

## **The Newest Challenges of the Oldest Minority. On Roma Inclusion**

### **I. Introduction**

The integration of Roma minority, as one of the most numerous and poorest national minorities has been officially recognised as a Romanian responsibility and a European Union goal gradually and more visible since 2000.

Seeking to support and channel the European and national authorities' efforts, political scientists, sociologists and anthropologists pointed out the internal diversity of the Roma minority, its specific combination of ethnic and social features, the vicious circle of social exclusion Roma persons face, the current stage of creation of a national Roma identity and of a Roma elite as some of the particularities to be acknowledged when tackling the issue. Jurists have highlighted the multiple and intersectional discrimination<sup>1</sup> as a specific form of inequality Roma persons experience.

However, it is unclear how the Roma inclusion policy is correlated and integrated in the current and future evolution of the Romanian state and of the European Union (EU), how far and how deep Romania and respectively the UE are prepared to pursue the proclaimed goal, how the distribution of competences between EU and Members States (MS) on this matter is evolving.

The study aims to highlight the way Romania and EU are sharing responsibilities and powers on the Roma integration file, showing that, in spite of growing EU involvement, the domain is currently still reigned by the national authorities. But how long will Romania be

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<sup>1</sup> See *Karon Monaghan*, Multiple and intersectional discrimination in EU law, *European Anti-Discrimination Law Review* no. 13/December 2011, p. 2-19; *Alessandro Simoni*, Roma and Legal Culture: Root and Old and New Faces of a Complex Equality Issue, *European Anti-Discrimination Law Review* no. 13/2011, p. 11-19; *Kristin Henrard*, A patchwork of 'successful' and 'missed' synergies in the jurisprudence of the ECHR, in *Sinergies in Minority Protection, European and International perspective*, edited by *Kristin Henrard and Robert Dunbar*, Cambridge University Press, Cambridge, 2008, p. 314-364; *Bruno de Witte and Eniko Horvath*, The many faces of minority policy in the European Union, in *Sinergies in Minority Protection, European and International perspective*, edited by *Kristin Henrard and Robert Dunbar*, op. cit., p. 365-384; *Gabriel Andreescu*, Națiuni și minorități, Ed. Polirom, Iași, 2004; *Dezideriu Gergely*, Interpretarea pe cale jurisprudențială a standardelor ce derivă din Directiva rasială, in *Noua Revistă de Drepturile Omului* nr. 2/2011, vol. 7, p. 27-48; *Kiss Denes*, Sistemul instituțional al minorităților etnice din România, în *Studii de atelier. Cercetarea Minorităților naționale din România* nr. 34, Institutul pentru studierea problemelor minorităților naționale, Cluj-Napoca, 2010. See also *Levente Salat, Monica Călușer, Florin Moisă, Istvan Horvath, Maria Kovacs*'s studies in *Politici de integrare a minorităților naționale din România. Aspecte legale și instituționale într-o perspectivă comparată*, Editor *Levente Salat*, Ed. Fundației Centrul de Resurse pentru Diversitate Etnoculturală, Cluj-Napoca, 2008; *Horvath, Iasvan*, Minorities, Minority Protection in Romania, in *Minority Politics within the Europe of Regions*, Scientia Publishing House, Cluj-Napoca, 2011, p. 475-501; *Szekely Isvan Gergo*, *Democrație consociationistă sau împărțirea puterii în societăți multietnice*, Editura ISPMN, Cluj-Napoca, 2011.

able to preserve this power and how can this process be tackled at national level in order to achieve effective results? We think that the effectiveness of this policy depends, among other, on the determination to consolidate the Romanian civic nation – an inclusive nation which supports the right to distinctiveness of the national minorities' members.

## 1. Methodology

To understand the role of Roma inclusion domain in the dynamic distribution of competences between EU and the MS, a significant number of European and national legal documents, mostly soft law, reports and studies have been analysed.

To identify the particularities of the Roma inclusion policy and its challenges, we had to frequently overpass the border of the juridical studies and adventure in the fields of political studies, sociology, anthropology.

## 2. General explanations

As experience is being accumulated on this still new field, its language is becoming more standardized. Nevertheless, there remains some difference of opinion on whether the specific policy should aim *integration* or (social) *inclusion* of Roma. For example, one of the newest EU documents talks about *integration*,<sup>2</sup> while the Romanian juridical instrument mentions *inclusion* in its name.<sup>3</sup>

**Social inclusion** is the process aiming to ensure for persons at risk of poverty and exclusion the opportunities and the resources to fully participate to the economic, social and cultural life and to enjoy a standard of living and wealth normal for the society they live in. Social inclusion ensures also participation in decision-making process for the issues affecting their life<sup>4</sup> and access to fundamental rights. Even if the conceptual differences between inclusion and integration are not always clear, the process of *integration* is generally seen as a more comprehensive one, not limited to the social aspects, including also political participation, for example.

The growing public interest in the social inclusion of Roma persons is motivated, in the explanatory notes of different documents by (i) the greater number of persons of Roma ethnicity affected by poverty and social exclusion in comparison with persons of other ethnicity (as shown by statistics); (ii) the general commitment to ensure effective equality for all individuals, irrespective of ethnicity or other criteria; (iii) the (economic) loss for the society - understood as 1. spending for social purposes and 2. income unrealized because of the unemployment of a sufficient number of persons); (iv) the alleged different demographic growth of Roma population compared to similarly excluded majority communities;<sup>5</sup> (v) the necessity to consolidate the future of the European states as stable democracies regardless of

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<sup>2</sup> European Commission Communication no. 8727/06.04. 2011 and EU Council Conclusions from 19.05.2011 „An EU Framework for national Roma integration strategies up to 2020” ([www.eur-lex.europa.eu/LexUriServ](http://www.eur-lex.europa.eu/LexUriServ)).

<sup>3</sup> 2012-2020 Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority, published in Official Journal no. 6 bis/04.01.2012.

