



FACULTY OF LAW
Lund University

Mădălina GRIGOROVICI

Institutionalizing the Intersectionality between Gender and Ethnicity in Romania: The Case of Roma Women

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Supervisor: Dr. Alejandro FUENTES

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“All the women are white, all the blacks are men, but some of us are brave”

[Gloria T. Hull, Patricia Bell Scott, Barbara Smith (eds.)
in book of the same title (Feminist Press, New York, 1982)]

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Abstract

The current research addressed the daily reality of Roma women from multiple perspectives. The paper gradually revealed the sociological challenges that the individuals must face and the way the state undertook the responsibility to intervene by means of law and policies in relation to the human rights system.

The findings were based on relevant legal and policy documents, multidisciplinary literature and studies which were corroborated and interpreted, but also complemented by the author's personal knowledge.

The social situation of Roma women was found to be in strong opposition with the principles provided by the human rights system, the patriarchy and stereotyping attitudes strictly establishing their subordinated status in society. Nevertheless, the state, but also other entities, fail to tackle the particular intersectional discrimination faced by Roma women. Neither the legal instruments, nor the policy incentives succeeded so far in addressing the discrimination originated at the crossroad between gender and ethnicity, leaving Roma women 'prey' to specific vulnerabilities.

Besides its goal to increase the stakeholders' awareness on intersectional discrimination practiced against Roma women, the research might have also opened new perspectives for effectively approaching the inclusion of the general Roma minority by focusing on women.

List of Acronyms

CCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	International Covenant on Economic, Social and Cultural Rights
CoE	Council of Europe
CRPD	Convention on the Rights of Persons with Disabilities
EC	European Commission of the European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EComHR	European Commission of Human Rights
ECJ	Court of Justice of the European Union
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EIGE	European Institute for Gender Equality
END	European Network against Discrimination
ERRC	European Roma Rights Centre and People in Need
EU	European Union
ILO	International Labour Organization
NAR	National Agency for Roma
NCCD	National Council for Combating Discrimination
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

Introduction

Justification of the research

Roma women from Romania are faced with an extreme situation ‘nobodying’¹ them and inherently affecting the rest of the minority. Negative stereotypes, marginalization and poverty, and clearly defined gender roles are constants in the Roma communities’ daily life, with a disparate effect on women. By ignoring Roma women, they and their families are condemned to a continuous fight for survival, while ‘the others’ take human rights as an exclusive privilege.

As the country with the largest number of ethnic Roma in the European Union (EU), ranking the second worldwide (after Turkey, with a slight difference of approx. 1 million Roma in a population size four times lower than that of Turkey)², Romania achieves a crucial importance in regional policies’ effectiveness. The European Union’s enlargement towards Central and Eastern Europe occasioned a process of Europeanization of the responsibility to socially integrate the Roma minority.

Furthermore, as Romania is party to all the relevant international instruments on human rights, the case of Roma women must be regarded also as a matter of international concern challenging the human rights system.

Previous analysis pertaining to the topic

The current research is the first of its kind to analyse the intersectional discrimination faced by Roma women from Romania, particularly from multiple perspectives. Indeed, there are several separate studies pointing at the critical social situation of the group in question and also legal and policy discussions on multiple discrimination. However, none of the investigations takes a comprehensive approach. The sociological studies limit at exposing the present state of affairs, without interconnecting it with certain multifaceted preconditions. In the same manner, the legal discussions do not delineate intersectionality from multiple discrimination, leading to confusions with a specific effect on jurisprudence. Furthermore, the latter lack a parallel approach of the national legislation with both the regional and the international human rights systems.

¹ *I.e.* “Those dominant cultures acquire their power through the process of ‘nobodying’ others, (that is, those from subordinated cultures)”. Laura M. Padilla, ‘Intersectionality and Positionality: Situating Women on Color in the Affirmative Action Dialogue’, 66:3 in *Fordham Law Review* (1997), p. 846

² Turkey’s estimated population of Roma goes up to 2.75 million; while Romania’s is considered to be of about 1.85 million. According to the statistics issued by the Roma and Travellers division – Council of Europe, available at <http://www.coe.int/t/dg3/romatravellers/default_en.asp>, visited on 23 March 2014

Nevertheless, the previous investigations and literature played a central role for grounding the findings of this paper by gathering dispersed data under the umbrella of a unitary approach and taking critical analysis of their outcomes.

Research objectives

The research aimed at two main objectives: portraying the current multifaceted situation of Roma women within and outside their communities, and assessing how the Romanian system is dealing with the sociological findings in relation to regional and international systems.

The exploratory and the evaluative analyses are alternatively used within the inquiry, searching for those facts and arguments to respond the research questions: 1. What is it that exposes Roma women more than any other members of the Romanian society to sociological risks and how do these risks manifest themselves?; 2. How much sensitivity and efficiency do the decision making factors show in this regard by means of legal instruments and public policies?

As anticipated by the research questions, the analysis comprises two main parts, *i.e.* sociological and legal policy. The first part is dedicated to the intersectional risks faced by Roma women and their specific impact on the individuals. The sections gradually provide answers to the question of 'why' the given situation and to that of 'how' the latter influences the present.

The second part explores the theory, the jurisprudence, and policies relevant for the specific discrimination affecting Roma women, in strict connection with broader regulatory and normative frameworks. The sections here seek to firstly identify the historical, legal and doctrinal contexts of discrimination in Romania. Then the discussion goes further into the twofold dimension of intersectional discrimination, *i.e.* conceptual and jurisprudential. The analysis concludes by assessing how the affirmative action has been implemented from its two complementary perspectives related to law and policy.

Methodology

The overall analysis has a trans-disciplinary approach, *i.e.* sociological, legal, and also policy, with slight ethnological, political, historical, psychological and criminological valences. The author has fully engaged her personal legal knowledge in terms of both general law and specialized areas of competency, but also her acquired skills in the other areas above.

The inquiry had a dual nature, *i.e.* fundamental (particularly in connection to the conceptualization of the intersectional discrimination and other related aspects) and applied (by seeking to use the theories on intersectional discrimination to assess the receptivity of stakeholders to it by means of law and social policies).

A specific doctrinal discussion was used to portray the current regulation on minorities, particularly on delineating the grounds of discrimination in relation to ethnicity, race and nationality.

The research was designed to combine both qualitative and quantitative information. Quantitative data, especially in the sociological part, relied on primary sources such as census reports, but also on secondary sources, as the reports issued by renowned NGOs or other public and private institutions.

Qualitative discussions, inextricably related to the quantitative analysis, were based on, without limiting to, laws, jurisprudence, and official documents issued by governmental authorities, as primary sources. The secondary sources, such as interpretative or analytical documents issued by governmental and/or NGOs, appropriate literature on sociology of law, legal doctrine and press articles, together with several other types of supporting instruments, were also capitalized in the investigatory process to a high extent.

