

UNEQUAL ACCESS TO EDUCATION OF ROMA IN ROMANIA: STRUCTURAL AND IMPLEMENTATION FLAWS OF THE SYSTEM

By

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ABSTRACT

Despite the fact that the national minorities of Romania are granted protection via domestic and international law, Roma ethnic minority faces major discrimination. This thesis researches the causes and the relations between the educational policies for Roma and discrimination. The core argument of the thesis is that the inefficient implementation of educational policies is caused by the discrimination against Roma, allowing the Roma school segregation to be perpetuated. Three main stakeholders, the Romanian Ministry of Education, the National Council for Combating Discrimination and Romani CRISS NGO have been analyzed and interviewed in order to assess the causes in the inefficient implementation of the legislation on school desegregation. The analysis of primary and secondary data shows that the main stakeholders involved in the desegregation process are unable to develop and implement efficient strategies for monitoring and implementation of the desegregation legislation.

This thesis concludes that the existing legislation is structurally sound from a legalistic point of view, but its implementation is inefficient due to the lack of resources of the main stakeholders involved in the process. Furthermore, the insufficient and inefficient monitoring process allows the Roma school segregation phenomenon to be further perpetuated.

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INTRODUCTION

The Roma minority is one of the largest minorities in Europe, with a population between 10 to 12 million, scattered around the continent's countries. According to the most recent census in Romania in 2012, the Roma population consists of 619,000¹ people, representing the second largest national minority. Unofficially, the number of Roma in Romania is up to 2 million people according to several researchers'²estimations.

Despite the fact that the national minorities of Romania are granted protection via domestic laws and international conventions and regulations that Romania ratified, Roma ethnic minority is one of the groups facing major discrimination, abuse and violation of human rights. 25% to 60% of the interviewed Roma, in the 11 countries included in the EU Fundamental Rights Agency survey³, declared they have experienced discrimination on ethnic grounds. Roma face discrimination in areas such as education, access to health care services, access to employment, and access to adequate housing⁴. Further, in many European countries they are the target of far right extremist groups, which harass or even attack entire Roma communities and individuals⁵.

In 2011 Open Society Institute together with Soros Foundation, Federation Secretariado Gitano and Fondazione Casa della Carita Angelo Biani conducted the project "EU INCLUSIVE – data transfer and exchange of good experiences regarding the inclusion of Roma population between Romania, Bulgaria, Italy and Spain" which researched the Roma

¹ The number is based on the most recent official number at the census in 2012 in Romania, <http://www.recensamantromania.ro>

² Grigoras Badescu, Vlad Grigoras, Cosima Righinis, Malina Voicu, Ovidiu Voicu, Roma Inclusion Barometer, Open Society Foundation, 2007, pag. 12

³ EU Fundamental Rights Agency, The situation of Roma in 11 states- Roma at a glance, (2012)

⁴ Moldovan v. Romania (Hadareni case), Kalanyos v. Romania (Plaiesii de Sus case), Gergely v. Romania (Casinul Nou case) – Romani CRISS instrumented cases of discrimination against Roma in Romania.

⁵ European Grassroots against Racism Movement, The Manifest of EGAM, (August 2011), available at: <http://egam-eu.blogspot.hu/2011/08/manifest-of-egam.html>

situation in Romania in 2011. The sample size was composed of 1100 respondents, aged above 16 years. The report summed up the Roma situation in Romania by analyzing five components of the social inclusion fields: employment, education, health, housing and discrimination. The detailed analysis of the 5 Roma communities gathered quantitative data from Floresti (Cluj), Petrilaca (Mures), Fetesti (Ialomita), Cornu de Sus (Prahova), Bereasca (Ploiesti).

The analysis concluded that *“only 35.5% of the Roma minority has a workplace in 2011. 38% of the employed persons work as unskilled workers, 32% have skilled employments (workers, sellers, traders), 9% are workers in agriculture, while 13% have traditional Roma occupations. The availability of the respondents to work continues to be significant: 76% of those without a workplace expressed their availability to immediately start working if a job was offered to them, but the programs intended for their qualification and change of qualification are facing the obstacle of the low level of education of the population and also of the lack of assurance regarding their hiring after the graduation of such training courses.”*⁶

The study reported that the level of education of the interviewed sample is very low, half of the respondents having graduated only the primary school, whereas 25% of the population is illiterate. Therefore, the employment competition is impossible, due to the low level of studies.⁷

⁶ Open Society Institute, Soros Foundation, Federation Secretariado Gitano and Fondazione Casa della Carita Angelo Briani– “Roma situation in Romania 2011, Between Social inclusion and migration, Country Report”, being part of “EU Inclusive – Data Transfer and exchange of good practices regarding the inclusion of Roma population between Romania, Bulgaria, Italy and Spain” project, 2011, p. 169 – 196.

⁷ Ibid 6.

In 2012 the European Union Agency for Fundamental Rights (FRA) and UNDP conducted a study on the Roma situation in 11⁸ EU member states. The research was conducted on 5 levels enquiring the Roma status in education, employment, health, housing and poverty.⁹ The sample size was composed of 64.263 respondents, from urban and rural areas. The study reported that only half of the interviewed Roma children attended pre-school or kindergarten, whereas only 9 out of 10 Roma children aged between 7 and 15 reported to be in school. In the same area, 15% of the young Roma adults completed upper-secondary general or vocational education. In the area of employment, the study reported that one out of three respondents is unemployed, whereas only 20% of the interviewed population is medically insured. 45% of the respondents live in a household which lacks indoor kitchen, indoor toilet, indoor shower and electricity. One of the most shocking findings of the study is that 90% of the interviewed population has incomes below national lines and 40% of the Roma live in households where somebody had to go to bed hungry at least once in the last month, since they could not afford to buy food.¹⁰ The discrimination percentages are reported to be very high; about half of the interviewed Roma experienced discrimination in the last 12 months based on their ethnicity.¹¹ The Roma are generally seen as second-class citizens due to their poor socio-economic conditions, which make them targets of discrimination in accessing the public services as public education, health services and employment. However, 40 % of the interviewed Roma reported that they are not aware of the anti-discrimination legislation regarding the ethnic minorities. Given the big and varied sample, the study offers reliable data according to which Roma at the European level are discriminated against and are unable to access basic public services.

⁸ Countries included in FRA, UNDP research on Roma situation: Bulgaria, Czech Republic, Greece, Spain, France, Hungary, Italy, Poland, Portugal, Romania and Slovakia.

⁹ FRA, UNDP, The Roma Situation in 11 European Countries, 2012, available at: http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf.

¹⁰ FRA, UNDP, The Roma Situation in 11 European Countries, 2012, p.21.

¹¹ Ibid 10.

The national minorities of Romania should be granted equal access to education at all levels, based on the Framework Convention for the Protection of National Minorities (1995)¹². The same disposition is included in the Romanian National Education Law¹³, acting as reinforcement of the principle of equal access to education of the national minorities. According to the Romanian Constitution,¹⁴ international regulations prevail over the domestic regulation, if there are inconsistencies between the domestic and the international provisions. Regarding the equal access to education, the regulations are not conflicting, but rather reinforce each other.

In 2007 Open Society Institute reported that the Romanian Government adopted a series of programs aimed at improving the Roma situation in general, but many of the strategies adopted proved to be inefficient due to the choice of ambitious targets and weak implementation.¹⁵

The primary problems regarding Roma access to education are the quality of education, early school leaving (ESL) and segregation in education¹⁶. The educational needs of the Roma are addressed both by domestic bodies (The Romanian Government through the Ministry of Education, Romani CRISS and other NGOs) and by international institutions (European Commission, Council of Europe), but the results are less than satisfactory at the implementation level.

Research question

¹² See “Framework Convention for the Protection of National Minorities”, Article 12, Paragraph 3, 1995

¹³ See “National Education Act (of Romania)”, Article 2, Paragraph 4, 2011.

¹⁴ See “The Romanian Constitution”, Article 20, Paragraph 2, 2003.

¹⁵ Open Society Institute, Equal access to Quality Education for Roma – Summary 1, 2007, p. 25-27.

¹⁶ See Communication from the Commission to the Council, The European Parliament, The European Economic and Social Committee and the Committee of the Regions - The social and economic integration of Roma in Europe, 2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0133&qid=1424126960789&from=EN>.

The research question is addressing the causes and the relations between the inefficient implementation of the educational policies for Roma and discrimination. **What are the causes of the inefficient implementation of the educational policies for the Roma?** My first hypothesis is that the inefficient implementation is caused by the discrimination towards Roma in education. The second hypothesis is that the educational policies lack a clear formulation that allows a high level of misinterpretation.

My third hypothesis is that the failure of the educational policies targeting Roma inclusion is caused by inefficient implementation mechanisms of the educational policies at the national and the local level. The lack of monitoring and the poor quality of the implementation tools lead to the inefficiency of the educational policies directed at the Roma minority in Romania.

The thesis will be structured in three chapters. The first chapter will consist of theoretical considerations on the segregation in education of Roma and unequal access to education. The second chapter will consist of an analysis of the legislative framework on the educational policies directed to Roma, and the third chapter will emphasize the empirical interests of the stakeholders involved in the desegregation policies in Romania. The third chapter of this thesis is based on qualitative interviews with the stakeholders on desegregation policies at the national level. The field research addresses three types of stakeholders coming from different activity areas, which however have an important input on the desegregation in education implementation at all levels.

Three types of stakeholders were interviewed in order to establish the empirical interests of the institutions involved in the process of desegregation. The interviewees have expert knowledge on the implementation and the structure of the desegregation in education policies in Romania and each of them work for institutions directly involved in the process of desegregation. One of the most relevant entities interviewed is the Romanian Ministry of

Education, which is responsible for the implementation and monitoring of the Ministerial Order 1540/2007 on the prohibition of the school segregation of the Roma children and the its implementation methodology. The Romanian Ministry of Education provided the legislative basis on which the desegregation policies are implemented and provides a perspective of the school desegregation of Roma children at the national level. The aim of the interview with the Ministry of Education is to provide an empirical description of the activities which address the desegregation of the Roma children in education. A second purpose of this interview addresses an analysis of the Ministry of Education from an empirical perspective, which is aiming to bring a new perspective of the actual work of the Ministry on the school segregation policies.

The second type of institution interviewed is the National Council for Combating Discrimination (NCCD), which represents the equality body of Romania. The NCCD is the institution that decides on the segregation cases, brought to its attention by various petitioners. The purpose of the NCCD interview is to provide a clear image of the litigation process and to some degree to assess the provision (M.O. 1540/2007) on which they base their activity.

The third type of institution interviewees is represented by various NGOs that work on school desegregation at the grassroots levels. This third type of interviewees shall provide insight on how the implementation and monitoring process of the desegregation policies occurs and which are the institutions that empirically provide most of the support in order to desegregate the Roma segregated schools.