<sup>4</sup> This encompasses both specific and general matters.

<sup>5</sup> For a nuanced opinion see *Judit Durst*, *Cred că sunt țigani ... cu atâția copii...*, *Etnicitate și reproducere*, în *Ștefania Toma, László Fosztó* (ed.), *Spectrum. Cercetări sociale despre romi*, Ed. ISPMN, Cluj-Napoca, 2011, p. 91-126.

the dynamic of the ethnic composition of their populations; (vi) the migration of Roma from Eastern Europe to the Western European States.<sup>6</sup>

## II. Overview

A brief overview allows us to identify three main groups of people that claimed the same origin: the Caldarari/Coppersmiths, the Gitans and the Gypsies.<sup>7</sup> The first ones, coming from the Balkan Peninsula, are divided into five groups: the Lovari (in Hungary), the Boyhas (miners, gold washers) (in Transylvania), the Luri (Indian tribes), the Ciurari (sieve makers) and the Turkish-Americans (those who left from Turkey to the United States before returning to Europe). The Gitans in Spain, Portugal, North Africa and Southern France are different from the Caldarari/ Coppersmiths by physical appearance, customs and dialect.

The “Gypsies”(Tzigani) are the traditional Bohemians (whose name comes from Sanskrit, meaning “true men”). Due to their Indian origin they are called Sinti (after the name of the river Sind). Although pretty vague, some sources indicate the existence of French, German (or Alsatians), Italian (or Piedmont) Sinti.

The Gypsies in Romania, usually called Ursari (bear trainers), formed separate corporations: Blidari (tableware makers), Chivute (whitewashers), Ciubotari (shoemakers), Costorari (tanners), Lautari (musicians, fiddlers), Lingurari (wooden spoons makers), Lacatuși (locksmiths), Rudari (makers of wooden instruments), Salahori (builders), Zlatari (gold washers).<sup>8</sup>

Over time, researchers have tried to discover the mysteries of the fatality which marked the destiny of these nomadic groups. Their beginnings were sought in the Bible (the name Cain refers in the Semitic language to one of the nomads’ occupations, that of blacksmith), their origin was presumed in Phoenicia,<sup>9</sup> or they were talked about as the Babylonians condemned to exodus after the destruction of the capital. Even Voltaire attempted an explanation by finding in their ceremonies and customs similarities to those of the descendants of the priestess Isis and the vagabond prophets. According to Mircea Eliade, the emergence of Gypsies in Europe should be associated with the processing of iron. Blacksmithing, demonic occupation, destined to the marginalized of the society and the nomads, is seen as the source of the curse attached to wandering peoples. But, at the same time, Eliade found correspondences of this occupation with the magic (and the shamanism) but also with music, dance and poetry.<sup>10</sup>

## III. Roma in the European Union

The recent expulsion of Roma from France generated a whole series of discussions, attitudes and reactions. The European Council reunited immediately after this gesture (September 2010) called it the “deal” in which France was guilty of discriminatory

<sup>6</sup> *László Fosztó*, *Colecție de studii despre romii din România*, Ed. ISPMN, Cluj-Napoca, 2009, p. 50.

<sup>7</sup> *Jean-Paul Clébert*, *Les Tziganes*, Ed. Arthaud, Paris, 1961, p. 42.

<sup>8</sup> *J.P. Clébert*, op. cit., p. 44; *C.J. Popp Serboianu*, *Les Tziganes-Histoire – Ethnographie linguistique – Grammaire – Dictionnaire*, Paris, 1930, which identifies over 14 groups of nomads residents of Romania, joined together under the name of „gypsies”.

<sup>9</sup> *J. Vaillant*, *Les Roms, histoire vraie des vrais Bohémiens*, 1857, apud *J.P. Clébert*, op. cit., p. 24.

<sup>10</sup> *Mircea Eliade*, *Forgerons et alchimistes*, Ed. Flammarion, Paris, 1956, p. 74.

application of Directive 2004/38. The European institutions have reviewed the situation and have reminded the efforts made in the recent years to integrate all European citizens:

(i) As recently as 2007 the European Council invited the Member States to consider the most appropriate measures for Roma integration, recognizing, apparently, for the first time that they dealt with a special situation;

(ii) It did not take long for the reaction to appear and, in 2008, at the level of the Commission, a report was presented in which the existing Community instruments and policies in this regard are displayed.<sup>11</sup> A European summit was organized the same year, devoted to improving the situation of Roma in the EU and consequently, a first European platform to coordinate the fight against the exclusion of Roma (performed in two stages) took place in 2009.<sup>12</sup> The platform is not a forum for decision making but it pursues the adoption of the best possible solutions. Broadly speaking, the platform insists on the necessity of mutual information of the involved actors (and the civil society), on the development of some mechanisms for implementing and monitoring the adopted policies, on the preparation of some political statements (as non-legally binding instruments). On the same line, the Council elaborated ten common principles for inclusion of Roma: Constructive, pragmatic and non-discriminatory policies, explicit but not exclusive targeting, Inter-cultural approach, Aiming for the mainstream, Awareness of the gender dimension, Transfer of evidence-based policies, Use of Community instruments, Involvement of civil society and Active participation of the Roma.

(iii) In 2010 the Commission drafted a document entitled "Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion" which, basically, grouped some documents already mentioned by us, and conducted an analysis of the situation (the progress) in the Member States and at the level of the Union.

An examination of this document allows us to notice the Commission's use of the name "Roma" as a term covering also other groups of people who have similar cultural characteristics and a persistent marginal position in the European societies, such as the Sinti, the Travellers, the Kalé. At the same time, the Commission considers it justified to use the name "Roma" in the context of discussions on social exclusion and discrimination and not in that relating to issues of cultural identity.<sup>13</sup>

Regarding the involvement of the Member States, the report mentions that there were identified „four key areas: education, employment, health and housing as the biggest challenges for the inclusion of Roma communities". In addition to these common aspects, Bulgaria, Italy, Hungary and Romania „stressed that segregation represents a serious problem which leads to the exclusion of Roma from education and other basic services". There have been recorded extreme forms of discrimination, inter-ethnic tensions and violent attacks in some Member States in Central and Eastern Europe and in the Mediterranean area. At the same time, „most Member States have identified Roma Children and younger Roma as well as Roma women as the most vulnerable subgroups among Roma communities".

