortunately, the regional authorities faced serious obstacles fulfilling these tasks, because of the lack of reliable data about the number of Roma in their regions, lack of understanding about which indicators they should apply in their work. Some of the regions, such as Kirovograd, Transcarpathia, Odesa and Pereyasliv-Khmelnytsky managed to allocate some resources for the local or regional Roma Action Plans, but the the crisis situation on the East of Ukraine and the limited financial capacity of the regional and national authorities significantly prevent from full realization of both the regional Roma Action Plans and National Action Plan.

¹⁰⁰ OSCE/ODIHR. Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis. August 2014, p. 5.

¹⁰¹ Advisory Committee on the Framework Convention on National Minorities. Fourth Opinion on Ukraine, 10.03.2017, para. 60.

¹⁰² State Statistics Committee of Ukraine. All-Ukrainian Population Census of 2001. 10.03.2018, Available: <http://2001.ukrcensus.gov.ua/rus/results/general/nationality/>

¹⁰³ Council of Roma, Roma and Travellers Team. Estimates on Roma Population in European Countries, Available: <https://www.coe.int/en/web/portal/roma/>

¹⁰⁴ Advisory Committee on the Framework Convention on National Minorities. Supra note 101, para. 57,58,59,60.

The report of the Roma Women Fund Chiricli, Ukrainian Roma NGO, says that many regional administrations have established working groups which include representatives of local departments, representatives of Roma organizations and Roma mediators. For the first time in many years, the meetings with the representatives of Roma organizations and regional administrations were held and the needs of the Roma population were taken into account during the development of regional action plans. Such meetings were held in Cherkasy, Odesa, Volyn, Kherson, Zaporizhzhia, Zakarpattia, Luhansk, Kirovohrad and other regions of Ukraine.¹⁰⁵

It is important to note that, despite the difficult political situation in the country, in 2015 the Cabinet of Ministers issued an order to establish the Inter-ministerial working group on Roma Strategy and the National Action Plan under the its supervision.¹⁰⁶ The working group is led by the Vice- Prime Minister of Ukraine and has three deputies, one of them is a Roma representative, and among 45 state representatives in this group, there are five Roma civil society representatives. After the first meeting, the Group ordered to establish 5 sub-groups linked to the Strategy's priorities:

- Permanent sub-group on legal protection of Roma under the Ministry of Internal Affairs.
- Permanent sub-group social security and health under the Ministry of Social Policy.
- Permanent sub-group enhancing the level of education and culture under the Ministry of Education.
- Permanent sub-group on living conditions under the Ministry of Regional Development.
- Permanent sub-group meeting the cultural and information needs of Roma under Roma Women Fund Chiricli.

However these actions are not enough to have effective implementation at regional level. As such, there is a need to enhance the capacity of the local authorities responsible for the implementation of regional Action Plans.

3.2. The right to education – domestic context

Since 1990s Ukraine faced many challenges in safeguarding children's rights to education and providing quality education to children with special needs. For many years, children with

¹⁰⁵ The International Charitable Organization "Roma Women Fund "Chiricli". Monitoring the human rights situation of Roma in Ukraine. Kyiv September 2014, p.17, Available at: <http://www.chirikli.com.ua/index.php/en/library/item/93-monitoring-the-human-rights-situation-of-roma-in-ukraine>

¹⁰⁶ The decree of the Cabinet of Ministers "On Establishment of the Interdepartmental Working Group on the Implementation of the Action Plan on the Implementation of the Strategy for the Protection and Integration into the Ukrainian Society of the Roma National Minority for the Period until 2020" No. 993, 25.11.2015.

developmental problems, sensory disorders, brain dysfunction and complex disorders have remained at the margins of the Ukrainian secondary education system or have been totally excluded from it. These children were educated by a separate, special school system which consists of independent institutions, many of them operating as boarding schools for children who lived too far from the school to commute each day. The terminology also shows that it was common to use medical model and approach for education for children with special educational needs.

Since the ratification by Ukraine in 1991 of the UN Convention on the Rights of the Child the social model is increasingly gaining recognition and prevalence related to the observance of human rights. In contrast to the medical model, social model considers the health problem as a social problem, and not as a character person junction, because the problem is caused by inappropriate environment, including attitudes towards people with special needs. Such a model is focused on changes in a society in a way that it ensures equal participation of the community.

Between 2001 and 2010 there were adopted about 40 different laws, decrees, and regulations aimed at developing inclusive education; they were intended to recognize the principle of equal opportunities for all children, youth and adults with disabilities in primary, secondary, and tertiary education carried out in integrated setting.