The research methodology combines three perspectives of the stakeholders involved in the desegregation process with the purpose of overlapping different points of view regarding the desegregation process efficiency. The aim of this methodology is to establish how the entities

working with the desegregation policies assess their efficiency and furthermore, due to the interconnected tasks and capabilities of these institutions, to assess each other's efficiency and implications. The interviews analysis' aim is to provide a substantive assessment of the desegregation policies, focused on their implementation and monitoring strategies. Finally, the third chapter of this thesis shall provide arguments referring to the efficiency of the desegregation policies and shall also provide some recommendations for improving the process of desegregation.

CHAPTER 1: SEGREGATION OF ROMA PUPILS IN EDUCATION

1.1. Definitions and patterns of school segregation

School segregation is defined by the Ministerial Order 1540/2007 on the prohibition of the school segregation, as the physical separation of the Roma pupils in groups/classes/buildings/schools and other facilities, so as to the percentage of the Roma pupils from a school, class or group is disproportionate compared to the total number of the Roma pupils represented in a certain administrative unit¹⁷. Further definitions of practices that lead to segregation are provided by the “Methodology for prevention and elimination of the school segregation of the Roma children”¹⁸ as follows:

- a) Enrolment of the Roma children in residentially segregated schools, i.e. a school situated within or the in the vicinity of a “compact” *Roma community*¹⁹, in which all or the vast majority of pupils are Roma.
- b) Guidance or direction of the Roma children towards segregated kindergartens/schools from or near the neighborhoods inhabited by Roma, considering that mixed kindergartens/schools are available.
- c) Placement in the same class of all 1st graders that did not attended kindergarten.
- d) The deliberate placement of all Roma children in a separate building of a mixed school.
- e) Placement of Roma children diagnosed with special education needs (SEN) in separate groups/classes/schools.

In practice there were identified different patterns of segregation. This paper will examine the following types of segregation:

- Segregation by classrooms
- Segregation by school buildings
- Residential school segregation
- Segregation in schools for children with special education needs (SEN)

¹⁷ Ministerial Order 1540/2007 regarding the prohibition of the school segregation in the Romanian educational system, Ch. 2, Art. 2, Paragraph 2.

¹⁸ Methodology for prevention and elimination of school segregation of Roma children, 2007. (Annex of the M.O. 1540/2007 regarding school desegregation).

¹⁹ The “compact Roma community” terms association refers to a community where Roma are majoritarian. The term also refers to a “closed Roma community”, i.e. where no or very few non-Roma people live.

1.2. Segregation by classrooms

The segregation by classrooms can be best defined from a dichotomous perspective; one class has only Roma pupils and the other one has only non-Roma children. Andrew Ryder and Marius Taba argue in their book that “this form of segregation occurs where schools adopt a separate classroom as a result of the teachers’ decision or by implementing different programs and is termed as ‘intra-school segregation’”²⁰. The same authors argue that the Roma children segregated by classrooms are often grouped as such on the grounds of poor academic performance or social status. However, the approach of grouping pupils based on their academic performance also has an impact of the quality of education that those pupils receive, due to the fact that pupils grouped as such will not be stimulated to perform better at school. A better approach could be that pupils which have a low academic performance to be mixed with those who have a better academic performance in order to stimulate the pupils to perform better.

Segregation cases were reported by Romani CRISS, a Roma rights NGO from Romania, and brought before competent courts and the NCCD. Romani CRISS monitored in 2008 the school situation of Roma pupils from “Josika Miklos” General School from Atid, Harghita County. The school had a total number of 155 pupils among which 87 were Roma.

According to the Romani CRISS report²¹, at the primary school level it has been found that some of the classes were composed only of Roma children. According to the school’s data the vast majority of the 1st grade pupils were Roma (19 Roma out of 27 total pupils). Large percentages of Roma pupils were observed in other classes from this school as well.

²⁰ Andrew Ryder and Marius Taba, *Ten years after – A History of Roma School Desegregation in Central and Eastern Europe*, Edited by Iulius Rostas, 2012, p. 11.

²¹ *Protectia drepturilor omului si combaterea discriminarii romilor in Romania*, Romani CRISS, 2010, p. 63.

The schools representatives stated that the assignment to classes was based on the academic performance levels and on the fact that the pupils come from families which live a “*migratory life*”²².

From the above interview excerpt conducted by Romani CRISS it can be inferred that the Roma pupils were deliberately assigned in the same class due to the stereotype according to which Roma live as “nomads”. The social categorization of the Roma should not be a criterion to be used in education. The fact that the Roma do not have a stable address, should not determine the academic development of the pupils.

Another case reported by Romani CRISS was at School No. 19, Craiova. The total number of Roma pupils was 106. It was reported that the some classes were composed only of Roma children (1st, 3rd, 5th grade).

The school representatives argued that this happened because “the Roma students were held back, because either the Romanian parents requested their children to be placed in a certain teacher’s class, before the beginning of the school year” or that “it happened as a consequence of late Roma pupils enrolment, because their parents do care about the deadlines²³.”

1.3. Segregation by schools/buildings and residential segregation

These two types of segregation are discussed under the same heading due to their similarities. To be noted that although they are similar, they represent different types of segregation.

Segregation by schools refers to the physical segregation of Roma children to a school which has a vast majority of Roma students. The same applies for the residential segregation. The

²² Ibid 15.

²³ Ibid 15.

difference between the two types of segregation is represented by the proximity of the Roma community to the school. In the case of residential segregation, the Roma pupils are enrolled in the single school that is nearest to them, whereas in the case of segregation by schools, Roma are enrolled in the school, which has worse conditions and a poor quality education, even though there exists another school with better conditions, and provide a better quality of education.

The residential school segregation implies the proximity of a compact Roma community, which leads to the directing of the Roma children the in the community to the same school. Marius Taba and Andrew Ryder refer to the residential segregation as the “ghetto schools: schools with a majority of Roma pupils”. The same authors argue that “in many cases the schools are restricted to Roma by local practices or tacit understanding”²⁴. The “white flight” phenomenon is present in cases of school segregation and residential segregation and it is defined as a result of a residential pattern where non-Roma parents choose to withdraw their children from the Roma populated schools²⁵. According to Article 10 of the National Education Law, parents can enroll their children according to the school circumscription, meaning that the parents can enroll their children to the nearest school to their residency²⁶. However, Article 21 of the National Education Law regarding children enrollment in school, states that the parents can opt to enroll their children to other schools than those nearest to their residency, but they will be accepted according to the available number of places. Due to this regulation, the segregation process is encouraged. Schools can easily reject Roma pupils arguing that there are no available places to enroll them. This phenomenon also happens because there is no possibility for the Roma parents to check the available places to enroll

²⁴ Andrew Ryder and Marius Taba, *Ten years after – A History of Roma School Desegregation in Central and Eastern Europe*, Edited by Iulius Rostas, 2012, p. 9.

²⁵ Ibid 17.

²⁶ “Methodology for the enrollment of children in primary education for the school year 2014-2015”, Ch. 1, Art. 4, according to National Education Act, 2014.

their children. Most of the parents are not aware that they can check the available places, or they are simply not provided with the list of enrollment places in the school. On the other hand, the majoritarian (ethnic Romanian) parents avoid enrolling their children in the Roma populated school by moving their children to a non-populated Roma school. This phenomenon needs further research and a mechanism needs to be developed in order to prevent segregation. In 2012 NCCD reported through the study “Perceptions and attitudes regarding discrimination in Romania”, with a sample size of 1400 that 31 percent of the Romanian ethnic population would feel less/at all comfortable in the presence of a Roma ethnic.²⁷ The same institution reported in 2009 that approx. 75% of the ethnic Romanian do not agree to have a Roma coworker.²⁸ In 2013 the number of people who would not accept a Roma coworker decreased to 48%.²⁹ In my opinion, the research regarding the acceptance of a Roma coworker is related to the acceptance of a Roma fellow pupil in school, due to the influence of the parents over their children.

The segregation by schools does not entail the proximity of a compact Roma community in the school’s vicinity, but rather represents the schools where the Roma are deliberately directed to, not necessarily belonging to a compact Roma community. It is rather recognized as the “Roma school”. This type of segregation is more common in the dispersed Roma communities. To be noted that both of these school segregation types entail poor schooling conditions (infrastructure), a low quality of education and poorly trained teachers. Romani CRISS documented a case of segregation by schools³⁰ in Albeni, Gorj County (2008-2009). In Albeni there are two schools, School No. 1 (I – VIII grades) and School No. 2 (I – IV

²⁷ NCCD, Perceptions and Attitudes Regarding the Discrimination in Romania, 2012.

²⁸ NCCD, The Discrimination Phenomenon – Perceptions and Attitudes, 2009, available at: <http://cncd.org.ro/files/file/Fenomenul%20discriminarii%202009.pdf>.

²⁹ NCCD, Perceptions and Attitudes regarding discrimination, 2013, Available at: <http://www.cncd.org.ro/files/file/Sondaj%20de%20opinie%20CNCD%202013.pdf>.

³⁰ Drepturile Omului in Practica, De la discriminarea Romilor la abuz al responsabililor cu aplicarea legii (2008-2008) , Romani CRISS, 2010, p. 20.

grades). According to the schools documents, the student body of School No. 1 was composed mostly of non-Roma and the student body of School No. 2 was composed mostly of Roma children. Further investigation on the case showed that the infrastructure of School No. 2, the school who had mostly Roma children was very poor compared to School's No.1 infrastructure.

Segregation by schools buildings can be defined as a subcategory of the segregation by schools category. This happens when the schools have more than one building and one of the buildings is populated by a majority of Roma children and the other by a majority of non-Roma. According to the documented case, the segregation of Roma in education is more common in small towns, irrespective of the Euro-regions or the county. Out of the 11 segregation cases instrumented by NCCD from 2003 to 2012, ten of the cases occurred in small towns and villages.³¹

1.4. Misdiagnosis of Roma children: Enrollment of Roma pupils in special schools

According to an Open Society Institute report, the placement of Roma children in schools for children with special educational needs (SEN) is a phenomenon that occurs in several European countries, including Romania³². The over-representation of Roma children in special schools has different causes but the majority of the Roma in special schools do not have special educational needs or any developmental problems.

In countries like Slovakia and Czech Republic a developmental testing is conducted by a specialized body, but in Romania according to the Education Law, the testing is organized after the recommendation of a teacher. In practice, most of the times the Roma children are

³¹ See Dezideriu Gergely, A European perspective of law and practice addressing the school segregation, p.14, available at

http://www.equineteurope.org/IMG/pdf/errc_school_segregation_roma_dezideriu_gergely_final.pdf.