The greatest challenge faced by this research, as a consequence of state policy on data processing³, was the absence of official information on the Roma minority in most spheres of interest, not to mention gender distribution, and on results of the implementation of certain laws or policies targeting Roma. Nevertheless, the issue has been overcome by identifying several other sources, most of which came from outside the Romanian governmental sphere. Their data has been interpreted and compared in order to extract objective information necessary for the main social, legal and policy inquiries. The studies selected for the present research have used samples ranging between 607 and 2051 respondents represented by self-identified Roma and non-Roma individuals of both genders.

³ *Law on Data Protection* prohibits data collection linked to ethnicity with only few exceptions, when the authorities get access to such information by the individual's voluntary disclosure. See Article 7, *Law no. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and Free Circulation of Such Data*, published in the Official Gazette no. 790/12 December 2001, with subsequent modifications and amendments.

1. Country Profile: Facts and Figures

Law and social policies do not act in a vacuum, but they reflect faithfully all the ups and downs that a country is going through at all levels. Thus, before proceeding into the substantial analysis on how intersectionality is manifesting itself and how is being approached by the human rights system in Romania for protecting Roma women, the socio-economic and political situation of Romania and even the state's organization will set the context of the inquiry.

This section comprises a collection of basic data that one can use to anticipate or explain to a certain extent why the current national framework is designed in a certain way and what are or should be the actual economic capabilities or political motivation for acting differently. Starting from the very political system, there has to be noted that Romania is a republic⁴, where the president is elected by a direct vote for maximum of two five-year terms⁵. The form of government in Romania is parliamentary democracy with two legislative chambers elected for four years⁶: Senate (137 seats) and the Chamber of Deputies (334 seats)⁷. Both chambers are directly elected from 41 electoral constituencies, comprising 41 counties and the municipality of Bucharest. The executive (government) comprises the Cabinet, headed by the prime minister, who is nominated by the president.⁸ Bucharest is the largest and most populated city in Romania, being the political, administrative, and economic centre of the country.

A county has an average area of 5,800 km² and a population of 500,000 inhabitants.⁹ Romania's land area is of 238,391 km², comparable to that of Great Britain, which places it on the 80th-largest in the world, the 12th in Europe¹⁰, and the largest one in Balkan area¹¹. The population's size is 20,121,641, while women represent 51.4 per cent of the total resident population.¹²

⁴ Article 1, *The Constitution of Romania*, firstly published in the Official Gazette no. 233/21 November 1991, and then republished in the Official Gazette, no. 758/29 October 2003 after the revising process

⁵ *Ibid.*, Article 83,

⁶ *Ibid.*, Article 61 *et seq.*

⁷ www.presidency.ro/?_RID=htm&id=81&exp2=ro – presidential website of Romania, visited on 20 March 2014

⁸ Article 102 *et seq.*, the Constitution of Romania, *see supra* note 4

⁹ www.presidency.ro/?_RID=htm&id=81&exp2=ro, *see supra* note 7

¹⁰ *Ibid.*

¹¹ www.news.bbc.co.uk/2/hi/europe/country_profiles/1057466.stm - news website of British Broadcasting Corporation, visited on 1 March 2014

¹² Institutul National de Statistica, 'Rezultate definitive ale Recensământului Populației și al Locuințelor – 2011 (caracteristici demografice ale populației)' [The National Institute of Statistics, Final results of the Census of Population and Housing - 2011 (demographic characteristics of the population)], 2013, p. 1

Following the 1989 revolution that ended the 25 years of Ceausescu's communist regime, Romania's economy began a transition from state control. The country has worked to create a legal framework consistent with a market economy and investment promotion.¹³

Romania is now a member of the United Nations (UN), the Council of Europe (CoE) and the North Atlantic Treaty Organization (NATO).¹⁴ As of 1st January 2007 Romania is also a full member of the EU¹⁵. Romania's membership of the border free Schengen group will be decided in late 2014. Opponents cite the country's failure to reform the judiciary and to tackle corruption as reasons to oppose membership.¹⁶ In this general political context, Romania has ratified all the EU and international conventions on human rights, including the special ones on vulnerable groups, *i.e.* minorities, women, disabled, and children.¹⁷ Nevertheless, the European Court of Human Rights (ECtHR) dealt with 7,863 applications concerning Romania in 2013, delivering 88 judgments, 83 of which found at least one violation of the European Convention on Human Rights (ECHR).¹⁸ Since 1959, ECtHR has found Romania in infringement of at least one right in more than 90 per cent of its judgements. This has placed Romania on the second position after Russia in terms of success of complaints made against states. As for the total number of judgements provided against countries since 1959, Romania ranks the fifth among all 47 CoE members, after Turkey, Italy, Russia, and Ukraine. Most of the judgements ruled against Romania were on protection of property (31.8 per cent), right to a fair trial (26.72 per cent), and on inhuman and degrading treatment (8.60 per cent), while discrimination as such was found in only less than 2 per cent of the total number of violations.¹⁹

At the last census (2011), 88.9 per cent of the population ethnically identified themselves as Romanians. The Hungarian population recorded 6.5 per cent, while the number of those who declared to belong to the Roma minority was 3.3 per cent. Other ethnic groups equal to over 20 thousand persons are as such: Ukrainians (0.25 per cent), German (0.7 per cent), Turks (0.13 per cent), Russians (0.11 per cent), and Tatars (0.1 per cent).²⁰

The Roma population is relatively evenly distributed in the territory, ranging between 1.1 per cent and 8.9 per cent, respectively in Botosani and Mures. The Roma also constitute higher

¹³ Bureau of European and Eurasian Affairs – United States Department of State, 'U.S. Relations With Romania – Fact sheet', 17 April 2013, available at <www.state.gov/r/pa/ei/bgn/35722.htm>, visited on 21 March 2014

¹⁴ Romania has been member of United Nations, Council of Europe and North Atlantic Treaty Organization since 14 December 1955, 7 October 1993, and 24 March 2004, respectively.