In 2001-2007, the Ministry of Education and Science had experimentally implemented the project "Social adaptation and integration into the society of children with peculiarities of psychophysical development by organizing their education in general educational institutions". At that time, an effective search for answers to the question of how to integrate children with special needs into the general educational process began. The second stage of the experiment was the Ukrainian-Canadian project "Inclusive education for children with special needs in Ukraine", which lasted from 2008 to 2012. In order to support inclusive education in Ukraine, a "Network to support inclusion" was created. An important achievement, back then, was the "Inclusion Index"¹⁰⁷ - a selection of practical materials for assistance in planning activities for the creation and development of inclusive educational environments for all participants in the educational process. Today, the Inclusion Index is translated into 32 languages and is used in many countries around the world.

¹⁰⁷ Ministry of Education, Inclusion Index . Supra note 4.

The next step was done in December 2015, when Ukraine ratified the main international documents in the area of ensuring children's rights in line with world standards of education, social protection and health care. First of all, it is about the Article 24 of the UN Convention on the Rights of Persons with Disabilities, which defines the state's obligation to implement an inclusive model of education. That was done with the aim to create special environment that would enable all children to be equal participants in the educational process, respectively to their features, needs and capabilities.

On July 5, 2017, the President of Ukraine signed the law "On Amendments to the Law of Ukraine on Education regarding the peculiarities of access of persons with special educational needs to educational services"¹⁰⁸. This helps Ukrainian children with special educational needs to have full right to receive education in all educational institutions, in particular, free of charge in state and municipal, regardless of the "establishment of disability". Also, these children have a possibility of distant and individual forms of education, as well as to receive psychological, pedagogical, correctional and developmental assistance. It is worth noting that the amended law gives an opportunity to create special groups or classes for children with special educational needs in secondary schools and adaptation of the classes to the needs of children with special needs which undermines the essence of inclusive education.

The main aim of inclusive educations is to improve the learning environment; meet the needs of all students with respect to their abilities and capabilities; it opens the variety of learning methods for teachers and students, and its methods should be personally oriented, taking into account the individual characteristics of educational and cognitive activities of children with special needs.¹⁰⁹

The Article 12 defines inclusive education as “a system of educational services guaranteed by the state, based on the principles of non-discrimination, that taking into account human diversity, effective involvement and inclusion in the educational process of all its participants”. The Article 13, in turn, defines inclusive educational environment as “a set of conditions, methods¹¹⁰ and means of their realization for the joint education, education and

¹⁰⁸ The law of Ukraine “On Amendments to the Law of Ukraine "On Education" regarding the peculiarities of access of persons with special educational needs to educational services. Supra note 6.

¹⁰⁹ Supra note 6, the aim on inclusive education.

¹¹⁰ Supra note 6, Article 12.

development of education applicants, taking into account their needs and capabilities”¹¹¹. Generally, the wording embraces the fundamentals of the international definition of inclusive education for all, yet the concern remains as to the implementation of this provisions.

The Ministry of Education of Ukraine tries to introduce a broader understanding of inclusive education, which not only includes the medical model of including children in education, but as a model that creates equal opportunities for all categories of children in Ukraine: for children from Roma families, for children from families of internally displaced persons, for children from other national minorities living in our country¹¹².

This explanation of inclusive education posted on the website of the Ministry of education triggered a debate and raised a lot of questions of Roma NGOs, IDPs and NGOs representing different national minorities, as there is no practical mechanisms of the implementation of a broader model of inclusive education, and, at the same time, the NGOs emphasize that the broader concept of inclusive education is more linked to multicultural education, which NGOs are trying to implement through the development of lessons of tolerance, the diversity of cultures, religions, etc.

The Ministry of Education of Ukraine provided the explanation specifying who are considered as children with special educational needs. At present, the use of the term "children with special educational needs" is approved in law. It is used for children under the age of 18 who need additional educational, medical and social support to improve their health, development, training, quality of life and socialization that is the inclusion of peers and other children in the community. This category also includes children with permanent or temporary disabilities. The Ministry of Education also proposed for the public discussion on the ten groups that they identified as children who require special education needs. The proposed list includes the following categories of persons:

- persons with visual impairment, hearing loss; diseases of the nervous system; delayed mental development, intellectual disorders, complicated speech disorders (including dyslexia);
- other complications of development (including disorders of the spectrum of autism);
- persons who have an electrocardiogram or other electronic implant or device;

¹¹¹ Supra note 6, Article 13.

¹¹² The concept of inclusive education, its understanding in Ukrainian policy on inclusive education, and Inclusion Index. Ministry of Education and Science of Ukraine. Supra note 5.