³² Open Society Institute, Equal access to quality education, Vol. 1, 2007.

directly guided to special schools and tested later or not tested at all³³. The phenomenon is spreading rapidly especially in the poor Roma communities, due to the lack of alternatives of schooling of Roma children. The poor social status of Roma leads to the enrollment of their children in special schools due to some benefits, such as clothing or free meals³⁴. In extreme cases, poor unemployed parents willingly choose to send their children to special schools due to the fact that they do not have the necessary resources to keep their children in mass-education schools.

The violation of the Order's provisions does not bring about any specific sanctions, but disciplinary sanctions, prescribed by the Law on the statute of teachers, civil, contravention or criminal sanctions, according to the law. The monitoring process is not continuous and the desegregation process is not infeasible; classes may be shifted back. The fined schools do not implement the desegregation process properly due to the lack of training and in some cases the classes are re-segregated in time (See Cehei case where the class was re-segregated after 3 years).³⁵ The segregation of classes also entails issues related to the quality of education. The teachers of the newly desegregated classes are poorly trained and often unqualified. Although the classes are desegregated (mixed), the quality of education is not analyzed and restructured to the class educational needs. The physical replacement of the pupils in non-segregated class does not improve the quality of education of the Roma pupils. In my opinion, the Roma pupils newly replaced in the desegregated classes need further educational attention in order to "catch up" to the class level.

³³ Open Society Institute, *Equal access to quality education*, Vol. 1, 2007;

³⁴ Andrew Ryder and Marius Taba, *Ten years after – A History of Roma School Desegregation in Central and Eastern Europe*, Edited by Iulius Rostas, 2012, p. 11.

³⁵ See Romani CRISS, *O analiza a procesului de desegregare*, 2007, p.13. available at: <http://www.romanicriss.org/PDF/O%20ANALIZA%20A%20PROCESULUI%20DE%20DESEGREGARE.pdf>.

1.5. Causes of school segregation

School segregation can be defined as “the separation or isolation of a race, class, or ethnic group by enforced or voluntary residence in a restricted area, by barriers to social intercourse, by separate educational facilities, or by other discriminatory means”³⁶.

The school segregation can be seen as a social practice, where the majority drastically influences the access and the quality of education of the minorities. Using Occam’s razor³⁷ the school segregation can be described in sociological terms as the power of the strong to influence the education of the weak. The social implications of school segregation are very vast and inter-related. The most common cause of the school segregation is discrimination and the stereotypical thinking and practices of the stake-holders (school staff, institutions) regarding the Roma people. Roma pupils are seen by teachers as unimportant and working with Roma children seems to be a burden on their shoulders.³⁸ Parent of the non-Roma pupils are also a decisive factor in the segregation issue. Often, the majoritarian parents put pressure on the schools’ management to remove their children from the Roma populated classes due to stereotypes about Roma, embedded in the Romanian society. According to some teachers interviewed during Romani CRISS’ investigations on segregation cases the Roma pupils are seen as uninterested in school and often the Roma children are being left behind because they lower the credentials of a certain class. Equal access to education of Roma pupils is not seen as a right, but rather as a favor that is done to Roma.³⁹

³⁶ Segregation definition, available at: <http://www.merriam-webster.com/dictionary/segregation>.

³⁷ Occam’s razor represents a scientific and a philosophic rule according to which interpretation of a complex phenomenon is made using the simplest theories in order to avoid repetition and ambiguous explanations.

³⁸ See “Our School” documentary movie on a segregated Roma school in Targu Lapus, Romania. The documentary provides proof of the bad treatment of Roma children by Romanian ethnic teachers.

³⁹ Ibid 38.

Leaving aside the social implications (e.g. social exclusion) of the schools segregation, which are too complex and still there is no consensus on the issue, further there will be presented three of the generally accepted causes of the segregation.

Residential segregation⁴⁰ is one of the most troublesome causes of the school segregation. The exclusion of the Roma from the mainstream communities leads to school segregation. The residential segregation issues are very complex and hard to deal with, due to the physical and social distance between the Roma community and the majoritarian communities in the cases of compact Roma communities. Even in the case of the mixed communities (where both Roma and non-Roma live) the school segregation is still an issue; the physical distance is eliminated, but there is the social gap between the Roma and non-Roma, which prevents the access to a quality education.

Educational policies⁴¹ at the local and national level also represent a cause of school segregation. Equal access to education is poorly addressed by the educational policies and the policies are not adapted for the disadvantaged groups. In the last decade, the access of Roma to education improved in Romania compared to other post-communist countries⁴², but there are still ineffective policies and the equal access to a quality education is not conferred to all of the Romanian citizens. The school segregation of the Roma children in Romania is still a subject of debate in the Romanian society. After a decade of fighting against discrimination in accessing a quality education, the desegregation policy in Romania remained at the Ministerial Order level, whereas in other countries the desegregation policies are enforced as

⁴⁰ See definition above, p. 7.

⁴¹ Educational policies term refer to the sphere of law and rules which regulate the Romanian educational system. These laws and rules are presented and analyzed in Chapter 2 of this thesis.

⁴² See Andrew Ryder and Marius Taba, Ten years after – A History of Roma School Desegregation in Central and Eastern Europe, Edited by Iulius Rostas. 2012.

laws included in the anti-discrimination law, such as in Bulgaria and Hungary⁴³. Due to the fact that the Romanian desegregation legislation is a “Ministerial Order”, it does not have the same legislative power as a “Law”, as it is an inferior law source.

School choice⁴⁴ is a rather complex cause, which goes in two directions. On one hand, the non-Roma parents choose to enroll their children in a school which does not have Roma pupils. The main reason behind for this choice is discrimination and stereotypical thinking. On the other hand, Roma parents choose to send their children to a school where Roma are majoritarian, in order to avoid discrimination and stigmatization of their children.⁴⁵

1.6. Stake-holders and influencers of the desegregation policies

The stake-holders and influencers of the desegregation policies are present and national and the international level. The stake-holders are defined as those who have the legal power to prohibit segregation and to sanction it (Romanian Government, EU via its directives), whereas the influencers are the NGOs (national and international) sector which can influence the adoption of rules against segregation by putting pressure on the stake-holders.

At the national level the main stake-holders are represented by the educational institutions at the local level (schools) and at the national level (Ministry of Education, School Inspectorates and other competent institutions). The stake holders have the power and the means to achieve the development and the implementation of the desegregation policies. The governmental apparatus could be able to implement such policies due to its power relations,

⁴³ ERRC, The impact of Legislation and Policies on School Segregation of Romani Children, A study of Anti-Discrimination Law and Government Measures to Eliminate Segregation in Education in Bulgaria, Czech Republic, Romania and Slovakia, 2007, p. 15, available at: <http://www.errc.org/cms/upload/media/02/36/m00000236.pdf>.

⁴⁴ School choice refer to the fact that both Roma and Romanian ethnic parents are free to choose any school to enroll their children. See the implications above.

⁴⁵ See “Our School” documentary movie on a segregated Roma school in Targu Lapus, Romania. The documentary provides proof of the bad treatment of Roma children by Romanian ethnic teachers.

available staff and financial means needed to achieve desegregation of Roma schools/classes. The main question rising from the statements above is why the desegregation policies are still ineffective? A suitable answer to this question will be that there is a certain lack of interest on behalf of the competent stake-holders regarding the segregation issue in Romania.

NGOs represent the **main influencers at the national level** on the desegregation issue. In Romania the pioneer of the desegregation policy was Romani CRISS, an NGO working on Roma rights. The first segregation case was documented and brought to court by Romani CRISS in 2003. Due to lobby and advocacy actions of Romani CRISS and other NGOs, the desegregation order has been adopted by the Ministry of Education in 2007.

The international stake-holders and influencers on the desegregation topic are represented by the United Nations (UN), World Bank, The Council of Europe (CoE), The European Union (EU) and other international NGOs, such as Amnesty International.⁴⁶

Earlier international pressure on the Romanian Government regarding the discrimination of Roma in Romania was made by the United Nations (UN) (2001-2002). UN addressed recommendations to the Romanian government also about the segregation of Roma students in schools.⁴⁷

The international stake-holders and influencers put pressure on the Romanian Government to improve the situation of the Roma minority in Romania. Among the conditions for accession to the European Union, Romania was responsible to improve the access to education of the Roma minority⁴⁸. It is not a coincidence that the most important policy regarding Roma

⁴⁶ Andrew Ryder and Marius Taba, Ten years after – A History of Roma School Desegregation in Central and Eastern Europe, Edited by Iulius Rostas, 2012, pp. 17-39.

⁴⁷ Andrew Ryder and Marius Taba, Ten years after – A History of Roma School Desegregation in Central and Eastern Europe, Edited by Iulius Rostas, 2012, p. 20.

⁴⁸ Communication from the Commission to the Council and to the European Parliament, Strategy Paper of the European Commission on progress in the enlargement process, 2004, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0657&from=EN>. Also see further explanation in the second chapter Legislative Framework subtitle.

access to education was adopted in the same year as the Romania accession of EU (2007), but rather a consequence. The European Union, World Bank and the Decade of Roma Inclusion also provided financial incentives for the Romanian Government to initiate the anti-discrimination and the desegregation policies. Among these influencers the donors must be mentioned (The Norway Grants, Soros Foundation, Open Society Institute, Roma Education Fund, Swiss Grants, European Structural Funds), which funded projects aiming at improving the Roma situation in Romania. These institutions and programs provided funding for the desegregation and anti-discrimination projects conducted by Romanian NGOs, which are responsible for most of the progress achieved regarding the decrease of discrimination and for identifying and exposing segregation cases.

The financial incentives had both good and bad influence over the anti-discrimination and the desegregation policies. On one hand, the good aspects of the financial incentives are that the policymaking process was started and the Government interest was raised, to address the topics of anti-discrimination and desegregation. On the other hand, the bad aspects of the financial incentives was that the regulations and the recommendations issued by the funding organizations set a certain trend of addressing the problems above mentioned, that led to the adoption of inefficient policies. The funding areas of the donors are very strict and do not allow to have the purpose of the program set from below (community level), but it is set from above (donor priorities).

In order to benefit from funding and prevent dismantling, sometimes NGOs apply for funds that are not directed to the most important problems of the Roma communities. The donors do not keep track of the most important and crucial aspects of the Roma communities, which results in adopting policies and conducting projects which are not tailored to the specific Roma needs, but they were rather designed and enforced as the funding organizations desire. To conclude, the donors' preferences rather than the Roma communities' needs' lead to the

development of projects and programs directed to Roma communities, without Roma input. The European Structural Funds programs offered a large amount of funds meant to improve the Roma minority situation, but the results are less than satisfactory⁴⁹.

⁴⁹ Project on Ethnic Relation (PER), “Roma and EU accession: Elected and Appointed Romani Representatives in an Enlarged Europe”, Brussels, Belgium, December 9-10, 2003, p. 10. Available at: <http://www.per-usa.org/Reports/Per%20Brussels%20Report.pdf>.