¹⁵ www.mae.ro/en/node/2057 - the website of the Ministry of Foreign Affairs of Romania, visited on 20 March 2014

¹⁶ Economist Intelligence Unit, 'Romania. Country report', London, February 2014, p. 2, available at <country.eiu.com/FileHandler.ashx?issue_id=831519467&mode=pdf>

¹⁷ www1.umn.edu/humanrts/research/ratification-romania.html - website of the Human Rights Library of the University of Minnesota, visited on 2 February 2014

¹⁸ European Court of Human Rights – Council of Europe, 'Press country profile - Romania', February 2014, p. 1, available at <www.echr.coe.int/Documents/CP_Romania_ENG.pdf>, visited on 3 February 2014

¹⁹ See European Court of Human Rights – Council of Europe, 'Overview 1959-2013', February 2014, pp. 6-7

²⁰ *Ibid.*, p. 5

proportions of more than 6.0 per cent of the resident population in Calarasi (8.1 per cent), Salaj (7.0 per cent), and Bihor (6.3 per cent).²¹ Compared to the census from 2002, the Roma population increased from 2.5 per cent to 3.3 per cent. The Romani language is the mother tongue for 1.3 per cent of the entire population of Romania, while the Romanian language is the first language for 90.9 per cent.²²

Currently the country is said to be undergoing a dynamic period of development and investment. However, the recovery from the recession in 2009 and 2010 has been modest. Romania avoided negative growth in 2012, with real GDP growing by 0.7 per cent. All major economic indicators registered positive quarter-on-quarter growth in the third quarter. The annual inflation averaged 4per cent in 2013.²³ However, there is a poor performance of domestic demand, *i.e.* modest increase in private consumption, decrease in gross fixed investments.²⁴

²¹ *Ibid.*

²² *Ibid.*

²³ Economist Intelligence Unit, *see supra* note 16, pp. 5-6

²⁴ Raiffeisen Services SRL, 'Romania Economic Overview in 2013', 8 January 2014, p. 3

2. Roma Women: At the Crossroad Between Gender and Ethnicity

Discrimination practiced against Roma women has a certain particularity to distinguish it from other types of discrimination. Their vulnerability comes neither just from the fact of being women, nor because of being Roma, but as a consequence of being both: they are Roma women. They are at the 'crossroad' between ethnicity and gender. Each separate element comes with a specific bundle of consequences. When in contact, they merge into a whole doctrinally called 'intersectional discrimination'. Once they got united within an individual, the ethnicity and the gender shall no longer be seen separately.²⁵ They produce together one and the same result, *i.e.* the social isolation of the particular individual who cumulates both elements.

Some scholars present intersectionality in contrast with 'single axis discrimination'²⁶, associating the latter with concepts as 'multiple subordinated identities'²⁷ or 'multiple consciousness'²⁸.

In what follows, the inquiry should give insights into the plethora of factors subjecting Roma women to critical risks, then provide a picture of these factors' intersectional impact at all levels of Roma women's lives. The sociological overview below is meant to portray the objective social context to which any effective intervention has to relate, regardless of who the initiator is and the sphere to be addressed.

2.1. Vulnerability factors

By looking at the wide range of aspects to be considered in terms of risks of discrimination, several types of factors affecting Roma women have been identified. Thus, within this research, these factors have been classified into two main types, including specific factors directly drawn from the intersection between gender and ethnicity, at both intra and interethnic levels, but also general factors regarding either gender or the ethnicity which potentiate the former.

²⁵ European Network against Discrimination, 'The legal implications of multiple discrimination', Factsheet 44, July 2011, p. 5

²⁶ Kimberle Crenshaw – University of Chicago Legal Forum, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist and Antiracist Politics', 1989, p. 139

²⁷ "When there is an intersection between two or more of these identities (*i.e.* gender, disability, sexual orientation), then people with multiple subordinated identities are often subjected to more intense discrimination". Laura M. Padilla, *see supra* note 1, p. 848

²⁸ "Feminists have adopted the notion of multiple consciousness as appropriate to describe a world in which people are not oppressed only or primarily on the basis of gender, but on the bases of race, class, sexual orientation, and other categories in inextricable webs". Angela P. Harris, 'Race and Essentialism in Feminist Legal Theory', 42 in *Stanford Law Review* (1989-1990), p. 587

2.1.1. Specific factors

For the first type of factors that are the result of the particular coming together of the gender and ethnicity elements, the sociological findings make reference to Roma culture. The most eloquent aspect of the status of Roma women within their own community is their subordinated position.

A traditional Roma community is designed as fully patriarchal where gender roles are clearly divided. The men's main task is to provide for the family and to represent the latter in the relationship with the environment outside the house, while the women's role is focused on housework and perpetuation of the traditional Roma culture between generations. The Roma girls start taking on adult caring roles from childhood. They are also expected to marry at an early age and to have many children in life-long marriages.²⁹

Usually, this is the reason why young Roma women leave school. Arranged marriages is often practiced and taken as a natural fact.³⁰ Early marriages are considered to protect girls' virginity before marriage and to avoid the mistakes that lead to promiscuity.³¹ Several investigations show that the majority of Roma women have their first pregnancy when still minors or before 20 years old in up to more than 80 per cent of cases.³²

Some specific studies have used indicators such as education, involvement in the labour market (paid work) and community control over individual lives in order to distinguish between several types of Roma communities. They have identified traditional and non-traditional communities, in both urban and rural areas. Though community control is less powerful in non-traditional communities and the education stock is slightly higher than that in the traditional ones, the involvement of women in the life outside the community is rather absent in all cases.³³

What is most striking is that there is a strong introversion of gender roles with Roma women accepting and reproducing patriarchy as a normal ethnic feature. According to several relevant sociological investigations, "regardless of the type of community or of the area of residence, there is much support for the idea that women have a status of inferiority. This idea is

²⁹ Marcella Corsi *et al* – European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, 'Ethnic minority and Roma women in Europe: A case for gender equality? - Synthesis report', November 2008, p. 123

³⁰ *Ibid.*, p. 124

³¹ Cătălin Augustin Stoica and Marius Wamsiedel – Romi Education Fund, 'Absenteismul cadrelor didactice, elevii romi si scoala primara din Romania' ['The Absenteeism of teachers, the Roma pupils and the primary school in Romania], August 2012, p. 35

³² Gabor Fleck and Cosmina Ruginis – National Agency for Roma, 'Come Closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society', Bucharest 2008, p. 91, and Asociatia Femeilor Rome din Romania, 'Situatia femeilor Rome din Romania. Studiu sociologic – Raport final' [The Association of Roma Women from Romania, 'The Situation of Roma Women from Romania. Sociological Study – Final Report'], Noiembrie 2011, p. 5

³³ Malina Voicu and Raluca Popescu, 'Roma women- known and unknown. Family Life And The Position Of The Woman In The Roma Communities – Research Report', 2009, p. 4

widespread among women and men alike”.³⁴ To put these findings into concrete data, a study from 2006 recorded that 63 per cent of Roma women agree that they have fewer rights than men have in Roma communities.³⁵

Furthermore, in interethnic relations, women acquire a particular symbolism defining their past and current situation. Women, their bodies and their social roles became symbols of the Roma minority. On the one hand, the group awards women symbolic valences revolving around purity. On the other hand, the majority sees them as a benchmark of the group’s pre-modernity.³⁶

This interethnic contention results in catastrophic restrictions in different spheres of Roma women’s lives. Their feeling of inferiority is amplified by the non-Roma community’s labelling, which leads to a lack of trust of the Roma in society exceeding their community and legitimization of genders’ roles as a protection measure.