- persons who have a disease that may be an obstacle to external independent assessment are identified by the Ministry of Education and Science in cooperation with the Ministry of Health;
- persons who have a disease requiring constant medical supervision or periodic implementation of individual medical procedures for ensuring human life and / or control over their condition;
- persons in need of restoration of health in institutions of general secondary education of a sanatorium type;
- persons who were in difficult living conditions, arranged for orphanages of a family type, social rehabilitation centres, are in schools of social rehabilitation;
- persons residing in the temporarily occupied territory or in settlements on the territory of which the bodies of state power temporarily do not exercise their powers or in settlements located on the line of collision;
- persons who have the status of internally displaced persons;
- refugee children and children who need additional and temporary protection;
- persons who acquire specialized education and / or can accelerate the mastering of content of educational subjects of one or several classes, educational levels;
- persons who complete full secondary education in a language other than the Slavic language group, or basic or vocational secondary education, in the language of indigenous people (persons with special language educational needs).

The spread of inclusive education is largely hampered by the banal lack of readiness of most general education schools and other educational institutions to receive students with special educational needs. First of all, the lack of architectural accessibility in educational institutions, the lack of modern correction and rehabilitation equipment, the uncertainty with the salaries of correctional teachers, the lack of special buses adapted for the transportation of students with physical disabilities, etc.

3.3. The challenges facing Roma national minority in light the ongoing crisis

On 14 April 2014, the acting interim President Turchinov signed the Decree 405/2014 on the commencement of an anti-terrorist operation (ATO) in the Eastern Ukraine. The subsequent conflict in the East of Ukraine, gave rise to serious concerns about human rights violations. Displacement of Roma communities as internally displaced persons (IDPs) has increased dramatically since the beginning of June 2014. There is no accurate data available about the

number of displaced Roma, but according to Roma non-governmental organizations and Roma health mediators there are 9000 displaced Roma, predominantly women and children from urban and rural areas from the East of Ukraine. Direct experience of violence, including violence against women and perception of imminent threat, was the main reason why many Roma people decided to leave their home regions. Only the most important items were brought along.¹¹³

According to the information of Roma NGOs, about 5000 Roma are reluctant to register as IDPs, fearing consequences, such as confiscation of their property by the police or other authorities. Some fear arbitrary detention and mistreatment. About 2500 Roma would like to register, but cannot do so because they lack the necessary documentation such as passports, identity cards and health records. About 1500 people lacked formal education and no prospect of acquiring any form of education due to their displacement.

Problems of IDPs are a new phenomenon for the Ukrainian society. That is why the response to the problems of displaced persons is weak and vague. The results of the "Assessment of the needs of women and the elderly IDPs" conducted by the Ukrainian Institute for Social Studies showed that Ukrainian population believes that IDPs should return to their homes as soon as possible (81.0%).

The situation with a large number of internally displaced Roma from the Eastern regions of Ukraine remains challenging. The local population was not ready to face such a big number of Roma in their cities or villages, and therefore local non-Roma residents express their concern about large number of "foreign" Roma. For example, in Peryaslav-Khmelnytskyi region, in village X, the Head of the village Council sent the police-officer to check on the displaced Roma every day. After one week of such visits the family decided to leave this village.¹¹⁴ It should be noted that most of the assistance to Roma IDPs in Ukraine has mostly been provided by Roma civil society organizations and private donors.

Due to the complicated procedure of re-registration of social benefits for children for internally displaced persons, 31.7% of Roma women were not able to re-register to receive

¹¹³ OSCE/ODIHR, "Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis". Supra note 100, pp. 2-5.

¹¹⁴ Interview in Pereyasliv-Khmelnytskyi with the Roma IDP family originally from Donetsk region; Verbal communication from the International Charitable Organization "Roma Women Fund "Chiricli" to the author on 25.02.2018.

social benefits for children. It is said that around 4% of them lost their documents because of the military operations in their cities; social departments did not work and that is why it was not possible to restore at least part of the documents.¹¹⁵

The displaced Roma experienced serious difficulties in finding accommodation. The local authorities did not have any possibility to accommodate Roma, for example, Cherkasy, Odessa and Kyiv regional administrations informed us that they do not have any vacant accommodations for IDPs. At the same time the local population was not ready to provide rooms or empty houses for the Roma. Many displaced Roma were accommodated in local Roma communities. The living conditions of those who remained in the ATO area were extremely difficult. People did not have water, food, or electricity.

The Roma women fund Chiricli conducted focus groups in Odessa, Zakarpattia, Lviv, Donetsk, Dnipropetrovsk, Zaporizhzhia, Kherson, Kharkiv, Kyiv, Luhansk, AR Crimea, and Kirovohrad. As a result they learnt that 600 (400 boys and 200 girls) children enrolled in schools but did not attend them regularly. In winter time the school attendance is very low, because the families do not have enough money to buy winter clothes. In the West of Ukraine, children are enrolled in Roma schools (segregated schools) because they are situated next to Roma settlements.