The part of the report describing the progress made by states covers a variety of measures that reflect the policies of the authorities and institutions in charge of this problem: ministries of social affairs, of integration or for minorities, the Government Council for Roma Community Affairs (Czech Republic), the Deputy Prime Minister (Slovak Republic), the

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<sup>11</sup> Document de travail des services de la Commission, SEC (2008), 2172, 2 Juillet 2008.

<sup>12</sup> IP/09/635, 24 avril, IP/09/1365, 28 sept. 2009

<sup>13</sup> Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion-Progress Report 2008-2010, Bruxelles, 7.04.2010, SEC (2010) 400.

inter-ministerial committee chaired by the Minister of the Interior (Greece), the Minister of the Interior (Poland), „a national commission through which the strategic process on Roma inclusion is implemented”(Romania), the Government Office for national Minorities (Slovenia), the Council for the Roma community (Spain) etc.

Among the general measures we notice the implementation of strategic plans (Hungary, Poland), of programs for Roma integration (Lithuania), the adoption of some legislation (the Municipal Anti-Discrimination Service Act in the Netherlands), the ratification of some international instruments (The Framework Convention on National Minorities by Sweden).

In the area of *education* most states report the creation of strategies for integrating children and students belonging to ethnic minorities (p. 10-11). Moreover, this seems the key area in which states were most involved, leading even to teaching in Romanès language (Slovak Republic), to intercultural training for teachers (Lithuania), the introduction of the history of Roma into school curriculum (Romania), open-pedagogical training for Roma without high school certificate (Germany, the Region of Hamburg, working together with Sinti NGOs).

The programs concerned with *employment* are much more modest, mainly focused on vocational training programs, on pilot project, on the allocation of funds for specific investments (Italy), training sessions etc. Many programs are run by NGOs and they also involve representatives of Roma communities.

The perspective is quite cynical if we consider the fact that Roma were actually the victims of the states' industrialization process, being forced to abandon their traditional occupations, which have either disappeared or became part of the industry. Therefore, it is quite hard to imagine appropriate “vocational training programs”.

In *healthcare* only some of the states mention vaccination programs, programs of teaching hygiene rules (Slovenia, Czech Republic) and, rarely, the establishing of some health insurance funds coming from the state budget (Hungary).

Finally, “the construction of apartment buildings and improvements of the infrastructure” were reported (Bulgaria, Czech Republic, Romania, Slovak Republic), creating conditions for the establishment of Roma communities in small rural areas (Hungary) or reforming the system of *house* rental (Greece). The focus was different, depending on the particularities of the targeted communities.

*The right to free movement within EU – for the Roma inclusion.* The European Parliament resolution on the Situation of Roma and on Freedom of movement in the European Union<sup>14</sup> requires the Member States, in addition to the measure to which we referred previously, to focus on the allocation of funds for Roma communities, on the collaboration with the Fundamental Rights Agency, which are, together with the NGOs, with the committees of the national parliaments to create a mechanism at EU level to monitor and ensure the Member States' compliance. The states are also encouraged to comply with the obligations undertaken by signing the „International Convention on the Elimination of All Forms of Racial Discrimination by immediate endorsing the recommendation adopted by the UN Committee for the Elimination of Racial Discrimination at its 77<sup>th</sup> session”.

At the same time, Member States are required to immediately suspend the expulsion of Roma to reject “any position capable of creating a link between minorities, immigration and crime and create discriminatory stereotypes” and to renounce the “provocative and discriminatory rhetoric that marked the political discourse” during the expulsions.

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<sup>14</sup> P7\_TA-PROV(2010)0312.

It is obvious that the freedom of movement is a right that belongs equally, without discrimination, to all citizens of EU Member States. Restrictions on this right cannot operate based on some general preventive measures and even less, on the grounds of race or origin. Individual behaviour of a person may result in such restrictions, but only after a thorough investigation of each and every case and with observance of the procedural rights.

#### **IV. The distribution of powers and responsibilities on the Roma inclusion domain between EU and Romania as a new member state**

The main areas of Roma integration (education, employment, health and housing) belong to the social policy field which is one of shared competence between EU and Member States (MS), the latter preserving the main power of decision. This distribution of competences remained broadly the same after the entering in force of the Lisbon Treaty, in December 2009. Nevertheless, with its fundamental commitment to human rights protection<sup>15</sup> and to social progress and rights, as well as with its new social objective of wellbeing of its people, full employment and social progress, the fight against social exclusion and discrimination, the promotion of justice and the eradication of poverty (art. 3 TEU), the EU acquired the potential for a more centralized decision in the social field.<sup>16</sup>

In February 2011, the Committee on Civil Liberties, Justice and Home Affairs proposed to the European Parliament to adopt a EU Strategy for Roma Inclusion,<sup>17</sup> which intended to declare this area of policy as one of common (EU and MS) responsibility under the subsidiarity principle, but the adoption, in May 2011, of “An EU Framework for National Roma Integration Strategies up to 2020”<sup>18</sup> consolidated the status *quo*, restating the MSs as main responsible and decision-makers and the EU as centre of impulse and coordination of the MSs actions for Roma integration on their territory.<sup>19</sup> The EU is exerting this role by instruments as country reports and visits, recommendations and financing Roma inclusion projects through Structural and Cohesion Funds. The national strategies will also serve as reference for further EU monitoring of the efficiency of the MSs’ Roma inclusion policies.