The Roma collective imaginary entirely reflects the situation. The traditional Roma sayings emphasize on social control and intra-ethnic cohesion, not recommending inter-ethnic mixtures, e.g. “Roma with Roma, ‘gajo’ (*i.e.* non-Roma) with ‘gajo’”.³⁷

As for the perceptions of non-Roma, the history of collective representations on ethnicity begins with the very name they were given: ‘tigan’ in Romanian language, ‘Gypsy’ in English. The word ‘tigan’ does not even exist in the Romani language. The term was first mentioned in the Romanian territories in 1385, when the Prince Dan Voda increased his uncle’s donation of ‘(a)tigani’ to Vodita Monastery.³⁸ The term indicates a social status outside the hierarchical system of the society. Unlike the term ‘tigan’, ‘Roma’ is an old word in the Romani language which has always been used for identification of the Roma ethnicity, this being the correct name for the group in question.³⁹

However, the word ‘tigan’ or ‘Gypsy’ has kept a deeply pejorative sense in both the collective perception and in the Romanian language, determining and being determined by negative social representation of the Roma ethnicity. Many proverbs and sayings in Romanian

³⁴ *Ibid.*, p. 41

³⁵ Laura Surdu and Mihai Surdu – Open Society Institute-Budapest, ‘Broadening the Agenda. The Status of Romani Women in Romania’, 2006, p. 90

³⁶ Centrul de Cercetare a Relațiilor Interetnice – Agenția Statelor Unite pentru Dezvoltare Internațională, “Etnobarometru Mai-Iunie 2000. Relații interetnice în România”, [Research Center for Interethnic Relations – the United States Agency for International Development, ‘Ethnobarometer May-June 2000. Interethnic Relations in Romania’], p. 341

³⁷ Some other Roma sayings/proverbs express the differences between their intra- and inter-ethnic relationships, *i.e.* “I sing to ‘gajo’ for money, while to Roma from my heart”. Their expressions also identify the racism against their ethnicity, *i.e.* “Judge me by what I do, not by my skin”; “A Roma’s shoulder must carry two times more than a ‘gajo’s one”, etc. Delia Grigore, ‘Romii și Romanii – Percepții reciproce în mentalul colectiv’ [Roma and Romanians – Mutual Perceptions in the Collective Imaginary], available at <www.scribub.com/sociologie/TRADITII-RRROME52734.php>, visited on 23 March 2014

³⁸ Bogdan Petriceicu Hasdeu, *Arhiva istorică a României, sub auspiciile Ministerului Instrucțiunii Publice* [The Historical Archive of Romania, under the Auspice of Public Ministry] (Imprimeria Statului, București, 1867), p. 193.

³⁹ Delia Grigore, *see supra* note 37

folklore and in the current vocabulary and phrases demonstrate the non-Roma population's perception of the Roma minority. This fact is entirely reflected by the Romanian dictionary which defines the word 'tigan' by using negative attributes. Thus, with a prior reference to the Roma population's territorial origins – as the literal meaning of the word, the Romanian Dictionary goes further by also explaining the figurative connotations of it: "Epithet given to a brunette person, or to a person with bad habits".⁴⁰

The 600 years of slavery of Roma in Romania (it was not until 1830s when the first calls for the abolition of slavery began to be heard in Romanian Principalities, while the complete legal freedom only came in 1864)⁴¹, deeply affected the perception of Roma women in the Romanian society. During that time women were called "breeding gypsy", considered useful only for increasing the number of slaves. Moreover, young Roma women, especially virgin and unmarried ones, served as objects of pleasure for their owners. However, in opposition with the negative perception of Roma during the times of slavery, the abolitionist literature and poetry promoted an exotic, romantic and endearing picture of Roma.⁴² This led to low self-esteem amongst Roma women, in the sense that beauty and passion became their only perceived qualities.⁴³

After the emancipation, Roma were not given the means for making a life on their own. This led them to turn to occupations that maintained their condition of poverty and discrimination. Roma women in particular practiced a marginal exploitation of the public, such as begging, fortune telling, witchcraft etc.⁴⁴ Their acquired status as mystic women was very well portrayed in the modern Romanian literature.⁴⁵

The stigma put on certain groups is often internalized. This led Roma women to develop inferiority complexes and to feel frustrated, and to react in accordance with the given social etiquette by internalizing the lower status. Because of this image, Roma women encounter all sorts of existential failures, and it becomes almost impossible for them to live a life like any other

⁴⁰ www.dexonline.ro/definitie/tigan - website of the Romanian Dictionary, visited on 10 March 2014

⁴¹ Ian Hancock, 'Roma Slavery', available at <www.reocities.com/~patrin/slavery.htm>, visited on 14 February 2014

⁴² Leon Negruzzi, *Tiganca [The Gypsy Woman]* (1877); Radu Rosetti, *Tigancusa de la ietac [The Little Gypsy Girl From the Bedroom]* (1921); Cezar Bolliac, *Fata de boier și fata de țigan [The boyar's daughter and the Gypsy daughter]* (1843); *Țiganul vândut [The Sold Gypsy]* (1843); *O țigancă cu pruncul său la Statuia Libertății [A Gypsy woman with her baby at the Statue of Liberty]* (1848); Vasile Alecsandri, *Istoria unui Galbân [History of a golden coin]* (1844); Gheorghe Asachi, *Tigani [The Gypsies]* (1856) etc.

⁴³ Delia Grigore, see *supra* note 37

⁴⁴ Elena Zamfir and Katalin Zamfir (coords) – Bucharest University, *'The Roma Population: Socio-economic situation and coordinates of a support program'*, Bucharest, 1993, p. 29

⁴⁵ Camil Petrescu, *Jocul ielelor [The Ieles' Game - Imaginary mythological beings, having the appearance of beautiful girls dressed in white, who appear only at night for charming the men upon whom they have negative powers]* (1947); Mircea Eliade, *La tiganci [At the Gypsy Women]* (1959), etc.

Romanian citizen.⁴⁶ No wonder why nowadays Roma women more or less refrain from interaction with the environment outside the Roma communities.

2.1.2. General factors

The general factors are elements which potentiate the intersectional discrimination's impact upon Roma women, creating a generally hostile context outside the Roma community, either for gender equality or for the ethnic one. These factors emphasize on the broader society's limits in social interaction in different circumstances, revealing some of the hindrances that women or Roma in general have to face. The corroboration of intersectional discrimination with ethnicity and gender as separate grounds affects the chances for people to become aware of the former. When being generally biased/prejudiced in relation to both or one of the two elements of the intersectional discrimination discussed in this paper, the need for a mainstreamed intervention for Roma women is not perceived, as they become just women and/or just Roma.