Roma families searched for better income and travelled to other regions, taking children with them. “We did not have any chance to earn money here, and had to move to Kyiv[...], we could not leave our children here to die from hunger” - said one of the interviewed Roma women. In other cases, children did not attend schools because they did not have proper clothes and shoes.¹¹⁶

Notably, according to UNICEF field monitoring conducted in May 2014, children’s access to education has been disrupted in many area and towns of Ukraine¹¹⁷. The children of Roma IDPs who do not possess personal documents are most affected in their access to education. Recent political developments in Ukraine have further negatively affected the situation of Roma, in particular, of those displaced from Crimea and the Eastern Ukraine. The observation of the local Roma NGO “Chiricli” shows that while Roma are generally in a vulnerable position even in times of stability, in times of crisis they are exceedingly vulnerable. Romani

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ UNICEF. Ukraine: Humanitarian Situation Report 9, Kyiv 16.05.2014, p. 2,

women are particularly vulnerable among the displaced, especially when they are pregnant or have to take care of their children.¹¹⁸

In this context it is important to ensure the ability of displaced Roma children to access quality education. The situation requires concentration of resources and coordination between government institutions, relevant international organizations and Roma NGOs.

3.4. Prospects for inclusive education for Roma

Given the current state of the access to education of Roma children the author believes that the educational gap between Roma and non-Roma children requires urgent measures and should be included into priority of the Ministry of Education of Ukraine. It requests long-term investment and effective actions to address exclusion, discrimination and intolerance. It is essential that the actions at the local level be aligned with National Roma Strategy and appropriate national policies, and local programs that must be coordinated and in coherence with each other. It is also important to develop such programs based on the needs of Roma children and taking into account the challenges of the educational institutions – such as scant financial resources, professional orientation of teachers, study materials etc.

It is of high importance for the governmental institutions to abandon separate education policies for Roma children. In many European countries, inclusion of Roma means desegregation of educational system and full participation of Roma children in public education. In this regard, the new law on Education, Article 20 (1) – Inclusive education, says:

“Educational establishments form, if necessary, inclusive and / or special groups and classes for the education of children with special educational needs. In case of request of a person with special educational needs or the parents, such group or class is compulsory”¹¹⁹

This provision raises a concern for the author and for the local Roma NGOs, noting the danger of formal segregation of Roma children, explained as the need to create special educational conditions. In this regards the practical implementation of this provision is crucial. On the other hand, legislative amendments could be introduced to revise the wording

¹¹⁸ Verbal communication from the International Charitable Organization “Roma Women Fund “Chiricli” to the author on 25.02.2018. Supra note 114.

¹¹⁹ The law of Ukraine “On Education”. Supra note 5, Article 5.

and reconsider this provision itself, as there are different groups of children with different educational needs. In the current wording, the creation of separate groups and/or classes needs to be amended with specific grounds providing the rationale for their creation.

It is important to mention that many Roma children are basically out of pre-school education. As a result they lack skills and knowledge that are needed for entry to primary school education: it places them in unequal conditions comparing to the children from mainstream. In this case it is important to empower Roma communities, and to work with Roma parents, on raising awareness about the importance of education of all stages. The Roma Education Fund in its report says that “the experience with Roma education projects shows that low parental involvement can change very rapidly, and that it is not as much of a problem as some would maintain”.¹²⁰ The success of the involvement of parents lies in addressing the needs of the children and provides minimal support.

Yet, it is also important when attempting to introduce a wide model of inclusive education to avoid the creation of even more stigmatization of Roma children; educational systems should be more open to multicultural approaches and should ensure that it is clear that being citizens of the same country does not mean being exactly the same, having the same cultural references, or having the same economic background. It is also important to train the teachers on a multicultural model of education and to ensure communication with the parents and the community outside of the classroom.

¹²⁰ Roma Education Fund, Roma Inclusion in Education: Position paper of the Roma Education Fund for the High Level Meeting on Roma and Travellers organized by the Council of Europe in close association with the European Union, Strasbourg, 20.10.2010.

4. UKRAINE-EU RELATIONS AND UKRAINE'S APPROXIMATION

Having analysed the international legal framework on minority rights and the right to education in linkage with the disadvantaged situation of Roma, it is now intended to specifically look at the Ukrainian standards on minority rights in the context of Ukraine's approximation with the EU. Particularly, the context of national laws and policies will be analysed in comparison to that of the EU law, as Ukraine has committed itself to harmonize its legislation to be in conformity with the EU standards.

Thus, this chapter will firstly look at the provisions of the Association Agreement addressing the higher provision of fundamental rights. It will be followed by the analysis of the EU standards providing the right to education, and then, based on the analysis of Ukrainian legislation and the situation of Roma in Europe and Ukraine, the author will provide his observations on the steps undertaken by Ukraine thus far in the process of the harmonization of its legislation.

4.1. EU-Ukraine Association Agreement and the right to education

Along the economic and trade areas, the Association Agreement also foresees structural changes that have to come in the Ukrainian legislation in the area of human rights and anti-discrimination. These changes do not omit the right to equal education. In addition, the right to education standards enjoy a highly important position in the EU. Primarily, the Charter of Fundamental Rights of the European Union makes a specific reference to the right to education: "everyone has the right to education and to have access to vocational and continuing training. This right includes the possibility to receive free compulsory education. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right"¹²¹.