CHAPTER 2: STRUCTURAL FLAWS OF THE SYSTEM

2.1 Analysis on the international framework on education and antidiscrimination of Roma

This chapter analyses the international framework on human rights and education which led to the national development of the desegregation policies in Europe. The desegregation process began as a top-down process and it was materialized in the majority of the European Countries due to the international pressure and the political context, which at that time (2004-2007) favoured human rights, equality and educational policies.

International entities, either institutions or NGO-s have constantly argued that the right to education is dependable on other rights and becomes a variable in the “vicious circle of rights”.⁵⁰ The vicious circle of rights refers to the fact that education, health, employment, discrimination and poverty are interrelated; without a proper education one is unable to access employment, without employment, the health services become inaccessible, also without employment one is unable to live at the society standards, which leads to poverty, poverty leads to discrimination. Poverty is one of the most crucial elements which lead to discrimination and it becomes aggravated when the ethnic variable intervenes in the equation. Everyone has the right to education, which is a human right protected by all international and regional systems for human rights protection, including the European Convention on Human Rights and Fundamental Freedoms.⁵¹ In the legal doctrine, the equal access to education was

⁵⁰ UN CESCR, General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights defines education as both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities, available at: <http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>.

⁵¹ UNESCO Convention Against Discrimination in Education (1960), available at: http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html; Convention on the Rights of the Child (1989), available at: <http://www2.ohchr.org/english/law/crc.htm>; Art.2 of the Protocol no.1 to European Convention on Human Rights and Fundamental Freedoms, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/009.htm>.

named as the „key to achieving greater economic and political power and thus, equality in society”.⁵²

The UN Convention on the Rights of the Child (CRC) stipulates that children always have to be treated in accordance with their best interest.⁵³ The best interest of the child means to obtain a complete and qualitative education. It should be the primary and common interest of the state administrations to provide quality education to all children, regardless of their situation.

The UN Convention on the Rights of the Child underlines the importance of a quality education for the proper development of the child. The CRC also affirms the obligation of governments to assure the realization of all rights to every child without discrimination on any ground. States that ratified the Convention on the elimination of racial discrimination are obliged to ensure that they do not engage in any act of discrimination on grounds of race or ethnicity, and also requires them to take proactive measures, including legislation, to prohibit racial discrimination.⁵⁴ This obligation has been further elaborated by the UN Committee on the Elimination of Racial Discrimination (CERD), in a general Comment that sets out the need to introduce specific legislation, policies and programmes to ensure the equal right of Roma children to education.⁵⁵

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

⁵² M.E.A Goodwin, *Taking on racial segregation: the European Court of Human Rights at a Brown v. Board of Education moment?*, page 94, available at: <http://arno.uvt.nl/show.cgi?fid=96970>.

⁵³ UN Convention on the Rights of the Child, Article 3, paragraph 1.

⁵⁴ UN Convention on the elimination of Racial discrimination, Article 2.

⁵⁵ Committee on the Elimination of Racial Discrimination, General Recommendation no. 27: discrimination against Roma, 6/08/2000, CERD.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children. (**Universal Human Rights Declaration, Article 26**)

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State. (International Covenant on Economic, Social and Cultural Rights, Article 13)

The Universal Declaration of Human Rights was the first international instrument to declare education to be a human right. Article 26 of the Declaration refers to elementary education as compulsory. The same article states that the states are responsible to make available the higher education of the basis of merit. The provisions of article 26 are reiterated with greater strength in the context of treaty law and in greater detail in article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 26 argues for tolerance and inclusiveness for the subsequent international instruments, which have emerged over time and have confirmed and further elaborated the right to education both generally and with reference to minorities specifically.⁵⁶

The Advisory Committee on the Framework Convention for the Protection of National Minorities concluded⁵⁷ that all minority educational policies need account for the goal of the educational policies, the actors involved in creating and implementing the policies and the tools necessary for achieving the policies' objectives. Every state shall account for the different situations and different groups that need to be treated differently in order to ensure effective equality and access to good quality education for all persons.

⁵⁶ OSCE, High Commissionaire for National Minorities, The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note, October 1996.

⁵⁷ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, Strasbourg, March 2006.

The involved actors need to have access to adequate basic information concerning the situation of different minority groups. Differences in geographic concentration, historical status and experience, kin-state support, level of organization, gender disparities require different responses from the State and local and regional authorities⁵⁸. The particularly disadvantaged position of the Roma needs to be taken into account in all countries that have ratified the Framework Convention. Stake-holders at central and local level, teachers and school directors are among the most important. Parents and those receiving education (pupils or adults) are other crucial actors. The needs of those groups and persons need to be continuously assessed and adapted as the educational process is conducted. The educational process must also account for the non-discrimination principles which must be embedded in the educational policies in order to assure the equal access to a qualitative education. State institutions need to assure the proper implementation of the policies in practice by creating monitoring tools in order to prevent discrimination which may occur and remedy the flawed procedures. The discrimination may be prohibited by international and national laws, but the implementation of the non-discrimination policies depend on the actors dealing with them.

The following section reviews the main recommendations from international organisations such as the Council of Europe, the OSCE, the UN, and the European Union to participating states for ensuring equal access to education of Roma children. These comprehensive measures represent the international framework, which served as basis to create the *European Union's Framework for National Roma Integration Strategies up to 2020*.

In March 1998 the Council of Europe's European Commission against Racism and Intolerance (ECRI) issued its General Policy Recommendation no. 3 on combating racism

⁵⁸ Council of Europe, Advisory Committee of the Framework Conventions for the Protection of National Minorities. Fifth activity report covering 1 June 2004 – 31 May 2006, 2006, p. 47.

and intolerance against Roma. ECRI defines segregation as “the act by which a (natural or legal) person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification, in conformity with the proposed definition of discrimination. As a result, the voluntary act of separating oneself from other persons on the basis of one of the enumerated grounds does not constitute segregation”.⁵⁹

In February 2000 the Committee of Ministers adopted Recommendation 4 to member states on the education of Roma/Gypsy children in Europe. The recommendation acknowledged that the problems faced by the Roma in education are a result of the non-qualitative policies created and implemented by the states which led to the segregation, instead of assuring equal access to education.⁶⁰

In August 2000, the United Nations Committee on the Elimination of Racial Discrimination (CERD) issued its General Recommendation XXVII on discrimination against Roma.⁶¹ CERD highlighted that State parties are responsible to support inclusion in the school of all Roma children, accounting for the desegregation measures. The same recommendation urged the states to take measures in training Roma teachers and school staff and include at all levels chapters about the Roma history and culture.⁶²

⁵⁹ Council of Europe, European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies*, Strasbourg, 6 March 1998, http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N3/Recommendation_3_en.asp#TopOfPage.

⁶⁰ Council of Europe, Committee of Ministers, Recommendation No R (2000) 4 to member states on the education of Roma/Gypsy children in Europe, Strasbourg 3 February 2000, <https://wcd.coe.int/ViewDoc.jsp?id=336669&Site=CM>

⁶¹ UN, Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation XXVII on discrimination against Roma*, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b).

⁶² UN CERD, *General Recommendation XXVII*, Measures in the field of education, point 17-26.

Further international recommendations issued by international entities, which promote the right to equal and qualitative education for Roma children and non-discrimination:

- In December 2003, the Ministerial Council of the Organisation for Security and Cooperation in Europe (OSCE) endorsed the Action Plan on Improving the Situation of Roma and Sinti⁶³ within the OSCE area.
- In December 2006 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted its General Policy Recommendation no. 10 on combating racism and racial discrimination in and through school education.⁶⁴ In 2008 and 2009 the Ministerial Council urged the participating states to enhance their efforts in achieving the Recommendation no.10 objectives.
- In June 2011 ECRI adopted General Policy Recommendation no.13.⁶⁵ ECRI defines anti-Gypsyism as a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among other things, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.⁶⁶
- In 2013 OSCE adopted the Ministerial Council decision on enhancing efforts to implement the Action Plan with a particular focus on Roma and Sinti women, youth and children as a cause of the arising violence upon the Roma.
- In 2013 The European Commission developed a proposal for a Council Recommendation, which was adopted by the Council of the EU on 9 December 2013.⁶⁷ The Council called on EU member states, among other, to: implement measures to combat discrimination and prejudice against Roma, referred to as anti-Gypsyism, including in the area of education.⁶⁸

To conclude, despite the extensive comprehensive international framework on the equal access to education of Roma and anti-discrimination, the segregation phenomena is still present in the European countries. As shown above, the recommendations of various international institutions urge the participating states to diminish segregation and the dropout rates since 1989 until the present, offering input on the mentioned issues. As problematic as it

⁶³ OSCE, *Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, Permanent Council Decision No. 566 on 27 November 2003, <http://www.osce.org/odihr/17554>.

⁶⁴ Council of Europe, European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation no. 10 on combating racism and racial discrimination in and through school education*, adopted December 2006, Strasbourg, 21 March 2007, http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n10/eng-recommendation%20nr%2010.pdf

⁶⁵ Council of Europe, ECRI *General Policy Recommendation no.13 on combating anti-Gypsyism and discrimination against Roma*, Strasbourg, September 2011, http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n13/e-RPG%2013%20-%20A4.pdf

⁶⁶ Ibid.

⁶⁷ Council of the European Union, *Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States*, published in the OJEU C 378/01 from 24.12.2013, <[http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224(01))>.

⁶⁸ Ibid, 1. Substantive policy issues, Effective policy measures, Access to education, para. 1.3.

seems, the main stake-holders at the national and regional level fail to develop and implement adequate strategies and tools for assuring the equal access of Roma to education. The national and regional stakeholders are not able to adapt the tools to the specific regional context of desegregation. In the past, educational policies for Roma were created and implemented due to the international pressure on the states, especially during the years of EU integration waves of various countries. The communication mechanisms between the international and national realms is ineffective, even if the recommendations at the international level demand their improvement. The character of the “recommendation” is that it can be accepted by the state or not. It is not a directive, which decreases the amount of opposition of the state. Who is to be hold accountable for the inefficient policies? During the past 15 years, the recommendations from international entities fail to be fully respected by the participating countries. Is it a matter of state efficiency or the segregation problem is more related to the local and regional stake-holders? Various variables are to be accounted to address the issues of segregation of Roma in education. The lack of resources (educational staff, poorly trained teacher, tools and mechanisms), the low interest of solving the segregation issue, the political context and the national and international level and the discrimination at the regional and local contexts are to be accounted in order to reveal possible effective strategies.