2.1.2.1. Gender roles in the broader society

On the first aspect, the stereotypes and beliefs regarding gender which exist in the collective consciousness of Roma are consistent with the segregation of gender roles still present in the contemporary general Romanian society. A national study has revealed that women in Romania are rather associated with the family sphere, *i.e.* the private space, while men relate better with professional life and leadership roles. The intensity of gender stereotypes differs by residential area. The rural area is associated with a higher level of stereotyping.⁴⁷ Furthermore, the existence of a traditional pattern of segregation on gender roles causes specific forms of disadvantage against married women, especially in the labour market.⁴⁸ This overall situation of women considerably affects their income and their dependence on others.

⁴⁶ Ștefania Comanescu, 'Femeia rroma: între tradiție și modernitate' in Gianina Catalina Prodan (coord.) - Centrul de Studii și Cercetări pentru Persoanele Dezavantajate Social, Universitatea Eftimie Murgu din Reșița, *Support de curs și aplicații practice: Problematika femeii rrome din România*, [Ștefania Comanescu, 'The Roma Woman: between Tradition and Modernity' in Prodan Catalin (coord.) – Center of Studies and research for Socially Disadvantaged Persons, Eftimie Murgu University of Resita, *Course Material and Practical Applications: The Problem of Roma Women from Romania*] (2011), p. 43.

⁴⁷ Ana Zamfir, 'Toleranta și intoleranta în România. Credințe, stereotipuri și grupuri sociale' in Societatea de Analize Feministe AnA și Institutul Național de Cercetare Științifică în Domeniul Muncii și Protecției Sociale București (eds), *Discriminarea multiplă în România*, [Ana Zamfir, 'Tolerance and Intolerance in Romania. Beliefs, Stereotypes and Social Groups' in the Society of Feminist Analysis and the National Institute of Scientific Research in the Field of Labour and Social Protection Bucharest (eds.), *Multiple Discrimination in Romania*] (2008), pp. 51-53

⁴⁸ Ana Zamfir and Cristina Mocanu, 'Defavorizare și discriminare în România' ['Disadvantage and Discrimination in Romania'], in *Ibid.*, p 65

According to the European Institute for Gender Equality (EIGE), money represents an important domain when assessing the extent of gender equality. Being generally disadvantaged financially, women are exposed to greater risks of social exclusion.⁴⁹ The Gender Equality Index for the domain of money developed by EIGE examines the gap between financial resources and the economic situation of women and men. Romania ranks lowest amongst all EU-27 countries.⁵⁰

Power, as another domain analysed by the Gender Equality Index, focuses on women and men's gap in different levels of representation in the political, social and economic spheres and their share of positions of power. Gender equality is affected by the lack of participation and access to decision-making, including political, social and economic spheres, all of which have detrimental consequences.⁵¹ In this aspect, Romania ranks 20th with a score much below the EU-27 average.⁵²

2.1.2.2. Social resistance against diversity

The second general factor to be discussed is the social resistance of Romanian society against diversity. Just over half of the Romanian population shares the belief that people of a different ethnicity enrich the Romanian culture, while about a third consider that several ethnic groups weaken the unity of the country. The result doesn't record significant difference in relation to the respondents' education. However, it is noted that the counties with a large Hungarian population are characterized by the highest level of tolerance. Unfortunately, Bucharest registers a share above the national average of those who believe that "several ethnic groups weaken the national unity". Moreover, regardless of the education level again, 60 per cent of individuals are characterized by a lack of trust in people of a different ethnicity.⁵³ Considering that trust represents the core of social networking, these findings raise serious worries in a much more globalized society.

This reluctance towards diversity was confirmed by the Global Diversity Readiness Index elaborated by the Economist Intelligence Unit.⁵⁴ This benchmarking model assesses five areas of Diversity and Inclusion in 47 countries. The areas considered are: heterogeneity of a country's general population; levels of diversity and attitudes in the workplace; societal attitudes towards minorities; diversity and inclusion among publicly elected officials; and the existence and

⁴⁹ European Institute for Gender Equality, 'The Gender Equality Index Report', 2013, p. 22

⁵⁰ *Ibid.*, p. 113

⁵¹ *Ibid.*, p. 27

⁵² *Ibid.*, p. 121

⁵³ Ana Zamfir, *see supra* note 47, p. 55-56

⁵⁴ The Economist Intelligence Unit – Society for Human Resource Management, 'Global Diversity and Inclusion: Perceptions, Practices and Attitudes', 2008

enforcement of equal-rights laws⁵⁵. These themes have been aggregated into a single composite indicator, where Romania ranks the lowest amongst all EU countries.⁵⁶

The resistance against diversity has a more specific impact upon Roma than on other ethnic groups, as they are discriminated against also by other minorities in Romania. Earlier studies revealed that Roma are up to 100 per cent rejected by the German community, 50 per cent by Hungarian community, and 63 per cent by other nationalities (Ukrainian, Hebrew, Russian minorities etc.). And perhaps the most shocking result is that Roma are also rejected by 24 per cent of the members of their own community.⁵⁷

A subsequent investigation has restated the specific manifestation of the resistance tendency in relation to the Hungarian minority. Hungarian ethnics' representations of Roma are mostly negative, leaning towards an intolerant stance against Roma and confirming the marginalized position that the latter have in the broader society.⁵⁸

The marginalization of Roma is highly perpetuated through mass media too, amplifying the stereotypes. A series of news on TV and newspapers demonstrate this attitude.⁵⁹ From a total of 1,598 references to Roma community recorded between October 2006 and August 2007 in the eight most renowned national newspapers monitored by a Roma NGO, there were 216 articles in which the journalists' attitude towards Roma was a positive one, 662 where the attitude was negative, and 720 with a neutral attitude.⁶⁰

Overall, the public image mingles old and new resentments. On the one hand, the Roma people are considered to be the beneficiaries of the transformation that occurred in Romania during the past years, perceived as becoming rich at the expense of Romanian society; on the other hand, it is hinted that Roma are underdeveloped in terms of culture and civilization. In

⁵⁵ *Ibid.*, p. 12

⁵⁶ *Ibid.*, p. 21

⁵⁷ Dorel Abraham *et al*, *Relațiile interetnice în România: Diagnoze sociologice și evaluarea tendințelor [Interethnic Relations in Romania: Sociological Diagnosis and Evaluation on Tendencies]* (Cluj-Napoca, Editura Carpatica, 1995) p. 103

⁵⁸ Research Center for Interethnic Relations, *see supra* note 36, p. 262

⁵⁹ Here are only a few of the most recent news titles: 'The Roma Bullies from Buzias Have Been Indicted' in *Renasterea Banateana*, 4 February 2014, available in Romanian at <www.renasterea.ro/stiri-timisoara/actualitate/romii-batausi-din-buzias-trimisi-in-justitie.html>, visited on 5 May 2014; 'The River Street, Blocked by Roma's Bus', in *Gazeta de Sud*, 10 February 2014, available in Romanian at <www.gds.ro/Actualitate/2014-02-11/Strada+Raului%2C+blocata++de+autobuzul+romilor>, visited on 5 May 2014; 'How Gypsies from Barlad scoff the public money. An investment of 1 million euros in social housing was transformed into a ghetto', in *Adevarul*, 12 December 2013, available in Romanian at <adevarul.ro/locale/vaslui/tigani-barlad-ghetou-1_52a93ac3c7b855ff56a484f8/index.html>, visited on 5 May 2014; 'Roma made a scandal at the hospital in Buzau' at *Romania TV*, news on 20 November 2012, available in Romanian at <www.youtube.com/watch?v=g5ObX4ijWeM>, visited on 5 May 2014, etc.