The financial instruments proved to be a powerful tool: after suspending, in October 2012, the payments on several EU programmes in Romania for corruption suspicions, the EU not only decided to enforce the technical assistance for Romania in order to grow its capacity to absorb EU funds, but went as far as to propose for the EU institutions to undertake the EU funds management on behalf of Romania.<sup>20</sup>

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<sup>15</sup> The EU Charter of fundamental rights which entered in force at the same date, does not increase the competence of the EU, nor does it apply to purely internal MS situations.

<sup>16</sup> For details see “Measures to promote the situation of Roma EU citizens in the European Union” by William Bartlett, Roberta Benini, Claire Gordon at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, Jan. 2011, p. 20 and next, available at: (<http://www.europarl.europa.eu/studies>).

<sup>17</sup> Report on the EU strategy on Roma Inclusion, 18.02.2011, European Parliament, Committee on Civil Liberties, Justice and Home Affairs available at ([www.europarl.europa.eu](http://www.europarl.europa.eu)).

<sup>18</sup> European Commission Communication no. 8727/06.04.2011 and EU Council Conclusions from 19.05.2011, “An EU Framework for national Roma integration strategies up to 2020” ([www.eur-lex.europa.eu/LexUriServ](http://www.eur-lex.europa.eu/LexUriServ)).

<sup>19</sup> Projet de Rapport d’information sur l’intégration des Roms: un défi pour l’Union européenne et ses Etats membres, Michel Billout, p. 67, available at ([www.senat.fr/rap/r12-199/r12-1991.pdf](http://www.senat.fr/rap/r12-199/r12-1991.pdf)).

<sup>20</sup> Idem, p. 65.

Some public statements<sup>21</sup> explain the interest the EU proves for the Roma inclusion file not only through events as the accession, in 2007, of the two new member states (NMS) with numerous Roma minority or the expulsion of Roma migrants from old member states (OMS) in 2010, but also through the commitments of the personalities who coordinate EU or key EU sectors. From this perspective, the election of new EU representative could affect the EU commitment in the field. Thinking at the EU decision-making procedure, this kind of change would only have a limited effect if it is to think of the reasons of the Roma inclusion policy we have listed at the beginning of our study. There seems to be a wide spread pressure to achieve results on the issue: for example an European Parliament member, H el ene Flautre, sees this policy as a test of the EU capacity to act in the interest of the citizens. The most important results reached so far may be to place and keep the subject “high on the political agenda” and to change the approach to Roma inclusion “from scattered, project-based interventions to comprehensive, evidence-based strategic thinking”<sup>22</sup> as they are emphasized in Viviane Reding’s speech at the European Platform for Roma Inclusion Meeting in March 2012.

All these make us consider that at the moment the Roma inclusion file rests in the national, specifically Romanian hands, and even if there is a change of approach, as mentioned, the conception on the distribution of competences is unchanged. Nevertheless, the EU has now the means to involve itself more heavily in the file, and make use of the subsidiarity principle if it appreciates the MS unable to achieve effective results at their level. In the case of Romania, the EU has also proved that besides taking general measures, equal for all MS, it is also capable to adapt to address one country’s specificities.

How long will Romania be able to preserve this power and how can this process be tackled at national level in order to achieve effective results?

## V. Roma inclusion as Romanian policy – limitations and perspectives

### 1. Chronology

After the collapse of communism, in 1989, in Romania, as in most of the others ex-communist countries, Roma were among the most hurt categories by the changing social conditions.<sup>23</sup>

Since discrimination against Roma became more visible once the political censure was replaced by liberalism, Romanian authorities tried to contain this trend and enforce stability and sustainable development of the country. In this context and only after 1990, the Roma have been recognised as a national minority. This policy was strongly encouraged by the negotiations for the EU accession, especially after the 2000 Lisbon Strategy<sup>24</sup> who defined

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<sup>21</sup> Ibidem.

<sup>22</sup> Roma integration: are national governments ready to live up their commitments?, Viviane Reding Vice-President of the European Commission, EU Justice Commissioner, Extraordinary meeting of the European Platform for Roma Inclusion Brussels, 22 March 2012, available at ([http%3A%2F%2Feuropa.eu%2Frapid%2Fpress-release\\_SPEECH-12-215\\_en.htm](http://3A%2F%2Feuropa.eu%2Frapid%2Fpress-release_SPEECH-12-215_en.htm)).

<sup>23</sup> D. Ringold, M.A. Orenstein, E. Wilkens, (2003), Roma in an Expanding Europe: Breaking the Poverty Cycle, Washington D.C., The World Bank, available at ([http://siteresources.worldbank.org/EXTROMA/Resources/roma\\_in\\_expanding\\_europe.pdf](http://siteresources.worldbank.org/EXTROMA/Resources/roma_in_expanding_europe.pdf)) (last consulted on the 14<sup>th</sup> of February 2012).

<sup>24</sup> The Lisbon Strategy, known also as the Lisbon Agenda or Process, was a EU ten years development plan adopted by the European Council in 2000 in Lisbon, Portugal. It broadly aimed to “make Europe, by 2010, the most competitive and the most dynamic knowledge-based economy in the world”.

social inclusion as a political EU requirement. The same year, the Race Directive<sup>25</sup> required all Member States (but not Romania, who became an EU member only after 2007) to equalize until 2003 their national standards on anti-discrimination law on ethnic or racial grounds. In this framework, Romania adopted its Governmental Ordinance no. 137/2000 to fight discrimination on any ground and the Romanian Government Strategy to improve the situation of Roma for the period 2001-2010.<sup>26</sup>

Bringing some structure on the Roma inclusion policy of Romania, a study<sup>27</sup> systematized its evolution in three phases: „the period of non-systematized searches” (1990-1995), characterized by policies and programmes of exploratory character, intended to the understanding of the mechanisms required by a consistent social intervention, „the period of understanding the responsibilities” (1996 – 2000) characterized by the preparation of some strategies and start of some concrete actions, by public institutions as well as by non-governmental organizations. The first strategy for the improvement of the Roma status was substantiated in Romania during this period and „the period of assuming the responsibilities” (from 2001 until now) characterized by the action of the competent authorities of assuming their responsibilities to offer responses to a situation becoming more and more hard, as well as to the great number of difficulties Roma population face.<sup>28</sup>