2.2. Analysis on the domestic framework on education and antidiscrimination of Roma

Legislative Framework

The Romanian Ministry of Education acknowledged the segregation phenomenon of Roma in Romanian education and adopted measures against it. During 2003-2004 Roma NGOs from Romania, continuously put pressure on the Romanian Government regarding the

acknowledgement of the Roma children segregation in education. In May 2004, the Ministry of Education acknowledged the existence of segregation of Roma pupils, but the legislative measure was issued only 3 years later. In 2007, the Ministry of Education issued Ministerial Order no. 1540, regarding the prohibition of the school segregation. The legislative initiative was adopted due to pressure of the non-governmental organizations. Romani CRISS initiated a coalition, an informal group of NGOs, which worked together with the Ministry of Education to draft the Order. The coalition was joined by international organizations (OSCE-ODIHR Contact Point for Roma and Sinti Issues)⁶⁹.

One of the major forces which influenced the adoption of the Ministerial Order no.1540 regarding the prohibition of segregation was represented by the ongoing negotiations for Romania's accession to the European Union. In 2004 the European Commission signaled through a Communication to the Council and the European Parliament⁷⁰ that even if the Roma integration strategies are implemented, the de facto discrimination in Romania remains. The year 2007 represents the accession year of Romania to EU. Thus, being pressured both internally by the NGOs coalition and externally by the European Commission the legislative measure against segregation was adopted.

As already noted, the legislative framework regarding the equal access to education of Roma is composed of both domestic and international regulations. The domestic framework that enables the desegregation of the education system is specified by the Romanian Constitution (2003) and the National Education Law (no. 1/2011 updated in 2014).

⁶⁹ FXB Center for Health and Human Rights at Harvard University, *Strategies and Tactics to Combat Segregation of Roma Children in Schools Case studies from Romania, Croatia, Hungary, Czech Republic, Bulgaria, and Greece*, page 123.

⁷⁰ Communication from the Commission to the Council and to the European Parliament, Strategy Paper of the European Commission on progress in the enlargement process, 2004, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0657&from=EN>.

(1) The State recognizes and guarantees the right of national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity.

(2) The protection measures taken by the State for the preservation, development and expression of national minorities must comply with the principles of equality and non-discrimination in relation to other Romanian citizens. (Article 6, Romanian Constitution, 2003)⁷¹

(3) The right of persons belonging to national minorities to learn their mother tongue and the right to be educated in this language are guaranteed; ways to exercise these rights are established by law. (Article 32, Paragraph 3, Romanian Constitution, 2003)⁷²

Article 32 of the Romanian Constitution acknowledges a general right to all forms of education for all citizens regardless of their ethnic origin, while Article 6 of this fundamental law makes explicit prohibition of discrimination. The institution responsible for enforcement of the law regarding the prevention and sanctioning of all forms of discrimination (Government Ordinance no 137/2000) is the National Council for Combating Discrimination (NCCD), a body established by Ordinance 137/2000. NCCD is subordinated to the Romanian Parliament and it performs its duties in the following areas:

- Prevents discrimination acts through human rights campaigns, anti-discrimination classes with authorities at local and national level.
- Mediates discrimination acts, acting as a communication and negotiation mechanism between the parts involved in a discrimination act.
- Investigates, establishes and sanctions discrimination acts
- Monitors discrimination acts
- Provides legal assistance for discrimination victims

The National Council for Combating Discrimination can warn or fine those who commit discriminatory acts from 300 up to 6.500 Euros when the discrimination is directed to a person and 600 up to 22.000 Euros when the discrimination is directed to a group or a community.

⁷¹ Romanian Constitution, Title I, Article 6, Paragraph 1 and 2, available at: <http://www.cdep.ro/pls/dic/site.page?id=339&idl=1&par1=1>.

⁷² Romanian Constitution, Title II, Article 32, Paragraph 3, available at: <http://www.cdep.ro/pls/dic/site.page?id=339&idl=1&par1=2>.

Further antidiscrimination regulations are grounded by the Resolution no. 1194/2001 on the organization and functioning of the National Council for Combating Discrimination; NCCD Instruction no. 1/2003; Decision no. 1258/2004 for approving the National Action Plan for Combating Discrimination; Law no. 324/2006 for amending and supplementing Government Ordinance no. 137/2000 on preventing and sanctioning of all forms of discrimination. The antidiscrimination regulations mentioned above enforce the Ministerial Order 1540/2007 regarding the prohibition of the school segregation of the Roma children and the “Methodology for the prevention and elimination of the school segregation of Roma children”.

The National Education Law, updated in 2014, recognizes the right to equal access to all forms of education (Article 2.4. and Article 3.1.) regarding the principles which govern the superior education system of the same law which promotes education without discrimination⁷³. According to the Education Law corroborated with Article 32 and Article 6 of the Romanian Constitution, equal access to education is granted to all Romanian citizens irrespective of their ethnic origin, religion, sexual orientation or political beliefs and discrimination is specifically placed outside the law.

As presented above the Romanian legislation specifically addresses the equal access of Roma to a quality education and punishes discrimination via NCCD. There is also the possibility to bring a segregation case before the civil court and to ask for moral damages, if the case is brought by victims themselves (in this case, the parents of the segregated children). However, the strong rooted **legislation against discrimination and segregation does not provide efficient remedies.**

⁷³ See “National Education Act” No. 1/2011 updated 2014, Art. 118.1. and 202.2. Related to anti-discrimination in the superior education system (University).

To conclude, the legislation against discrimination and segregation is limited to small contravention sanctions (fines and warnings⁷⁴); therefore those who break the law are not constrained enough by sanctions, resulting in repeated violations and perpetuation of discrimination and segregation. Due to the lack of harsh penalties for discrimination acts and segregation in education, the Roma continue to be discriminated and treated as second class citizens.

The international framework that enables and promotes equal access to education of Roma in Romania is composed of a number of international treaties on human rights and minorities rights ratified and adopted by Romania. According to the Romanian Constitution (2003), international treaties once ratified become domestic legislation and they come first in case of inconsistency with national legislation.

Despite the legislative frameworks against segregation and discrimination in education, Romani CRISS and other NGOs have reported a variety of school segregation cases. The first documented school segregation case was “Cehei School”. The relevant body dealing with discrimination cases in Romania is National Council for Combating Discrimination (NCCD). NCCD decided that “the facts of the case constitute indirect discrimination - infringing Article 2 par.2 of the Government Ordinance 137/2000 regarding the prevention and elimination off all forms of discrimination. Cehei School was sanctioned with a warning”. The classification of this case as segregation in education makes it one of the most important cases of racial segregation. It identifies racial segregation in access to education in Romania and enforces the definition of indirect discrimination.

2.3. EU equality policy and its impact on education

⁷⁴ See NCCD power of sanction presented above.

The purpose of this section is to look at the role the European Union has in advancing equality and quality for Roma education at the national level. It firstly presents the most important European policy on the Roma issue, namely the Framework for National Roma Integration Strategies up to 2020. The section argues the Framework should not be the single tool used by the EU to improve the situation of the Roma. The Framework should be complementary to using the EU anti-discrimination and desegregation policies effectively. To this end, the section addresses EU equality policy and its impact on the Roma educational policies at the national level, due to the complementarity of the EU law and the national law.

This section addresses the National integration strategies for Roma, whether they complied with the EU Framework requirements, whether there was progress made so far in the area of education, and what prospects are there to actually have the Framework's objectives met by 2020.

In May 2012 the European Commission has issued its communication, "National Roma Integration Strategies: a first step in the implementation of the EU Framework, on the assessment of the national strategies adopted by the Member States. As a response to the fact that many of the Roma in EU Member States are confronting with discrimination and social exclusion, the European Commission calls for fair treatment of Roma and for respect of their fundamental rights, as established by the EU Charter of Fundamental Rights⁷⁵. It further calls for action to break the vicious cycle the Roma people are trapped in. As put by Goodwin and Buijs, the way the Framework is structured, "reflects the broader Union shift towards viewing economic growth and social progress as mutually sustaining".⁷⁶

⁷⁵ European Commission, COM(2011) 173 final, „*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An EU Framework for National Roma Integration Strategies up to 2020*”, (Brussels, 2011), 2

⁷⁶ Morag Goodwin & Roosmarijn Buijs, Making Good European Citizens of the Roma: A Closer Look at the EU Framework for National Roma Integration Strategies, 14 German Law Journal (2013), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1591>

The Commission puts an emphasis on the potential workforce that Roma represent and how investment in education is critical⁷⁷. Goodwin and Buijs thought about the implications of the Framework as *“positive integration spiral: Equal access to goods and services will lead to participation in education, which in turn will lead to participation in the labor market, which leads to economic benefits to everyone, both Roma and non-Roma, which in turn leads to social acceptance. Social acceptance, in turn, will lead to greater access to goods and services, and so on”*.⁷⁸

The EU Framework justifies the need for action to improve the Roma situation, in the area of education, by highlighting that the educational achievement of Roma is lower, as well as a lower number of Roma who complete primary education. The Commission further argues that Roma children are over represented in special education and that they are subject to school segregation. Early childhood education is problematic also, as the participation of Roma children is lower⁷⁹.

In this context, these are the educational targets the European Commission has included in the EU Framework⁸⁰:

- Ensuring access to quality education for all Roma children
- Ensuring they are not subject to discrimination
- Ensuring they are not subject to segregation
- Ensuring primary completion
- Ensuring access to early childhood education
- Reducing the school drop out of Roma at secondary level (connected to Europe 2020 targets)
- Encouraging Roma to participate in secondary and tertiary education (connected to Europe 2020 targets).

⁷⁷ Ibid 39

⁷⁸ Morag Goodwin & Roosmarijn Buijs, Making Good European Citizens of the Roma: A Closer Look at the EU Framework for National Roma Integration Strategies, 14 German Law Journal (2013), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1591>

⁷⁹ Ibid

⁸⁰ Ibid

The assessment conducted by the European Commission in 2012 concluded that prohibition of discrimination, including in the area of education, by legislation was not enough and that Members States should “combine efforts” in order to combat discrimination⁸¹. However, Romania is one of the countries in which the problems of discrimination and segregation are

With regard to the completion of primary school target, the European Commission noted all national strategies have set goals higher than the minimum standard established by the Framework, by including secondary and even tertiary education under this target⁸². Although eager to set high standards within the designed public policies, when it comes to Roma the substantial changes, improvements and results are weak. According to the survey conducted recently by the EU Fundamental Rights Agency, “at least 10 % of Roma children aged 7 to 15 in Greece, Romania, Bulgaria, France and Italy are identified [...] as not attending school”⁸³.

Measures against school segregation were included in few of the national strategies, namely of the Czech Republic, Greece, Spain, Hungary, Poland, Romania and Slovakia⁸⁴. Notably, no provisions regarding school segregation were included in countries such as Bulgaria, where segregation of Roma students was repeatedly reported. However, Romania is one of the countries in which the problems of discrimination and segregation are addressed by the State. Even if the progress is very low and there are much to be improved, unlike Bulgaria or Czech Republic where the segregation in education is extremely high.