⁶⁰ Centrul Romilor pentru Interventie Sociala si Studii – Romani Criss, 'Imaginea minoritatii rome in presa nationala si locala. Rezultatele monitorizarii de presa octombrie 2006 – august 2007', [The Roma Center for Social Intervention and Studies – Romani CRISS, 'The Image of Roma in National and Local Media. The Results of the Monitoring Process of media between October 2006 and August 2007'], p.6

combination with an alleged demographic threat emanating from the Roma people, this all results in a diffuse potential danger to Romanian society. Most of the mass media however neglects society's responsibility for the impoverished Roma people of Romania.⁶¹

2.2. *Consequences of the vulnerability factors*

Stereotyping, prejudice, and discrimination are interlocking phenomena, and scholars have been interested in sketching a general model of how they relate to each other. The prevalent view holds that stereotypes give rise to prejudice (people develop antipathy toward a group based on the characteristics the group is assumed to possess), and in turn, prejudice gives rise to discrimination. In other words, cognitive appraisals give rise to affective reactions, which then shape intentions and behaviour⁶². The entire phenomenon very simply described by psychologists is truly manifesting itself in relation to Roma women in a double manner, their situation being a result of both the intra- and the interethnic stereotypes.

The consequences will be presented according to how they relate to Roma women's immediate sphere and then to their extended environment.

2.2.1. Consequences at the individual level

Because of the factors presented above, both general and specific, Roma women experience a plenitude of social problems directly affecting their level of welfare. Furthermore, the consequences do not act independently from each other, but they all together conspire against Roma women towards an amplified impact.

2.2.1.1. Education

Roma children are caught between two different worlds, the one in the school where they are educated in line with certain standards, and the one at home, with their daily routine where they have different values and social codes of conduct.⁶³ The number of Roma women who attended formal education is 60 per cent lower than that of Roma men, while in relation to non-Roma women it is six times below the average.⁶⁴ Amongst the ethnic Romanians there are more

⁶¹ Joachim Krauß, 'The Roma People in Romania', 2 in GESIS Leibniz Institute for the Social Sciences, *Social Sciences Eastern Europe – Thematic series. Roma in Central and Eastern Europe*, (2009), p. 21

⁶² Galen V. Bodenhausen and Jennifer A. Richeson, 'Prejudice, Stereotyping, and Discrimination' in Roy F. Baumeister and Eli J. Finkel (eds), *Advanced Social Psychology. The State of the Science* (Oxford University Press, 2010), p. 346

⁶³ Gabriela Gruber, 'Education and social inclusion of the Roma minority in Romania', 4 in *Educazione Democratica, Rivista di pedagogia politica - Essere rom in Italia e in Europa*, (2012), p. 95

⁶⁴ Laura Surdu and Mihai Surdu, *see supra* note 35, pp 44-46

women who have education experience than men by more than 6 per cent.⁶⁵ The discrepancies between Roma minority's trends in education with those of the majority particularly emphasize on the impact of intersectional discrimination upon Roma women.

As the main reasons for not attending school, Roma women invoked the following aspects, listed by priority: the precarious financial situation of the family; lack of interest in school; the beginning of marriage / couple life; the birth of the first child.⁶⁶ In the boys' case, the percentage of those who do not attend school because of marriage is approx. four times lower than in the case of girls. Moreover, the percentage of girls not attending school because they have to look after their younger siblings is also more than double than that of boys. This indicates again how domestic duties are unevenly divided between school-aged girls and boys.⁶⁷

At the same time, ethnic segregation of Roma children in schools is another characteristic regarding the school education of Roma children, including Roma girls. The gender component on school segregation is highlighted by the National Agency for Roma (NAR) which states that about 30 per cent of Roma girls learn in classes where the majority of pupils is made up of Roma, compared to about one fifth of Roma boys.⁶⁸

2.2.1.2. Employment

The situation encountered in education is inherently having repercussions on the employment sphere. As an overall situation in relation to non-Roma population and gender differences, in 2011 the employment rate of Roma for the age group 15-64 years was of only 30 per cent, compared to the 44 per cent of the majority population. There were significant differences in employment rates between men and women: only 19 per cent of Roma women were employed, while men had a share of 42 per cent. Among non-Roma population the employment rate for men was of 56 per cent, while for women of 34 per cent.⁶⁹

Recent studies revealed that more than 80 per cent of Roma women declared not to have a professional qualification.⁷⁰ Usually, the activities carried out by Roma women are within the secondary segment of the labour market, where the social protection of workers is very poor.

⁶⁵ Institutul National de Statistica, 'Populatia stabile de 10 ani si peste pe sexe, dupa etnie si nivelul de educatie', 2011, [The National Institute of Statistics, 'The Stable Population of 10 years old and beyond, disaggregated by ethnicity and level of education'] available at <www.recensamantromania.ro/rezultate-2>, visited on 5 May 2014

⁶⁶ Asociația Femeilor Rome din România, *see supra* note 32, p. 16

⁶⁷ Nicoleta Bitu and Crina Morteau – The Roma Center for Social Intervention and Studies – Romani CRISS, 'The case of early marriages within Roma communities in Romania: Are the rights of the child negotiable?', 2010, p. 22

⁶⁸ Gabor Fleck and Cosmina Ruginis, *see supra* note 32, p. 165

⁶⁹ Programul Națiunilor Unite pentru Dezvoltare (ed.), 'Economia socială și comunitățile de romi – provocări și oportunități', [United Nations Development Programme, 'Social Economy and Roma Communities – Challenges and Opportunities'], 2012, p. 20

⁷⁰ The Association of Roma Women from Romania, *see supra* note 32, p. 22

Roma women are more likely to remain in seasonal or temporary occupations, or even to work in the black labour market.⁷¹ As the majority of Romanian women, when they get into formal work, they are mostly found to activate in fields traditionally perceived as suitable to women, *i.e.* confections, cleaning, health, education and so on⁷², these jobs being lower paid and less secure. But often Roma women are paid even less than other employees for the same work.⁷³

2.2.1.3. Social assistance

A UN Development Programme (UNDP)'s study shows that half the Roma population in Romania lives in absolute poverty, four times more than the general population, regardless whether the data is income-based or expenditure-based.⁷⁴

Though the main income for Roma comes from employment, they are critically dependent on state transfers, as analysed by UNDP, World Bank and European Commission (EC) through a joint project.⁷⁵ Most of the Roma households' income is represented by state transfers in the form of child allowances followed by social assistance. The non-Roma citizens also record a high dependency on state transfers, but in the form of pensions, for which most Roma are not eligible without work experience, and also due to a lower life expectancy.⁷⁶ As Roma women are the ones who mostly lack employment and, as it will be further discussed, have serious health issues, this aspect highlights the increased poverty amongst the group in question.