## 2. Overall assessment on the 2001-2010 Roma inclusion strategy

Although an official assessment report on the 2001-2010 Roma inclusion Romanian strategy is not yet available,<sup>29</sup> some of the results can be easily spotted. The creation of a semi-functional network of Roma counsellors and experts at central administration level and at national and local level, in autonomous and in de-concentrated administrative institutions is one of the results. The network of school and medical mediators,<sup>30</sup> although strongly affected by the 2008

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<sup>25</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>) (last consulted on the 14<sup>th</sup> of February 2012).

<sup>26</sup> See Government Decision no. 430/2001 for the approval of the Romanian Government Strategy for improving Roma situation published in Oficial Journal no. 252/2001.

<sup>27</sup> *Ionescu, Cace*, 2006 apud. *Incluziunea romilor în România. Politici. Instituții. Experiențe*, p. 163.

<sup>28</sup> *Incluziunea romilor în România. Politici. Instituții. Experiențe 2012*, Daniela Giurca, Coord., Marioara Rusu, Iulian Stoian, Simona Ilie, Stefánia Toma, Alin Arsu, authors, p. 163, available at ([www.soros.ro/ro/program\\_articol.php?articol=400](http://www.soros.ro/ro/program_articol.php?articol=400)).

<sup>29</sup> There are, nevertheless, two reports available – one, *Raport privind progresele înregistrate în implementarea Strategiei Guvernului de Îmbunătățire a Situației Romilor* (Report on the progresses made in implementing the Government Strategy to ameliorate Roma situation) issued by the Ministry of Public Information, Bucharest, April 2003, available at ([www.academos.ro](http://www.academos.ro)) Groups > CAMAD, and one issued by the Agenția de Dezvoltare Comunitară “Împreună” *Strategia națională de îmbunătățire a situației romilor; vocea comunităților*, Ana Maria Preoteasa, Sorin Cace, Gelu Duminica (coord.), Expert Publishing House, 2009, available at ([www.agentiainpreuna.ro/files/publicatii/10-RAPORT\\_tipar-p-ro.pdf](http://www.agentiainpreuna.ro/files/publicatii/10-RAPORT_tipar-p-ro.pdf)). There is also available a Romani Criss NGO working document, *Propuneri de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor Romani aparținând minorității romilor pentru perioada 2011-2020*, ([www.romanicriss.org/.../Comentarii\\_Strategie\\_ONG-uri\\_FINAL\(1\).p](http://www.romanicriss.org/.../Comentarii_Strategie_ONG-uri_FINAL(1).p)).

<sup>30</sup> See *Improving the tools for social inclusion and non-discrimination of Roma in the EU* (Report 2010), available at ([www.errc.org/.../improving-the-tools-for-th](http://www.errc.org/.../improving-the-tools-for-th)).

world crisis is another one. The Romani language and the Romani culture and history teachers, the young Roma supported with scholarships and special places in schools, high schools and universities can be considered other proofs that the 2001 strategy was helpful. Indeed, it is our opinion, that the most important of the improvements can be detected in the field of education. Still, some of the national minorities education provisions, even if neutrally formulated, answer the needs of minorities which use the mother tongue also as language of teaching and not only language taught: only these minorities have the right to participate to school and education management. This way, Hungarian minority may be represented at the decision level, but not the Roma. To include Roma to education management, Roma needs have to be revealed and quantified, if exist, and legislative provisions may address the specificity Roma education and of Romani language.<sup>31</sup> It is not possible to speak about this decade (2000-2010) of Roma inclusion policy and to overpass the National Council for Combating Discrimination (CNCD) whose role in applying and theorizing the anti-discrimination law in general was essential and not less important with regard to discrimination against Roma.<sup>32</sup>

The shadow which still falls over this progress is, in our view, the limited capacity of the authorities to defend the new arrived in the Roma inclusion policy implementation system from being instrumentalized by political organizations. By consequence, the process of evaluation of the activity of Roma counsellors, experts and so on could be partially corrupted and the declared objectives pushed further. In fact, this weakness threatens, in our view, the implementation of the new, 2012-2020, Roma inclusion strategy.<sup>33</sup>

### 3. Particular aspects of the right to participate in public decision

We stress on the importance of genuine Roma participation for several reasons. To reach sustainable and just Roma inclusion in the wider society, the will and the interests of the Romanian citizens of Roma ethnics must be recognized and given weight in the decision. To provide Roma political and apolitical organizations with an official channel of expression is a necessary step, of course, but, in order to legitimize the Roma inclusion policy, genuine power of decision on the distribution of resources, for example, is to be shared with these organizations. This, also, is not an easy task, if it is to notice the numerous Roma organizations claiming for political representativeness and the Romanian dispositions recognizing representativeness only to the one organization who gains the special seat in Parliament. Also, from a European point of view, the importance of active participation of Roma is reflected by the insertion of this statement as one of the 10 Principles of the Roma inclusion.<sup>34</sup> *Per a contrario*, what can Roma inclusion be without Roma participation? If it would not represent the will and the interests of Roma ethnics, how could it be delineated by yet another case of discrimination or ethnic profiling? If it is for us to accept the evidence: that Roma inclusion must be lead and implemented with Roma, the next step is to ensure that the diversity of the Roma communities is taken into account and the process includes, as much as possible, the various wills and interests of different Roma groups, competing in an as fair as possible manner.

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<sup>31</sup> See the new *Law of National Education*, 1/2011 published in the Official Journal no. 18/2011.

<sup>32</sup> For details, see *Dezideriu Gergely*, op. cit., p. 27-48.