Adding to the targets established by the Framework, the assessment included several points to be addressed by Members States, “as part of an integrated approach”, such as: elimination of

⁸¹ European Commission, COM(2012) 226 final, “*National Roma Integration Strategies: a first step in the implementation of the EU Framework*”, (Brussels, 2012), 3

⁸² Ibid, 4-5

⁸³ Fundamental Rights Agency, World Bank, United Nations Development Programme, “*The situation of Roma in 11 EU Member States; Survey results at a glance*” (Luxembourg, 2012), 13

⁸⁴ European Commission, COM(2011) 173 final, 5

the misuse of special needs education, teacher training and school mediation improvement, and raising the awareness of parents of the importance of education⁸⁵.

Moving from the assessment of the substantive requirements of the Frameworks, towards assessing the structural requirements, several findings of the European Commission are relevant for the area of education of Roma as well. Firstly, it is observed in the assessment that most of the Members States did not envisage a concrete plan of cooperation with civil society and Roma communities, in the implementation and monitoring processes.⁸⁶ This is crucial for the area of education, as the cooperation with parents, who are members of the community, is a determinant factor in improving the access to education of Roma. Further, the non-governmental organizations are those which developed, for several years, initiatives which were successful for advancing education for Roma, either at local, regional or national level. Unfortunately, although necessary, the cooperation with the NGO sector has been neglected by governments.

Perhaps one of the most problematic structural requirements of the Framework, since it was poorly reflected in the national strategies, is the monitoring process. Again, this is particularly significant for the area of education. In order to assess progress for targets such as school participation, for example, clear baseline indicators are necessary.

Another weak point in the national strategies was the allocation of funding. It is impossible to make progress in the area of education without concrete funds allocated. The assessment of the European Commission concludes that budgetary commitments of the Members States are necessary, which would also reflect the political will⁸⁷.

⁸⁵ Ibid, 6

⁸⁶ European Commission, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and Committee of the Regions, National Roma Integration Strategies: a first step in the implementation of the EU, 2012,

⁸⁷ Ibid, 15

The assessment indicates that annual review of the implementation of the national strategies will be conducted by the European Commission⁸⁸. Therefore, the following assessment conducted by the European Commission was the 2013 one. The 2013 assessment focuses exclusively on how the member states have met the structural requirements, with not so much input on the four priority areas (education, health, employment and housing). Unfortunately, the progress, compared to the 2012 situation, is insignificant. Most of the observations made in the 2013 assessment are the same as the previous ones: weak cooperation with regional and local authorities; weak cooperation with and support for the civil society; no budgetary commitments, which caused delays in the implementation of the strategies in several Member States; lack of indicators, in order to adequately monitor the progress⁸⁹. All these, as already observed, determine slow progress, and low outcomes in the area of education for Roma.

The 2014 assessment⁹⁰ goes beyond observations on the structural requirements of the Framework and points out to the progress made by each member state in all four priority areas. The European Commission reports progress in the area of early childhood education, particularly in countries such as Finland and Hungary⁹¹. Positive initiatives are highlighted in the report, such as training Roma language teachers in Romania, providing after-school programs in Hungary, day schooling in Bulgaria and Slovakia. Importantly, the European Commission highlights that these positive examples have a limited scope, and that the challenge remains the scaling-up.

⁸⁸ European Commission, {SWD(2014) 121 final} , “*Report on the Implementation of the EU Framework for National Roma Integration Strategies*”, (Brussels, 2014)

⁸⁹ European Commission, COM(2013) 454 final, “*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Steps Forward in Implementing National Roma Integration Strategies*”, (Brussels, 2013), 11-15

⁹⁰ European Commission, {SWD(2014) 121 final} , “*Report on the Implementation of the EU Framework for National Roma Integration Strategies*”, (Brussels, 2014)

⁹¹ Ibid, 3

After the period 2011-2014, several points can be observed. The first step after adopting the Framework was to ensure that member states comply with the structural requirements. The 2013 assessment conducted by the European Commission identified same critical issues, such as lack of consultation with the civil society, lack of indicators and lack of allocated budget. First of all, not engaging with the civil society has serious effects, as it prevents the possibility of scaling-up positive initiatives, which are usually promoted by NGOs. Further, in the area of education it is crucial to involve the Roma parents and the community in common efforts. Secondly, the lack of indicators in the area of education prevents clear measurement of progress. Thirdly, although there are several positive initiatives for Roma education, they are mostly coordinated by NGOs, and lack sustainability without engagement, including budgetary, from the governments.

So far, the European Commission has monitored the existent situation, observed repeatedly gaps and lack of progress, and recommended further efforts to be made by member states. It is undesirable to have the same status quo at the end of 2020. The question is, consequently, what the European Union can do to ensure the National Strategies are taken seriously by the member states and that there is true political commitment to achieve the established objectives. The possible answer is that the Framework should not be the sole mechanism inside the European Union used to approach the Roma issue. Taking into account that the Framework is designed for “national” strategies, it is mostly up to the will of the states what to actually put into practice. The European Union should make use of all its powers to ensure the situation of the Roma in Europe is improved.

The EU has shown on several occasions, willingness to expand its focus over the area of fundamental rights and non-discrimination through legal tools, as well. The clearest proof was given in 2000, when two important Directives were adopted, namely the Racial Equality Directive and the Employment Equality Directive. How genuine was the EU interest in

protecting fundamental rights is controversial. Rights protection became a necessity in the European Union, as a result of the spill-over effect. It is highlighted in literature the context of recognition of fundamental rights by the EU Court of Justice, only when the EU law supremacy was threatened by national constitutional courts⁹². It is further argued that the EU has not engaged in developing a substantive sense of human rights⁹³, and gave a clear sign when deciding not to give constitutional status to the EU Charter of Fundamental Rights⁹⁴.

The discrimination of Roma in all areas of public life, including in education has been acknowledged persistently and increasingly over the years, both by non-governmental actors as well as by European institutions themselves⁹⁵. Yet, the lack of an effective mechanism which would address discrimination both at its roots and its complex effects, has led to the perpetuation of an almost “status quo”. There are no legal mechanisms or concrete policy measures at member state level which would link repeated recommendations to address discrimination in the area of education and school segregation of various stakeholders, including European institutions such as the European Commission or the Fundamental Rights Agency. There is a vicious dead end translating obvious issues and useful recommendations for policy and legal measures into empty wording.

While acknowledging the limited powers of the European Union to legislate or implement policies in the area of education, as the main powers in this field rests with member states, the EU fails to undertake specific legislative and institutional measures which would have a

⁹²Douglas-Scott, Sionaidh „*The European Union and Human Rights after the Treaty of Lisbon*”, Human Rights Law Review 11:4 (2011), 678-679

⁹³ Ibid, 678

⁹⁴ Ibid, 680

⁹⁵ For information and reports on discrimination of Roma in the area of education provided by non-governmental sources, please see www.errc.org, <http://www.amnesty.org/en/roma>. For information and reports on the situation of Roma, including on discrimination and segregation in the area of education, please see <http://fra.europa.eu/en/theme/roma>. A comprehensive list of reports and other documentation of the European Parliament on the issue of Roma education, please see Livia Jaroka, *Roma Education on the Agenda of the European Union*, European Education Journal, vol. 39, no. 1, Spring 2007, pp. 81–87.

decisive impact on addressing *inter alia*, issues such as the segregation of Roma in education, the access of Roma to quality education, the disproportionate rates of access to various levels of education for Roma, or the broad and complex effects of discrimination affecting Roma within educational systems.

To conclude, the existing EU framework on anti-discrimination has a general positive outcome on national legislative frameworks. Further steps need to be taken so that positive changes can be generated, such as modifying the competence of the national equality bodies, and starting infringement procedures against Member States for non-compliance with the Racial Equality Directive.

CHAPTER 3: EMPIRICAL INTERESTS OF STAKEHOLDERS INVOLVED IN THE DESEGREGATION POLICIES

The third chapter of this thesis addresses the empirical interests of the stakeholders involved in the desegregation in education policies in Romania. So far, this thesis addressed the social and legal implications of the desegregation process and analyzed their efficiency as well as segregation definitions and its effects based on content analysis of third party documents and researches. This chapter's aim is to bring an original perspective over the desegregation process in Romania, analyzing the empirical interests of the most important institutions involved in the desegregation process. The data used in this chapter was collected through qualitative interviews with representatives from the Romanian Ministry of Education, the National Council for Combating Discrimination and several NGOs, which work with on the topic of school desegregation. The interviews structure focused on two main questions, regarding the implementation efficiency of desegregation policies and the monitoring process of the desegregated schools. Each of the interviewed stakeholders received different questions based on their area of expertise, but all of the answers were aimed at the two problematic aspects mentioned above, namely implementation and monitoring. The choice of interviewed institutions is to challenge the existing data published regarding desegregation and to bring a new approach on desegregation starting from the input of the main stakeholders which provide legislative and executive remedies. The Ministry of Education is in charge of the legislation regarding desegregation implementation, while the NCCD decides on the cases brought to its attention by various petitioners, and the NGOs provide implementation and monitoring at the grassroots level working directly with the segregated schools and segregated Roma children. Through this analysis the whole process of desegregation shall be analyzed and the main actors involved shall provide their own perspective on the efficiency of implementation and monitoring.

3.1. The Romanian Ministry of Education's role on the efficiency of the desegregation policies

The Ministry of Education represents the institution that has the legislative power to address segregation of Roma children in education and to provide substantial improvements regarding desegregation policies. However, as shown in the previous chapters of this thesis, the Ministry of Education's activity is assessed as insufficient and inefficient by various national and international bodies dealing with desegregation in education of Roma children. In order to answer some of the questions arisen from the previous analysis of the Ministry's activity on desegregation we shall proceed to list some of its functions and results in order to assess its efficiency. What are the most important prerogatives of the Ministry of Education regarding desegregation of Roma children in education? What is the empirical implication of the Ministry in desegregation activities? Theoretically, as a governmental institution, the Ministry of Education has the power to produce the most substantive changes regarding desegregation and has the means to do so. There are of course several reasons that can be listed for which the Ministry does not have the power to produce substantial changes. One of the most important reasons for which the Ministry cannot produce substantial improvements is the lack of both financial and human resources. The lack of financial resources does not allow a proper implementation of the desegregation policies, even if the legal provisions allow it. However, the lack of financial resources is strongly related to the lack of human resources. Due to the lack of funds, the Ministry of Education cannot hire experts on desegregation which can use their knowledge to efficiently implement the legal provisions.