Moreover, the lack of identity documents is a very significant problem related to accessing social assistance and other benefits. Children born to parents who married according to traditional Roma practices and failed to register the marriage with the Romanian authorities lack identity documents, causing additional burdens in accessing social assistance. Roma women are the most affected ones, being those who are commonly in the position to administer the family budget and find ways to stretch it further.⁷⁷ However, three thirds of those who could access birth and

⁷¹ *Ibid.*, p. 23

⁷² The pattern is confirmed also by Soros Foundation (ed.), 'Roma situation in Romania. Between social inclusion and migration. Country Report', 2011, p. 173

⁷³ Carmen Gheorghe, 'Participarea femeilor rome pe piața muncii' in Institutul Național de Cercetare Științifică în domeniul Muncii și Protecției Sociale și Agenția de Dezvoltare Comunitară "Împreună", 'Femei rome pe piața muncii: interese, reprezentare și participare sindicală', [Carmen Gheorghe, 'The Participation of Roma Women on Labour Market' in The National Institute for Scientific Research in the Field of Labour and Social Protection and the Community Development Agency "Impreuna (Together)", 'Roma Women on Labour Market: Interests, Representation and Unionist Participation'] p. 12, available at <www.privestemaasacumsunt.ro/wp-content/uploads/2011/07/femei-rome-pe-piata-muncii.pdf>, visited on 7 May 2014

⁷⁴ United Nations Development Programme (ed.), 'Social economy and Roma communities – challenges and opportunities', 2012, p. 14 [English version]

⁷⁵ United Nations Development Programme, World Bank, European Commission, 'The Roma pilot project: tools and methods for evaluation and data collection', 2011, p. 113

⁷⁶ *Ibid.*

⁷⁷ Marcella Corsi *et al*, *see supra* note 29, p. 117

maternity benefits granted by the state consider them to be insufficient and so Roma women are “unsatisfied” or “very unsatisfied” with the payment they receive.⁷⁸

At this moment, Romanian Government lacks any specific information on the number of recipients or the average benefit payments disaggregated by sex. Therefore, there is no adequate data to evaluate the gender perspective of the effectiveness of income support schemes in terms of social inclusion and the activation of the recipients. It is important to note that income support schemes are found to affect the intra-household division of labour and women’s propensity to search for a job in the labour market.⁷⁹

2.2.1.4. Housing

Low income is affecting the very quality of life of Roma in general, and particularly that of women, with an impact on housing and consequently on health too. Most Roma women are not happy at all with their living conditions, this aspect achieving a great importance when most of their activities are undertaken in their domestic space. Their residential area does not appear to significantly influence their degree of satisfaction.⁸⁰ Though the majority of their houses have electricity (more than 90 per cent)⁸¹, more than half of Roma women from rural areas do not have an indoor water supply, the percentage in urban areas being high as well (one third).⁸² The houses with an indoor toilet varies between one third⁸³ and slightly above this number⁸⁴, depending on the sociological investigator. Compact/segregated communities (isolated from the other communities and characterized by a great ethnic homogeneity) are found especially in the rural environment.⁸⁵

Here it is important to mention about the Roma women’s attachment to community and their domestic space, which once lived and invested with symbolism, can not be abandoned anymore. That is reflected by data on their mobility. Most women live in the same town/village where they grew up. If they had a large amount of money, most Roma women would invest them in their homes. Local authorities confirm that the majority of Roma who work abroad channel their

⁷⁸ Laura Surdu and Mihai Surdu, *see supra* note 35, p. 54

⁷⁹ Expert Group in Gender Equality, Social Inclusion, Health and Long-Term Care – European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, ‘Gender mainstreaming active inclusion policies. Final synthesis report’, 2010, p. 7

⁸⁰ The Association of Roma Women from Romania, *see supra* note 32, p. 38

⁸¹ Soros Foundation (ed.), *see supra* note 72, p. 190

⁸² The Association of Roma Women from Romania, *see supra* note 28, p. 36

⁸³ *Ibid.*, p. 37

⁸⁴ Soros Foundation (ed.), *see supra* note 72, p. 190.

⁸⁵ *Ibid.* p. 189.

finances towards improving the living conditions. Beyond the living space, the house also represents a benchmark in asserting the prosperity of the Roma family.⁸⁶

2.2.1.5. Health

In terms of health, Roma women do not seem to prioritize their own needs of medical help, studies suggesting that many Roma women do not conceive their own health as a significant factor in decision making.⁸⁷ A problem identified by sanitary representatives is that Roma women do not go to the doctor at the first signs of the disease, but when they get worse or when they are already in advanced stages of illness.⁸⁸ The most common health problems of Roma women are: genital problems; spinal problems; pneumonia; bones problems; and diseases of the respiratory tract, the skin, or of the breast. This health status is given by the precarious care and low living standards, being also reflected in their life expectancy, which is lower than that of the Romanians.⁸⁹ The Roma population life expectancy in Romania is of about 61 years, while non-Roma ones is from approx. 73 years⁹⁰ up to 74.45 years⁹¹.