<sup>33</sup> See 2012-2020 Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority, published in Official Journal no. 6 bis/04.01.2012.

<sup>34</sup> Stated by the EU Council in its Conclusions on inclusion of the Roma (presented at the June 2009 meeting), available at ([www.consilium.europa.eu/.../108377.pdf](http://www.consilium.europa.eu/.../108377.pdf)).

In the field of social and political participation, the growing number of NGOs, especially Roma ones, involved in social and human rights projects financed by international institutions, the quality of the expertise they gained over the years represents, in our views, another effect of the combined Romanian and European Roma inclusion policy. Of course, there is, still, a lot to be done, while an important number of the auto-entitled Roma NGOs are created or run by non-Roma ethnics.<sup>35</sup> Of course, this raises questions about their representativity for the Roma community.

In the context that virtually every Roma NGO can compete for the special seat in the Chamber of Deputies, the right to participation in various social fields is, somehow linked to the right to political participation.

Again virtually, there were highlighted three possibilities for national minorities' members to gain seats in the Romanian Parliament: as independent candidate, as candidate of a mainstream political party or as candidate for the national minority's representative organization. As the first two apparently have not given noticeable results until now,<sup>36</sup> the only practical solution remained the competition for the seats reserved to each national minority obtaining at least 10% of the votes necessary to elect a deputy.<sup>37</sup>

By gaining the special seat in the Parliament, the representative organization is ensuring the participation in parliamentary negotiations, the involvement in the legislative procedure and the entitlement to public fund, as well as the place in the special administrative consultative body of the National Minorities Council, beside the possibility to participate in government coalitions. By this means, the winning organization becomes, practically, the sole official political voice of the Roma minority in Romania. While this 20 year-old constitutional rule seems to be generally well accepted by the majority and by the minorities as well, there are still some questions regarding the fairness of the competition for this place among the organizations wanting to represent a minority, it's adequacy for the Roma minority and the political effects of this rule.

On the fairness of the political competition, the issue is the different standard required to participate in parliamentary elections for those organizations which are not represented in Parliament by difference with the ones which are already represented. While for those organizations represented in Parliament there are no supplementary conditions to enrol candidates in parliamentary election, there are some for the non-represented organizations. These requirements are to have been previously declared by the Government as "of public utility" and to have at least 20.000 members (if the minority has more than 20.000 members<sup>38</sup> auto-identified through official census) located in at least 15 Romanian counties and the capital, with at least 300 person in each county or the capital.<sup>39</sup> The 2004 decision to enforce stronger conditions for national minorities' organizations aiming to enter the Parliament can be explained by the constant growing number of seats assigned to national minorities from 12 in

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<sup>35</sup> *Kiss Denes*, op. cit., p. 15.

<sup>36</sup> In 2012 Mr. Damian Draghici, auto-identified as Roma ethnic, was elected senator on USL (Social-Liberal Union) proposal.

<sup>37</sup> See Articles 9 and 47 from the Law no. 35/2008 published in the Official Journal no. 196/2008.

<sup>38</sup> The Roma minority counts for more than 600.000 members auto-declared at the 2011 census. See the preliminary results at (<http://www.recensamanromania.ro/rezultate-2/>) (last consulted on the 14<sup>th</sup> of February 2012).

<sup>39</sup> For the exact conditions see Article 9 of the Law no. 35/2008 with ulterior amendments, the last being made by Government ordinance of Urgency no. 46/2012. By difference, the Local Elections Law 67/2004 with ulterior amendments, asks for 25000 persons to be member of the candidate organization (see Article 7 parag. 4 of the Law 67/2004).

1990 to 18 in 2000.<sup>40</sup> While the international treaties Romania ratified do not allow public authorities to worsen the national minorities situation by withdrawing the rights previously granted, the idea to impose more difficult conditions for the minorities not yet represented has its reasons. This idea is even more substantiated if it is to consider that the number of members of some national minorities, as established by national census, is lower than the number of votes the representing organization received in general elections. Nevertheless, the solution to impose conditions on representing organizations rather than on the national minority itself<sup>41</sup> negatively affected the competition among organizations of the same minority and, by consequence, the legitimacy of the representing deputy.

While one of the most often highlighted features of the Roma minority is its internal diversity, we are asking ourselves if one deputy representing only one Roma organization can ever be a suitable and legitimate answer for the need to political representation of the entire Roma minority. In our view, more appropriate means to ensure political representativity may be found by requiring that the elected deputy has the approval of a significant number of Roma organizations representing an important percentage of the Roma ethnics.

The constitutional rule stating that each officially recognized national minority is represented by one deputy from only one minority's organization has, on the one hand, many positive consequences regarding democracy, political participation, efficient negotiation etc., and on the other hand, the effect of strengthening the position of the representative organization in competition with other organizations representing the same minority. In fact, in the last five parliamentary elections which Romania had after communism collapsed, only 3 national minorities<sup>42</sup> were represented by different organizations. 16 of the 19 organizations which represent national minorities in the Romanian Parliament, the Roma representative included, have been doing so since the beginning of that minority's representation until today.

#### 4. The 2012-2020 Roma inclusion strategy

The new Romanian Government Roma inclusion Strategy intends to use and enhance the progress made by implementing the first, 2001-2010, Roma inclusion strategy in the fields of education, employment, health, housing, culture, justice and community development.

By comparing the national normative development in the field with the European one, the effort to harmonize the Romanian strategy with the European framework is noticeable with regard to the areas of interests (education, employment and so on), the principles and the objectives. Also, the Romanian Strategy directly refers to two of the newest European documents on the topic: the 2011 European Commission Communication and the EU Council Conclusions "An EU Framework for national Roma integration strategies up to 2020".<sup>43</sup>

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<sup>40</sup> M. Caluser, *Reprezentarea minoritatilor nationale pe locurile rezervate în Parlament*, p. 167-178, in *Politici de integrare a minorităților naționale din România. Aspecte legale și instituționale într-o perspectivă comparată*, Editor *Levente Salat*, Ed. Fundației Centrul de Resurse pentru Diversitate Etnoculturală, Cluj-Napoca, 2008 ([www.edrc.ro/docs/docs/politici/Intregul-volum.pdf](http://www.edrc.ro/docs/docs/politici/Intregul-volum.pdf)) (last consulted on the 14<sup>th</sup> of February 2012).