Given that the Ministry of Education has three people who do this (experts on desegregation), and they do not work solely on desegregation, does not allow for an efficient implementation and monitoring process. This fact does not allow for a coherent implementation. (Interview with a Ministry of Education employee)

This problem was signaled by an interviewee working for the Ministry of Education, who argued that due to the lack of funds, experts cannot be hired and public servants are given tasks for desegregation even if they do not possess expert knowledge. Due the lack of expert knowledge the Ministry's employees do a superficial work. Empirics show that the Ministry's employees responsible to monitor and implement the desegregation policies are specialist in other fields and they do not possess expert knowledge on desegregation, which has a great impact on implementation and monitoring of the M.O. 1540/2007.

Those who are supposed to monitor and implement the desegregation policies are the county school inspectors. They have a certain ascribed number of schools to be responsible of...but the problem is the school inspector who specialized in Mathematics has to measure the degree to which the M.O 1540/2007 is applied. This does not allow for efficiency, given that the one responsible does not have expert knowledge on desegregation. (Interview with a Ministry of Education employee)

The lack of financial and human resources has great negative consequences on the process of implementation and monitoring as well as the lack of Ministry's employees properly trained to work on the segregation policies. The Romanian education system by default has efficiency issues which are further translated into deficiencies of the desegregation policies. Furthermore, the interviewee notes that if the Ministry was ever willing to closely monitor and the implementation of the M.O. 1540/2007, it would collapse due to the lack of personnel and funds.

Another reason for which the Ministry of Education is not able to efficiently implement the desegregation policies is the lack of interest to engage in a close policymaking regarding the segregation of Roma children. In the previous sections of this thesis it was hypothesized that there is a lack of interest from the Ministry of Education to address segregation efficiently.

All of the reports on desegregation are reports from institutions which are closely monitored by the civil society, or the Commission, and they have to

'look good'. In reality, is that segregation was perceived as an obligation and all of the schools and the school inspectorates are obliged to create plans to address desegregation. (Interview with a Ministry of Education employee)

The Ministry of Education is regarding the segregation phenomenon of Roma children as an obligation imposed by the European Union and other international bodies. Due to the fact that Romania as a state is obliged by external institutions to create legislation which grants the access to education of Roma, and this has not appeared internally as a need of Roma as Romanian citizens, the issue of segregation is superficially approached and results in an inefficient implementation strategies. One of the most substantial desegregation policies was adopted by the Government in 2007 (M.O. 1540/2007), when Romania was preparing for the EU accession. Paradoxically, Romania was already obliged by other treaties and international agreements to provide equal access to education before 2007, but results regarding this matter appeared only when the Government needed to complete the EU accession requirements.

The efficiency of the desegregation process is greatly affected by the unclear focus of the Ministry of Education which is not approaching both prevention and remedy strategies in order to combat the segregation in education. None of the Ministry's tools of desegregation make a clear cut distinction between the prevention and remedy components of desegregation. Both of these processes are vital to be addressed in order to efficiently combat the segregation phenomenon. The Ministry is focusing only on prevention of segregation, but does not have any substantive activities meant to remedy the cases of desegregation, which allows perpetuation of the phenomenon. On the same note, an interviewee working for the Ministry of Education argues that the Ministry does not have a monitoring policy, but rather a prevention policy.

The monitoring process of the segregation policies (of the Ministry of Education), except rare monitoring visits and announced visits, cannot be done. These visits cannot be (often) done because the Ministry's lack of personnel. (Interview with a Ministry of Education employee)

Due to the lack of monitoring coming from the Ministry of Education, the NGOs become responsible to monitor the segregation cases. However, this non-formal arrangement could be improved if the Ministry and the NGO sector would develop a communication platform in order to coordinate their efforts in combating segregation in education. Steps towards creating a communication platform have been made in the past, but the “mixed working groups” were not permanent. An interviewee working for the Ministry of Education notes that a formal collaboration between the Ministry and the NGO sector could drastically improve the implementation and monitoring of the Ministerial Order 1540/2007 regarding the prohibition of school segregation of Roma pupils. The vast majority of the interviewees assessed the M.O. 1540/2007 being a good policy from the legal and structural point of view.

To conclude, the analysis of the Ministry of Education role in on desegregation policies efficiency shows that structurally, the M.O. 1540/2007 comprehensively addresses the segregation in education phenomenon, but the enforcement of the Order is insufficient. Moreover, the Ministry uses an incomplete approach of the desegregation phenomenon, focusing only on prevention and superficially addressing the remedy and monitoring aspects.

3.2. The National Council for Combating Discrimination (NCCD) role on the efficiency of desegregation policies

The National Council for Combating Discrimination represents the institution that has the power to decide on the segregation cases, which are brought to its attention. Together with the Ministry of Education and the NGOs involved in school desegregation of Roma pupils, NCCD is responsible for implementation of the Ministerial Order 1540/2007, regarding the prohibition of school segregation of Roma children in education. Cases of school segregation are reported to NCCD mostly by NGOs, but on several occasions the NCCD has reacted to

segregation cases out of its own motion. NCCD is responsible to investigate and to decide on cases and as a remedy can fine the school which committed the act of segregation in education. The process starts by informing the petitioner that the case has been received and further NCCD employees' proceed to investigation. Following the investigation process, NCCD's council members proceed to voting and deciding if the case represents segregation in education. However, according to the Ministerial Order 1540/2007, even if a case is decided on as segregation in education, the institution cannot oblige the defendant, in this case the school, to remedy the situation by desegregating the class. The NCCD can only give recommendations, with regard to the desegregation process, and the parties involved can bring the case for deciding to a superior court. A certain legislative deficiency arises from this issue. Given that the only institution which can decide on a segregation case cannot enforce its decisions over the segregated schools, represents an issue which affects the implementation of the desegregation legislation. However, from the legal perspective it is possible to bring the segregation case in front of a superior court which can entail more efficient punishments, but the procedure of bringing the case first to NCCD's attention is a customary practice, because the equality body is the institution with the highest expertise in the area of non-discrimination. Even if the case is brought directly before the civil court, the usually the expertise of the NCCD will be used by the judge, as members of the NCCD would be called to express their expert opinion on the case. Bringing segregation in education case before a superior court entails litigation costs (hiring lawyers), that most of the Roma parents cannot afford. Furthermore, the process of litigation can be long and tedious and the timeframes in which the case can be decided on can range from 1 to 5 or more years. This has a great impact on the NCCD efficiency when dealing with segregation cases and allows the process of desegregation to be prolonged and impoverishing. However, Istvan Haller, a member of Steering Committee of NCCD, argues that the administrative punishment (fines)

has a positive effect on the process of desegregation. Usually, the victims of segregation do not bring their cases after NCCD's decision to other courts for deciding on.

A fine of an approximate amount of several thousands of RON is difficult to be paid by a teacher who earns several hundreds of RON per month. The efficiency of the NCCD fine would be increased if the victims would also request moral damages through courts. The only case I know of in which the parents of a Roma student brought their case to a superior court asking for moral damages received 10.000 Euros as remedy. (Istvan Haller, Member of NCCD's council of directors)

Istvan Haller also notes that the legislation on desegregation is not efficient due to the lack of monitoring process, not because of its provisions. The lack of monitoring process allows for segregation to be perpetuated. Furthermore, Haller argues that even if the legislation on discrimination is flexible (Government Ordinance no. 137/2000), it needs clear provisions for forbidding segregation. The lack of clear legislation leads to issues of enforcement, which further results in the perpetuation of segregation and causes an inefficient implementation of the desegregation policies. Furthermore, when asked about the efficiency of the desegregation legislation, Haller argued that from a legal point of view the legislation is structurally sound, but the enforcement of the order is lacking.

The problem is not the Order (M.O. 1540/2007) itself, but the indifference of the schools and school inspectorates towards it. The Order was given only for showing a positive image, not for implementation. I found that nobody is monitoring if the Order is properly implemented or not. (Istvan Haller, Member of NCCD's council of directors)

In order to triangulate the information received from the interviewees, Romani CRISS was enquired about how it evaluates the NCCD's activity regarding the segregation in education cases. Romani CRISS argued that there are both negative and positive aspects related to NCCD's activity. NCCD was among the first Romanian institutions which substantially contributed to the official recognition of school segregation of Roma children and provided support in developing the legislation to prohibit this phenomenon.

The NCCD was the one that decided on the first case of school segregation in Romania (Cehei), giving rise to public debate and finally putting school segregation on the public agenda. This eventually led to having the Ministry of Education acknowledge the existence of the phenomenon and issuing the Order in 2007. The NCCD included, among the contraventional sanctioning (warning/fine) recommendations to initiate desegregation plans. (Romani CRISS)

Among the negative aspect of NCCD's aspects, Romani CRISS notes that in several cases NCCD reaction to investigate and decide on segregation cases was delayed several years after the cases were brought to its attention, allowing Roma children to continue to learn in segregated environments, which had a great impact on their education. This situation has aggravating effects on the enforcement of NCCD decisions due to the specificities of the Romanian legal system, which has a statute of limitation term for administrative sanctions, such as fines. In case the statute of limitation operates, there is no sanction that can be applied against the segregated schools.

The NCCD decided on several cases a few years after we lodged the complaint. This is extremely problematic, as children continue to learn in a segregated environment, while proceedings are pending before NCCD and then, probably, before courts. Further, the NCCD went in the field to investigate a segregation case a few years after we lodged the complaint and made the decision based on the findings resulting from the investigation carried out at that later point, when the facts had already changed, compared to the situation we had complaint about. Deciding on cases so late, prevents the NCCD from imposing fines, which can be done only 6 months after the facts occurred. (Romani CRISS)

To conclude, the role of NCCD on the desegregation policies is restricted to investigate and decide on the segregation cases brought to its attention. However, the process of litigation can be long and complicated and most of the victims of segregation do not have the necessary resources to ask for a higher remedy from a superior court. What is more concerning regarding the NCCD activity is that this institution does not have an efficient enforcement mechanism to oblige defendants to pay the fines to the recommendation character of its

decisions. Furthermore, the efficiency of the NCCD activity is affected by the lack legal power to enforce its decisions.

3.3. The NGOs role on the efficiency of desegregation policies

NGOs represent the bodies that are morally responsible for implementation and monitoring at the grassroots level of the desegregation policies. Throughout previous sections of this chapter the efficiency of implementation and monitoring of the desegregation policies has been discussed, and most of the positive aspects regarding these processes have been attributed to NGOs. However, the issue of segregation in education still exists in Romania and the tools used for combating segregation are inefficient. To this end, Romani CRISS, one of the most active NGOs in Romania in researching segregation cases and bringing cases before NCCD has been interviewed in order to assess the efficiency of the desegregation process.