It is stipulated under the title two, which foresees the intensification of the political dialogue and reforms, of the Association Agreement that it is based on the principles of strengthening respect for democratic principles, rule of law and good governance, human rights and

¹²¹ Art. 14 of the Charter of Fundamental Rights of the European Union.07.12.2000, e.i.f. 01.12.2009.

fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities, respect for diversity and gender equality, and contributing to the consolidation of domestic political reform. Therefore, it is clear that Ukraine has committed itself to the gradual transformation of its legislation and inclusion of EU directives to prohibit discrimination and implementation of equality policy in national legislation.

The author submits that the newly enacted Ukrainian Law on Education, as such, is a positive step and is an example of approximation of Ukraine's legislation to be in line with the EU equality policy. Yet whether the new Law on Education itself ensures that Roma will have better access to education is highly unlikely. Another institutional step undertaken by Ukraine to give effect to the AA is the Ordinance of the Cabinet of Ministers of Ukraine "On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their countries - members on the other hand"¹²². Paragraph four of the Ordinance refers to the issues of human rights and combating discrimination, namely, it is linked with the activities related to the protection of ethnic minority rights, including in the framework of the Action Plan on visa liberalisation, which provides measures in the system of anti-discrimination policy constitution, policy regarding refugees and asylum seekers, and measures to protect the rights of vulnerable groups. It implies that the protection of rights of the Roma national minority automatically fall under the aforementioned provision. Nevertheless, the implementation process is essentially the key element of those structural changes that have to come.

Therefore, the realization of the right to education of Roma nowadays depends on not only legal framework, but more importantly on the measure taken to give effect to the new legislation. In this regard, the Roma Integration Strategy can be mentioned and its Action Plan that are also generally regarded as positive steps, and indeed provide an institutional leverage for Roma themselves and the government bodies to cooperate on the improvement of the situation of Roma, in particular in the area of education. Inevitably, the fragile political climate in Ukraine brings about some of the challenges for implementation of anti-discrimination policy in regard to the Roma national minority. One of the main challenges is that Ukraine has suffered from the occupation and annexation of Crimea by the Russian

¹²² The Ordinance of the Cabinet of Ministers of Ukraine "On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their countries - members on the other hand" No. 847-p, 17.09.2014.

Federation and also from the conflict in Donbass also backed by the Russian Federation. In such a state of affairs, it is a particularly daunting task to introduce reforms in the field of human rights and protection of vulnerable groups. Nevertheless, Ukraine has decided to take both paths at the same time - to implement the reforms and defend its territorial integrity. This in itself proves to be a preventing element from full realization of human rights, and particularly the right to education of Roma and other vulnerable groups, but, on the other hand, Ukraine remains obligated to ensure that the rights are provided to Roma too. Additionally, the other preventing factor from full realization of the anti-discrimination policy is the overall economic decline in the country which is reflected in all sectors of social relations. The consolidation of nationalist groups in Ukraine is also a challenge on the path of ensuring higher provision of human rights and fundamental freedoms, as well as respect for the rights of national minorities.

In this regard, specific cases can be mentioned, namely the hate crimes against Roma, and anti-Roma political and media discourse. A striking example is the anti-Roma so-called pogroms and evictions of Roma families that have taken place in several regions of Ukraine. The most outrageous one was in the Loschynivka village of the Izmail district of the Odesa region, which took place in August 2016. In January last year in Izmail city of the Odesa region, similar events took place in June 2016 in the Avylyvtsi village in the Kharkiv region, and three years ago in the Ivanovka village in the Cherkasy region.¹²³ The cases of violence against vulnerable groups and continuous manifestation of intolerance towards Roma across the country is seemingly the phenomenon that Ukraine currently is not able to deal with. The author further contends that it is so due to the lack of robust approach to the ethnic policy that would embrace the broader concept of multiculturalism. Education, in turn, is crucial in this regard, serving as the key modality in ensuring both the acceptance of liberal multiculturalism and furtherance of principles of equality and non-discrimination.

4.1.2. Higher provision of human rights and fundamental freedoms

Higher provision of human rights and fundamental freedoms is among key areas of the political dialogue between the EU and Ukraine under the Association Agreement. The main guarantee of EU-Ukraine Association Agreement human rights standards is enshrined under the Preamble and the Article 2 of the AA:

¹²³ EU-Ukraine Civil Society Platform. Anti-discrimination legislation and practice: The rights of vulnerable groups in the context of the Association Agreement, Kyiv 08-09.11.2016, p.7.

“Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement.”¹²⁴

It is stipulated in the Association Agreement that Ukraine undertakes an obligation to implement, among others, all the provisions and principles of Helsinki Final Act of 1975, the Charter of Paris for a New Europe, the UDHR and the ECHR: these treaties provide as both legally binding and politically binding commitments, and constitute that Ukraine is to ensure full respect to the principles of equality and non-discrimination.¹²⁵ The AA also recognises the common values on which the European Union is built, namely democracy, respect for human rights and fundamental freedoms, and the rule of law. These common values are essential in the AA and constitute a basis for further approximation between the EU and Ukraine; non-compliance with these human rights standards listed in the Article 2 of the AA may even result in suspension of obligations or general non-execution of the agreement, as the Agreement stipulates it. One has to keep in mind, however, that Ukraine’s approximation is also the matter of geopolitical game, and the formal adoption of specific laws is also beneficial for Europe, as Ukraine sends the message that it remains committed to the overarching principles of the EU. Yet, that the reforms and enactment of new legal basis is not the only expectation seems to be overlooked which further leads to an excellent situation on paper and much more depressing in reality.

Indeed, the wording of the Preamble and Article 2 of the AA firmly establishes the importance of higher provision of human rights, fundamental freedoms and respect of the rights of persons belonging to national minorities, but, nevertheless, as the author submits in his hypothesis - the real effect of the harmonization process could only be achieved holding on the premise that the political climate becomes stable and a genuine political will is expressed towards ensuring the minority rights at national level. As the object of this study is extended beyond the analysis of legal acts to the socio-economic context, the author takes a liberty to submit that the consolidation of far-right rhetoric, as well as the cases of violence

¹²⁴ EU-Ukraine Association Agreement. Supra note 2, Article 2.

¹²⁵ Ibid.

against vulnerable groups in Ukraine by nationalist forces¹²⁶, significantly obstructs the implementation of Ukraine's commitments towards ensuring higher provision of human rights. Ukraine should be reminded that derogation from basic principles to which it has committed itself may result in an ever more troubling situation for the Ukrainian people and, particularly, to the vulnerable layers of Ukrainian society.

As stated in the report of the EU-Ukraine Civil Society Platform of 2016 that “there is a lack of proper practice of anti-discrimination policy implementation; in various areas of policy it remains ataxic, institutionally weak both at central and local levels”¹²⁷. The report also stresses that the lack of positive actions by Ukraine on policies regarding vulnerable groups can be observed. Positive actions would “facilitate convergence to true equality, introduce a policy on the promotion of the respect for rights of vulnerable groups (Roma, people with disabilities)”. Lastly, the report emphasizes that government programmes concerning vulnerable groups are often formally implemented, the Roma Integration Strategy, for example, and “are not provided with an adequate resource base, adequate institutional coordination, and process of proper monitoring and evaluation”. Such criticism has been expressed by the Roma civil society too in regards to the Roma Integration Strategy and its Action Plan. The author goes further and contends that the lack of the aforementioned attributes is conditioned by the absence of political will and is merely a declarative move that helps Ukraine to stand in front of its European partners as an allegedly like-minded State. Roma rights are unfortunately used for State's own purposes to get certain political gains, while the reality of many Roma families living on the margins of the social fabric remains very unfortunate.

4.2. Harmonization process of Ukrainian anti-discrimination law

One can call the approval of the National Human Rights Strategy of Ukraine by the respective President's decree¹²⁸ in August 2015 an achievement. The National Human Rights Strategy was the result produced by a working group that included civil servants, civil society groups, the Ombudsperson, and international organisations such as the UNDP, the OHCHR and the Council of Europe. The Strategy contains 24 strategic areas that cover human rights

¹²⁶ European Commission against Racism and Intolerance. ECRI report on Ukraine (fifth monitoring cycle). Strasbourg 19.09.2017, para. 27.

¹²⁷ EU-Ukraine Civil Society Platform. Supra note 123, p. 13.

¹²⁸ The Decree of the President of Ukraine No. 501/2015 on the Adoption of the National Strategy on Human Rights, 25.08.2015.

comprehensively, in particular, anti-discrimination area and the protection of persons belonging to national minorities.¹²⁹ According to the Ministry of Foreign Affairs of Ukraine, the Strategy is in line with the provisions of the EU Strategy for Human Rights and Democracy.¹³⁰ Not surprisingly, some of its provisions, however, are rather declarative, and, in fact, the very existence of the National Human Rights Strategy in itself does not constitute higher provision of human rights. Also, the Action Plan for the implementation of the Strategy was adopted by the resolution¹³¹ of the Cabinet of Ministers on 23 November 2015; this document was also drafted with the participation of civil society groups and also clarifies most of the provisions of the Strategy. The Association Implementation Report underlies that the implementation of the Strategy and its Actions Plan¹³² “requires adequate resources which are lacking so far”¹³³.