<sup>41</sup> For example, by establishing a minimum number of members.

<sup>42</sup> The Italian, the Albanese and the Bulgarian national minorities have been represented by other organizations before the 2004 general elections.

<sup>43</sup> See European Commission Communication no. 8727/06.04. 2011 and EU Council Conclusions from 19.05.2011 *An EU Framework for national Roma integration strategies up to 2020* ([www.eu-lex.europa.eu/LexUriServ](http://www.eu-lex.europa.eu/LexUriServ)) (last consulted on the 14<sup>th</sup> of February 2012).

The priority areas of intervention stated by the 12 European governments initiating the Decade of Roma Inclusion (2005-2015), education, employment, health and housing, were proposed to be extended and complemented in The February 2011 Report on an EU Strategy for Roma<sup>44</sup> inclusion by three new domains: fundamental rights, culture and political and civil participation of Roma. The same fields can be detected more or less accurate in the Romanian Strategy, even if the EU Framework for National Roma Integration Strategies up to 2020 (the EU Framework) stipulates only the four “classical” areas.

This EU document establishes the limits of the EU implication in Roma inclusion policies to develop a comprehensive approach to Roma integration establishing goals and creating the basis for an effective use of EU funds and a robust monitoring mechanism<sup>45</sup> while the Member States remain primarily responsible for this policy. It preserves a wider margin of appreciation for the Member States than the one proposed by the Committee on Civil Liberties, Justice and Home Affairs in its February Report for a EU Strategy for Roma Inclusion.<sup>46</sup> The last was proposing for the EU to share responsibility with the MSs on the basis of subsidiarity – which establishes that, in matters of concurrent competence, the decision-making power should pertain to the lowest level able to solve the issue efficiently.

Of course, it is much too soon to discuss results<sup>47</sup> so the challenges it implies are still to be revealed. The fact that the previous ten-year Roma inclusion strategy still lacks an official evaluation report and following actions could impact negatively on the will to completely fulfil the new one and, consequently, on the final result.<sup>48</sup>

First of all, the choice to fight firstly poverty and secondly discrimination is highly controversial: The roots of this approach are to be found in the first, 2001, Strategy<sup>49</sup> and, deeper, in the Government’s way of understanding and integrating the main cause of exclusion: discrimination.<sup>50</sup> The strategy contains potentially offensive, discriminatory provisions as the one which states that “Roma culture remains underdeveloped” (point IV.5 of the Strategy). It may override the standards of a public policy and the EU principles for Roma inclusions<sup>51</sup> as the Government seemed to have missed its own rules on the elaboration and

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<sup>44</sup> Report on the EU strategy on Roma Inclusion, 18.02.2011, European Parliament, Committee on Civil Liberties, Justice and Home Affairs.

<sup>45</sup> 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, p. 4.

<sup>46</sup> Report on the EU strategy on Roma Inclusion, 18.02.2011, European Parliament, Committee on Civil Liberties, Justice and Home Affairs.

<sup>47</sup> An official assessment of the national strategies of the MS was done in 2012 through The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, National Roma Integration Strategies: a first step in the implementation of the EU Framework, COM(2012) 226, Brussels, 21.05.2012, available at ([www.eur-lex.europa.eu/.../LexUriServ.do?uri](http://www.eur-lex.europa.eu/.../LexUriServ.do?uri)).

<sup>48</sup> For a similar opinion see *Florin Moisă*, *Incluziunea socială în România. De la concept la implementarea politicilor publice de incluziune a populației de romi*, Rezumatul tezei de doctorat, ian. 2012, p. 21 ([doctorat.ubbcluj.ro/sustinerea\\_publica/.../2012/.../moisa\\_florin\\_ro.pdf](http://doctorat.ubbcluj.ro/sustinerea_publica/.../2012/.../moisa_florin_ro.pdf)) (consultat la data de 14 februarie 2012).

<sup>49</sup> See *Florin Moisa*, *Provocarea includerii sociale a romilor. Sărăcie sau abordare bazată pe discriminare?*, în *Stefania Toma, László Fosztó* (ed.), *Spectrum. Cercetări sociale despre romi*, Ed. ISPMN, Cluj-Napoca, 2011, p. 222.

<sup>50</sup> (<http://www.crj.ro/blog/archives/371>) (last consulted on 26th of January 2012).

<sup>51</sup> *Ibidem*.

initiation of normative decisions and public policies documents<sup>52</sup> as well as the tenth of the EU principle for Roma inclusion – the participation of Roma. The 2012 Strategy was criticised for lacking of effective consultations with representatives of diverse Roma groups and communities<sup>53</sup> – in accordance with the official acknowledged internal diversity of the Roma minority – from the earliest stages of initiation to the implementation and monitoring period. This questions the Government’s capacity to adopt an inclusive decision-making procedure according to the philosophy of the Roma inclusion policy. As a procedural vice, the ineffective consultation is not only in itself a form of discrimination, but may have also contributed to it: The Roma representative stressed on the key role of this principle since 2000, in the first General Policy Recommendation of the Working Group of Roma Associations, in the second one of the Framework Convention of Roma (2001), as well as in other public documents issued by Roma representatives.<sup>54</sup> On the need to develop the entire national strategy for Roma inclusion under the umbrella of the anti-discrimination principle there have been elaborated other studies,<sup>55</sup> too, as well as the 2005 Joint Inclusion Memorandum<sup>56</sup> adopted in view of Romania’s adhesion to the EU.