Romani CRISS, together with other NGOs from Romania was one of the promoters of the desegregation legislation (M.O. 1540/2007). Acknowledging the importance of the existing legislation on schools segregation in Romania, Romani CRISS argues that it lacks efficiency. Romani CRISS advocated for the insertion of the school segregation prohibition in mainstream documents/legislation as well. When the Education Law was about to be modified, Romani CRISS attended public consultations in the Romanian Parliament, submitted proposals and comments of the proposed law, including the prohibition of school segregation. The current law (Law no 1/2011) does not mention school segregation, but it does mention the misdiagnosis and abusive placement of children in special schools, which is the result of civil society efforts (including Romani CRISS): *“the abusive diagnose of children on backgrounds of race, nationality, ethnic, language, religion, marginalized group,*

or any other criteria and their placement into classrooms with special education needs will be sanctioned”⁹⁶. Furthermore, Romani CRISS argues that a piece of legislation is effective firstly, when it sanctions the prohibited behaviour, and secondly, when it prevents such behaviour from being repeated.

The Order has not succeeded to do none of the two (sanction and prevent). Breaching the provisions of the Order leads to disciplinary sanctions, according to the Law on the statute of teachers, or to „contraventional, civil or criminal sanctions, according to the law”. (Romani CRISS)

This means that in order to sanction a school unit/a school Inspectorate for school segregation, one cannot simply rely on the Order, but on the anti-discrimination law, civil law, etc. The Order in itself cannot lead to concrete sanctions. Further, the Order did not succeed to prevent school segregation, taking into account that 8 years after it was issued the school segregation of Roma children is still an active phenomenon.

Achieving this result, to have a piece of legislation, issued by the Ministry of Education, which explicitly prohibits school segregation of Roma, was a succes of the civil society, which was seriously involved in efforts for this purpose. Compared to other countries in Europe, where school segregation of Roma exists as well, but no legislation actually prohibits it (apart from the general prohibition of discrimination), it is most surely an achievement. That, unfortunately, does not make it efficient. (Romani CRISS)

When asked about the monitoring procedures of the Order 1540/2007 by the Ministry of Education, Romani CRISS argued that there is no continuous monitoring, it is done only occasionally. On the same note, during an interview with a Ministry of Education employee, it was argued that the monitoring process of the desegregation policies falls in NGOs tasks. However, even if the NGOs are interested in monitoring desegregation, the lack of resources and the area in which they are based becomes a problem. One of the most important issues is that the NGOs are locally or regionally based and they do not possess the necessary personnel to cover a wide area of activity. Unlike NGOs, the Ministry of Education has the power to

⁹⁶ Education Law (no. 1/2011), Available at: <http://lege5.ro/Gratuit/geztsobvgi/legea-educatiei-nationale-nr-1-2011>.

implement policies through their subordinated institutions at national, regional and local level. The interviewed employee of the Ministry argued that a possible solution for the lack of both human resources and financial resources could be overcome by a close working relationship of the Ministry and the NGO. According to the interviewee, the NGOs could provide the expert knowledge on desegregation, while the Ministry can provide the necessary influence to NGOs to produce efficient implementation and monitoring of the desegregation policies.

Romani CRISS' conducted three types of monitoring of school segregation. In 2007/2008, immediately after the Order was issued, it conducted a research to monitor how the measures against school segregation of Roma are being applied. The research included a sample of 134 schools in 9 counties in Romania. The methods used were direct observation, document analysis and enquiry based questionnaires. Romani CRISS noted that it intended to repeat the research, but it was impossible in the next years due to lack of funding. On several occasions, Romani CRISS sent letters to school units and school inspectorates, asking for information on the implementation of the Order. The number of schools/inspectorates which provided answers was always quite low and most of the answers received were incomplete. Since the beginning of 2000s Romani CRISS monitored, either directly or with the support their human rights local monitors' network, concrete cases of school segregation.

The method is that we go to schools where we have some preliminary information that there might be a segregationist practice. We interview the school director, professors, school mediator (if there is any). We try to find out how the children are being assigned to classes, to check whether the conditions are equal for everyone in the school, including by direct observation. We also interview parents who have children in that particular school. (Romani CRISS)

Romani CRISS reported that there is also a matter of legislative gap, particularly taking into account the „residential segregation”. The Order mentions that „in the exceptional situations when the School Inspectorates can argue with solid arguments that the desegregation of

residentially segregated schools is not possible starting with 2007-2008, the inspectorates will take measures to improve the quality of education in that school”⁹⁷. Then, the Order gives several examples of measures which „could be taken”. That means that a School Inspectorate could keep Roma children in residentially segregated environment if they show, for example, that they have a school mediator there. Of course, School Inspectorates could have invoked the impossibility of desegregation of residentially segregated schools only for 2007-2008, if the Order’s provision are textually interpreted.

8 years after the Order was issued this [Inspectorates reporting to the Ministry of Education on the issue of school segregation] should have become a routine already. However, it is a sporadic activity some Inspectorates do, from time to time, not even following the steps indicated in the Order. The Ministry of Education does not have, to date, a clear situation on school segregation, some sort of a map of segregated schools. This should be the first step, the basic step to start with, but this has not happened yet. (Romani CRISS)

To conclude on the topic of legislative gaps, the existent Order could be improved; prohibition of school segregation should be included in the Education Law. However, these gaps should not prevent authorities from properly engaging in **eradicating school segregation**. School segregation could be eradicated by making use of the current legislation and policies. Therefore, the main issue is the implementation of the current legislation and policies. There is no adequate monitoring mechanism, built at central level (Ministry of Education) that permanently follows on what happens in the field. The Order specifies that annual reports should be put together by Inspectorates, giving information on existent segregation and desegregation measures. However, despite all of the legislation prerogatives there is no proper enforcement of the Order.

⁹⁷ Ministerial Order 1540/2007 regarding the prohibition of the school segregation in the Romanian educational system, Ch. 4, Art. 8, Paragraph 2, Available at: <http://www.legex.ro/Ordin-1540-19.07.2007-82075.aspx>.

CONCLUSIONS

Roma represent one of the biggest national minorities of Romania and they are subjected to discrimination in accessing healthcare services, access to employment, housing and education. As have been shown throughout the paper Roma children experience problems in accessing equal education services. Even though Roma are granted equal access to education at all level thought national and international legislation and treaties, this paper showed that Roma are discriminated against and segregated learn in segregated schools. This paper showed that the Roma still remain one of the most discriminated categories of people in Europe, using secondary data from various sources. Several studies show that Roma have poor socio-economic conditions and a lower access to education.

Although Roma are formally granted equal rights through the Romanian and the EU legislation, empirically there are obstacles which do not allow them to access the basic public services. The varied sample of secondary data of this paper offers reliable data according to which Roma at the European level are discriminated against and treated as second class citizens.

The main goal of this paper was to determine the causes of the inefficient implementation of the educational policies for Roma. The research question was based on three hypotheses according to which the main causes of the inefficient implementation were discrimination, the lack of a clear structure of the educational policies and a lack of efficient monitoring and implementation mechanisms. The operationalization of the main research question and the hypotheses was made by analyzing secondary and primary data regarding the phenomenon of school segregation.

Throughout this thesis the unequal access to education of Roma was analyzed and structured in three chapters. The first chapter addressed theoretical considerations of the segregation in

education phenomenon and categorized types of segregation. As the first chapter showed, the segregation is very complex and difficult to address, due to complications that arise from its specific typologies. Causes of school segregation are as well diverse, ranging from sheer discrimination to misdiagnosis of Roma children. The first chapter also introduces the main stakeholder of the desegregation process, which were interviewed and thoroughly analyzed in the third chapter.

The second chapter of this thesis analyzed the national and international legislative framework on educational policies directed to Roma. The analysis of the second chapter shows that the national and international frameworks are functional and structurally viable. However, the legislation can benefit from a more clear formulation of its objectives and procedures in order to unburden the implementation and monitoring process of the policies. Despite the existing national and international framework on the equal access to education of Roma and anti-discrimination, the segregation phenomenon is still present in Romania as well as in the European countries. The existing EU framework on anti-discrimination has a general positive outcome on national legislative frameworks. Continuous improvement and actualization of the framework is needed so that positive changes can be generated, such as modifying the competence of the national equality bodies, and starting infringement procedures against Member States for non-compliance with the Racial Equality Directive.

The third chapter analyzed the empirical interest of the main stakeholders involved in the desegregation process. Firstly, the main stakeholders were analyzed through secondary data coming from reports and other official documents enquiring their activity. Secondly, the main stakeholders were analyzed through primary data collected by qualitative interviews. To this end, the Romanian Ministry of Education, the National Council for Combating Discrimination (NCCD) and the NGO sector, represented by Romani CRISS were analyzed. The mixed methodology applied to this paper was designed to acquire a comprehensive

analysis of the roles and priorities of the main stakeholders of the desegregation process, in order to assess the causes of the inefficient implementation of the educational policies for Roma. The results showed that the Ministry of Education is formally responsible for monitoring and implementing the desegregation legislation and adjacent procedures. However, the Ministry shows a lack of efficiency in implementing and monitoring of the M.O. 1540/2007. Furthermore, the Ministry uses an incomplete approach of the desegregation phenomenon, focusing only on prevention and superficially addressing the remedy and monitoring aspects.

The role of NCCD on the desegregation policies is restricted to investigate and decide on the segregation cases brought to its attention. As the analysis in showed in the second and third chapter of this thesis the process of litigation can be long and complicated and most of the victims of segregation do not have the necessary resources to ask for a higher remedy from a superior court. One of the most notable downfalls of the NCCD activity is that this institution does not have an efficient enforcement mechanism to oblige defendants to pay the fines due to the recommendation character of its decisions. Furthermore, the efficiency of the NCCD activity is affected by the lack legal power to enforce its decisions. The legislation against discrimination and segregation is limited to small civil sanctions (fines and warnings); therefore those who break the law are not constrained enough by the civil sanctions resulting in repeated violations and perpetuation of discrimination and segregation. Due to the lack of harsh penalties for discrimination acts and segregation in education, the Roma continue to be discrimination and treated as second class citizens. Finally, the legislative gaps of the Order could be improved and prohibition of school segregation should be included in the Education Law. However, these gaps should not prevent authorities from properly engaging in eradicating school segregation. School segregation could be eradicated by making use of the current legislation and policies. Therefore, the main issue is the implementation of the current

legislation and policies. There is no adequate monitoring mechanism, built at central level that permanently follows on what happens in the field. The Order specifies that annual reports should be put together by its subordinated institutions (Inspectorates), giving information on existent segregation and desegregation measures. However, despite all of the legislation prerogatives there is no proper enforcement of the Order. The third chapter of this paper shows that the monitoring component of the desegregation legislation is not fulfilled by the Ministry of Education, which is formally responsible, but it is redirected to the NGO sector.

Finally, the efficient implementation of the order could be achieved by a formal collaboration between all of the actors involved in the desegregation process, which could coordinate their efforts in order to improve the equal access to education of Roma children. The legislative framework, although functional still need fine-tuning and troubleshooting mechanisms in order to address all of the diverse characteristics of the school segregation phenomenon.

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