¹²⁹ UN welcomes adoption of the National Human Rights Strategy in Ukraine. UNDP.Ukraine, 31.08.2015 (16.02.2018), Available: www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2015/08/31/un-welcomes-adoption-of-the-national-human-rightsstrategy.html.

¹³⁰ Comment of the MFA of Ukraine on approval of the National Strategy on human rights. The Ministry of Foreign Affairs of Ukraine, 03.09.2015. Available: <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/39699-komentar-mzs-ukrajini-shhodo-nacionalnoji-strategiji-u-sferi-prav-lyudini>.

¹³¹ The Resolution of the Cabinet of Ministers of Ukraine No. 1393-p on the Adoption of the Action Plan on the Implementation of the National Strategy on Human Rights, 23.11.2015.

¹³² Ibid.

¹³³ European Commission. Association Implementation Report on Ukraine, Brussels 09.12.2016, p.5.

Conclusion

The analysis carried out in this thesis has been extended beyond the consideration and discussion of the international, European and Ukrainian standards on the right to education due to the extension of the object of the study, embracing the socio-economic context of Roma in Ukraine and Europe. It can be concluded that the legal standards in Ukraine on the right to education are generally well established and meet both regional and international standards. Nonetheless, in regard to the legal framework of inclusive education in Ukraine, the author concludes that the provision stipulating creation of special groups and/or classes for children with special educational needs is too general and may lead to further discrimination of children from marginalized communities, including Roma. The author suggests that more explanation is needed as to the circumstances and conditions of creation of such groups and/or classes. In addition, when it comes to the implementation of right to education in regard to the Roma minority, many challenges can be observed, such as the practice of school segregation and low access to education.

While Roma in Ukraine are generally in a vulnerable position even in times of stability, in light of recent political development in the country they have become even more vulnerable. As to the negative factors impacting the right to education of Roma, they are predominantly conditioned by high level of discrimination towards Roma which has been continuously manifested by non-Roma residents, the socio-economic decline in the country, as well as by the ongoing crisis situation – confrontation in the Eastern Ukraine and annexation of Crimea by the Russian Federation. In relation to the crisis, the rise of nationalism and high frequency of anti-Roma violent attacks are also severely affecting Roma in Ukraine. Additionally, the crisis situation, in turn, caused an unprecedented phenomenon for Ukraine – IDPs and, particularly, Roma IDPs who suffer from double or multiple-discrimination by virtue of being both a Roma, displaced person, woman and/or child etc. The children of Roma IDPs who do not possess personal documents are most affected and their access to education becomes limited.

Another factor that causes the low level of access to education by Roma is the lack of strong ethnic policy in Ukraine. The author explains it by the lack of appropriate policies addressing the concept of multiculturalism. Ukraine, as a country with a variety of national minorities, in author's view, could accommodate the concept of multiculturalism that would promote active social interaction and peaceful coexistence for various ethnic groups as well as majority

population. In this regard, the consolidation of nationalist and right-wing groups poses a particular threat to further development of inclusion of national minorities in Ukraine. While the relation between the rise of nationalism and inclusive education might be not self-evident, building inclusive education system requires multiculturalism to be addressed in the form of ethnic policy as a necessary precondition for the development of inclusive policies; in such a state of affairs, with open manifestations of violence and intolerance towards Roma, failure of law enforcement to investigate them, and support enjoyed by nationalist groups from the mainstream population, building inclusive policies is indeed a challenging undertaking. The form of multiculturalism proposed by the author, in fact, is the liberal multiculturalism that appeals to the need of having affirmative measures aimed at improving the situation of marginalized communities, including Roma. Though with enactment of the National Roma Strategy the cooperation of State authorities and Roma civil society has improved, the current government of Ukraine has not demonstrated that it is capable of protecting and ensuring the rights of Roma on its own.

Having analysed the European policy framework on Roma and successes and challenges of its implementation, the fact that Ukraine has adopted the National Strategy and the National Action Plan on the protection and integration of Roma, in itself, does not constitute the improvement of the situation, though it signals that the State is already acknowledging the fact that the situation needs to be improved. The lack of budgetary provisions in the National Action Plan on Roma, as well as in the National Human Rights Action Plan, poses a significant problem for the realization of the goals enshrined in these documents. Hence, the expectations in regard to the improvement of the situation remain to be rather modest, unless clearly manifested political will is determined: the lack of clearly established budgetary provisions in the aforementioned Action Plans, in author's view constitutes the lack of political will and, as such, is a declarative attempt to show off Ukraine as a reliable partner for Europe, committed to the respect of human rights and fundamental freedoms.