As we have already stressed, the participation of Roma in Roma inclusion projects is not only a UE requirement, but, more important, a condition for obtaining effective results. For the same reasons, we consider the inclusion of the Roma vision in shaping the national strategy for Roma inclusion a key factor of success. In the vision of the Roma representative, as it is expressed in the documents listed above, the Roma themselves have to “articulate an auto-referential perspective”, a “positively receipted cultural and social identity” from which to build an “active partnership with the public administration” able to determine the replacement of the current “demo-liberal” theory of social integration with a “multicultural social cohesion” which can “actively include the underprivileged groups”.<sup>57</sup>

The Roma inclusion policy needs a wider vision and a larger scale projects. These are *sine qua non* conditions for a successful strategy, as suggested in 2005 by Joint Inclusion

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<sup>52</sup> Government Decision no. 1226 from 10 October 2007 to approve the Regulamentului privind procedurile, la nivelul Guvernului, pentru elaborarea, avizarea și prezentarea proiectelor de documente de politici publice, a proiectelor de acte normative, precum și a altor documente, în vederea adoptării/aprobării, published in the Official Journal no. 716 from 23 October 2007

<sup>53</sup> The Romani Criss NGO working document, Propuneri de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor Romani aparținând minorității romilor pentru perioada 2011-2020.

<sup>54</sup> See Recomandări pentru un Plan de acțiune referitor la migrația internațională a romilor din România și (re)inserția acestora în comunitățile locale (Document al Subcomisiei Parlamentare pentru Romi pentru Summitul romilor, Cordoba, 8-9 aprilie 2010), Vasile Ionescu, coordinator, available at ([www.cdep.ro/.../Plan%20migrația%20internaționala%20a%20romilor](http://www.cdep.ro/.../Plan%20migrația%20internaționala%20a%20romilor)), or the Romani Criss NGO working document, Propuneri de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor Romani aparținând minorității romilor pentru perioada 2011-2020.

<sup>55</sup> See, for example, Florin Moisă’s article Provocarea includerii sociale a romilor. Sărăcie sau abordare bazată pe discriminare?, în *Stefania Toma, László Fosztó* (ed.), op. cit.

<sup>56</sup> Memorandumul comun în domeniul incluziunii sociale, Joint Inclusion Memorandum, elaborat de Guvernul României împreună cu Comisia Europeană - Direcția Generală Ocupare și Afaceri Sociale 2005 available at ([www.mmuncii.ro/.../Domenii/Incluziune%20si%20asistentă%20social](http://www.mmuncii.ro/.../Domenii/Incluziune%20si%20asistentă%20social)).

<sup>57</sup> Recomandări pentru un Plan de acțiune referitor la migrația internațională a romilor din România și (re)inserția acestora în comunitățile locale (Document al Subcomisiei Parlamentare pentru Romi pentru Summitul romilor, Cordoba, 8-9 aprilie 2010), Vasile Ionescu, coordinator.

Memorandum and emphasized in 2012 by Gabriel Andreescu.<sup>58</sup> As anti-discrimination is a corollary of the substantial, effective equality principle, to conceive this public policy on anti-discrimination would imply to reinforce the equal legitimization of Roma persons as constitutive elements of the Romanian nation-state, on the same footing as other Romanian, Hungarian ethnics etc., and with the same entitlement to use the public resources to maintain and develop the specific Roma cultural identity.

As possible implication, in the general centralizing trend at the EU level, this issue could become a vehicle to transport power from the MS to the EU, by the instrumentality of the subsidiarity, if the states will prove themselves unable to develop an effective Roma inclusion policy. This is why we are wondering if a more effective consultation with a wider range of Roma representative is needed for the Romanian Government to prove itself capable to assume the Roma inclusion policy. Foreseeing the political costs of changing the *status quo* in Romanian-Roma political elite collaboration, the alternative could prove itself even more expensive: the loss of European funds, of power of decision over the allocation of these funds and eventually over an important part of the Roma inclusion policy. All these could affect the coalition in power, indiscriminatory of ethnicity while affecting the EU Roma inclusion policy, too.

## VI. Conclusions

The EU conception on the Roma inclusion did not changed yet: the issue remained in the national sphere of competence even if, since 2011,<sup>59</sup> a tendency to move the Roma inclusion dossier from exclusive Member States to shared EU and MS domain became visible. However, in spite of the growing European interest in the area, the EU content itself to boost the national determination and to coordinate the national actions by political negotiations, recommendations, monitoring and financing, giving the MSs the opportunity to decide quite autonomous on the issue.

At the moment, the European influence seems to be the main force driving the Romanian Roma inclusion policy, which doesn't diminish the value of the principle, but questions its efficiency. For the Roma inclusion to become a genuine and effective Romanian policy, the matter has to be visualised as part of the socio-political web of the whole Romania, especially as it is interconnected with the national minorities' protection domain and the social development of the country. On the most general level, the achievement of this aim depends on the place the Roma ethnic reaches in the Romanian nation.<sup>60</sup> Here, a more inclusive conception of the Romanian nation is to build, a conception in which Roma minority, as the others Romanian national minorities, is part of the nation.<sup>61</sup>

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<sup>58</sup> Editorial, NRDO, în Noua Revistă de Drepturile Omului nr. 4/2011, p. 1.

<sup>59</sup> When the Committee on Civil Liberties, Justice and Home Affairs' *Report on the EU strategy on Roma inclusion was published.*

<sup>60</sup> M.R. Prisacariu, The responsibility to protect and the national minorities' participation to decision-making in the nation-state, The 18th International Conference The Knowledge-Based Organization, Conference Proceedings I, „Nicolae Bălcescu” Land Forces Academy Publishing House, Sibiu, 2012.

<sup>61</sup> Marc Weller, *Effective Participation of Minorities in Public Life*, in *Universal Minority Rights*, edited by Marc Weller, Oxford University Press, 2007, p. 479.