Speaking about the case-law of the European Court of Human Rights, the practice of schools segregation has been fully outlawed, as it diminishes the educational outcomes, contributes to a growing social exclusion, and provides low quality education, as well as is a form of indirect discrimination which is a violation of the Article 14 of the ECHR. Ukraine, however, though does not have such a deteriorated situation as in the countries in which the court practice has been forged, such as Czech Republic, Hungary, Greece, and Slovakia, nevertheless the access to education of Roma remains low and the practice of school

segregation persist. The author reiterates that more action should be taken to improve the access to education of Roma. However, following the experience of the Roma Education Fund and various projects implemented by the UNICEF, it should be stressed that improving the access to quality education does not solve the issue entirely and is not the ultimate goal. Children's further development, decent educational outcomes, and, eventually, their employment and acceptance within society should be the end result of realizing the right to education of Roma. That is why the concept of inclusive education has been favoured by various stakeholders, paying specific attention to the education of Roma. Therefore, the concept of inclusive education in Ukraine has to be continuously developed to accommodate children with special educational needs, including Roma: such an important step is a long-term investment into both the economy and human capital of the country.

The steps taken by Ukraine on introducing the new law on education and amendments on the provisions for the special educational needs are a positive phenomenon, as such. However, the author comes to the conclusion that the law on education, in its Article 20, foreseeing the creation of separate special groups and/or classes, contradicts the international practice of inclusive education, as well as it might end up as a backlash where the Roma children could be stigmatized and placed into such separate groups and or/classes. As already proposed, the Ministry of Education of Ukraine should provide clear explanation on their vision of implementation of the provision under Article 20, as well as more clarity should be provided as to what are the special educational needs of Roma.

When it comes to the EU-Ukraine relations, the efforts made by Ukraine on the implementation can be called overly hasty because of initiating, apparently, an excessive number of reforms simultaneously and at the same time dealing with the crisis situation in Eastern Ukraine. Quantity seems to be more appealing to the current government than the quality of the reforms: in such a situation it can be observed that it neither benefits the society as a whole nor provides decent protection to the most vulnerable layers of society such as Roma, not to mention those affected directly by the conflict such as IDPs. Human rights should remain a priority. Yet, to assure them, more action is needed from the government side. Particularly, the manifestations of violence against the Roma have to be investigated and properly qualified as hate crimes. By failing to do so, the government betrays its people and its commitments undertaken by the Association Agreement and other international human rights treaties. Moreover, Ukraine will only benefit by ensuring and showing determination that the rights of the Roma and other vulnerable groups are observed and respected. The

political dialogue and the Association Agreement are essentially built up on the principles of respect to human rights and fundamental freedoms.

It is important to underline, that the lack of comprehensive research on the right to education of Roma in Ukraine has prevented the author from addressing specific cases of violations of the right to education of Roma. On the other hand, the fact that the Roma civil society in Ukraine is pro-active and cooperates with state authorities, other non-Roma NGOs, international organizations and other international NGOs has helped to analyse the overall situation of Roma in Ukraine and compensated for the lack of targeted studies on the right to education of Roma. Various reports, submissions to monitoring bodies, such as the Advisory Committee of the Framework Convention on National Minorities, have been analysed to understand the situation from the institutional perspective and how it can be dealt with in the future.

The genuine political will of the State remains the key to improving the access to the right to education of Roma in Ukraine, and to improving the situation of Roma in general. Having declarative policy instruments without concrete budget provisions does not suffice for bringing about a positive change. The rights of persons belonging to national minorities should not be the tool of power games, but should be taken seriously in accordance with the comprehensive perception of security: securing minority rights prevents ethnic conflicts and contributes to social cohesion. This necessitates reiterating the vitality of having multicultural policies aimed at shortening the social distance between marginalized and mainstream population.

Lastly, the author would like to propose some concrete recommendations that would address the right to education of Roma in Ukraine. Firstly, the author recommends that State authorities undertake effective strategy to put an end to the practice of school segregation. Access of Roma children to preschools education should be also taken as a priority. Secondly, more efforts should be taken to address anti-Roma sentiments in society in general, and in school environment in particular. Thirdly, a thorough review of the current National Roma Strategy and its action plan is needed to be carried out by the State authorities in close cooperation with Roma civil society and with involvement of international organizations that could facilitate this process – OSCE/ODIHR, Council of Europe, UN and its agencies, for example. Fourthly, the author recommends that the Law on Education is revised with the involvement and close consultation of representatives of groups in question; namely, it is

about Article 20 which foresees the creation of separate classes and/or groups: such provision contradicts international standards on the right of inclusive education and does not contribute to social cohesion in the current wording. Last but not least, the author recommends that the law enforcement agencies properly investigate the cases of violence against Roma; preventive measures, such as work with Roma communities and human rights training of law enforcement, should be also taken.

With these recommendations being said, the author would like to reiterate that stability and security can be achieved by ensuring that persons belonging to national minorities can effectively enjoy their rights. Ukraine is in the position to demonstrate that it is indeed committed to the improvement of the situation of its national minorities, including Roma. In author's view, the best way to do so is to ensure that the right to education of Roma, as a starting point for children in their interaction with the State, is fully realized.

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