It is said that, in Roma population's perception, a disease is not considered to exist unless it shows some clear symptoms that prevent the individual from undertaking daily activities or endanger his/her very physical existence. Once symptoms have vanished the person considers himself/herself healthy again.⁹² Moreover, scholars have noted that Roma groups ascribe ill-health to exogenous factors such as bad luck, curses, or spiritual possessions. As a result many methods of healing are respectively, supernatural, magical or spiritual in nature and lacking a bio-medical basis. Much traditional Roma healing also relies on alchemy and the creation of potions, usually concocted from herbs. Secondly, remedies are often administered by an older woman. Traditionally it is women who are chiefly responsible for the health and maintenance of the family; men are rarely involved in the health decisions for children and other dependents. Within Roma communities, the strict sex segregation in matters of health is often upheld, especially when

⁸⁶ The Association of Roma Women from Romania, *see supra* note 32, pp 32-35

⁸⁷ Max van der Stoep – Organization of Security and Co-operation in Europe High Commissioner on National Minorities, 'A Study on Roma and Sinti', 10 March 2000, p. 124

⁸⁸ The Association of Roma Women from Romania, *see supra* note 32, p. 26

⁸⁹ *Ibid.*

⁹⁰ Marius Radulescu, *Roma Health Mediation Program in Romania*, Roma Center for Health Policies – SASTIPEN Romania, p. 8, available at

webcache.googleusercontent.com/search?q=cache:T8bN1hXs3MJ:www.bhbi.eu/sites/default/files/Radulescu_Romania.ppt+&cd=5&hl=nl&ct=clnk&gl=be, visited on 5 May 2014

⁹¹ According to the United States Central Intelligence Agency's data in December 2013, www.cia.gov/library/publications/the-world-factbook/rankorder/2102rank.html, visited on 21 March 2014

⁹² Marius Wamsiedel and Cristina Jitariu, "Analysis of the situation in Romania", in Fundacion Secretariado Gitano (ed.), *Health and the Roma Community. Analysis of the situation in Europe - Bulgaria, Czech Republic, Greece, Portugal, Romania, Slovakia, Spain* (Madrid, 2009), p. 148

associated with 'impure or dirty' parts of the body. These strict beliefs about purity and contamination have been confirmed again to historically mediate the interactions between Roma and non-Roma. Some observers have proposed that Romani women may not seek medical care for fear of having to expose themselves to or being touched by a non-Roma male doctor.⁹³

Specialized studies also mentioned Romanian Roma women's reluctance to go to medical institutions which do not belong to Roma community, as one of the factors which affect their health status, together with financial issues.⁹⁴

Early and frequent pregnancies place particular health risks on Roma women.⁹⁵ The fertility rate amongst Roma women is on average three times higher than that of the non-Roma population.⁹⁶ However, measures like family planning are still regarded with scepticism by the entire Roma population, mainly because of the poor levels of education and information rather than their traditional behaviour.⁹⁷ Abortions are often perceived as the only realistic method of birth control and apparently one of the few exercises of autonomy of Roma women from Romania.⁹⁸

The Roma women's situation has a serious impact over the Roma children too, especially when we consider the role that Roma mothers play as the main caregivers within their communities. For instance, almost half of the Roma minors did not receive all the vaccines required by the National Immunization Program in spite of the fact that they are mandatory and provided free of charge.⁹⁹

The situation of children is also reflected in data on the mortality rate. The infant mortality, together with the life expectancy indicate the stage of overall development reached by a certain society, its welfare provision and health status, medical care and way of life.¹⁰⁰ On a national scale, studies in Romania pointed out that just looking at the Roma population as an indicator for

⁹³ Dorian Singh, 'Attitudes and Praxis of Traditional Forms of Health Care in a Post-Communist Romanian Romani Community', 29 in East European Anthropology Group, SOYUZ (the Research Network for Postsocialist Cultural Studies), *Anthropology of East Europe Review*, (2011), pp. 128-129.

⁹⁴ Centrul de Documentare și Informare despre Minoritățile din Europa de Sud-Est (CEDIMR-SE), 'Minoritățile din Europa de Sud-Est. Romii din România' [The Center of Documentation and Information on Minorities in South-Eastern Europe, 'Minorities from South-Eastern Europe. Roma from Romania'], available at <www.ardor.org.ro/content/ro/Romii_din_Romania.pdf>, visited on 7 May 2014, p. 28

⁹⁵ Marcella Corsi *et al*, *see supra* note 29, p. 114

⁹⁶ Valér Veres, *Difficulties in Researching the Demographic Behaviour of Ethnic Hungarian and Roma Communities from Romania*, Doctoral dissertation, Babes-Bolyai University Cluj-Napoca, Romania, p. 17, available at <www.ciqss.umontreal.ca/Docs/SSDE/pdf/Veres.pdf>, visited on 7 May 2014

⁹⁷ Mihaela-Daniela Preda, 'Demographic Behaviour of the Roma Population – Between Tradition and Modernity. Case study: Oltenia Region, Romania', 4:1 in University of Bucharest, *Human Geographies - Journal of Studies and Research in Human Geography* (2010), pp. 110-111

⁹⁸ The Roma Center for Social Intervention and Studies – Romani CRISS, 'Romani Communities and Access to Health in Romania', June 2009, p. 6

⁹⁹ Marius Wamsiedel and Cristina Jitariu, *see supra* note 92

¹⁰⁰ Werner Haug, Paul Compton *et al* (eds), *The demographic characteristics of national minorities in certain European states*, Volume 2 (Council of Europe Publishing, Germany, 2000), p. 185

assessing the infant mortality rate is not sufficient, while when correlated with education and unemployment it does show a corroborated negative effect. There is a parallelism between the geographic distribution of the infant mortality rate/ trend and the level of education.¹⁰¹

As an overall situation, Romania has the highest infant mortality rate in the EU, *i.e.* 9.8 deaths in 1,000 live births in 2010, while in Sweden, for instance, is was 2.5 deaths for 1,000 live births.¹⁰² However, in all the age groups the mortality is higher amongst the Roma population than the national trends.¹⁰³

An aspect to seriously consider when analysing the situation of Roma women's health status is the attitude of the medical institutions when dealing with ethnic Roma. The research identified two mechanisms of exclusion from the public health system: a. formal exclusion: this category comprises all the persons who do not fulfil the conditions laid down by law, such as non-insured persons¹⁰⁴; and b. informal exclusion: this may be termed as 'inclusive exclusion' referring to those who meet the requirements prescribed by law, but who for various reasons related to deficiencies of the entire health system, the local contexts, or because of social, cultural or ethnic prejudices, are excluded from health services.¹⁰⁵

2.2.2. Consequences in relation to the external environment

The convergence between the risk factors and consequences encountered at the individual level transposes the discussion into another dimension of social life, namely victimology and criminality. Usually, the general society is seeing the Roma minority solely from these perspectives and less from a general human rights point of view, most of the time based on assumptions in contradiction with the real situation. Criminality and victimology impress by their dramatic consequences and answer the peoples' appetite for arresting stories which are often used in a creative manner to justify stereotyping.

Nevertheless, both victimology and criminality are part of the Roma women's reality. Thus, this section will present the actual situation of Roma women at the two levels, based on relevant data and its interpretation. The topics chosen to be discussed below do not exhaust the subject, but only bring into attention the most common phenomena to either manifest amongst or be associated with Roma women.

¹⁰¹ Ana-Maria Burlea, 'Multilevel analysis on infant mortality in Romania', 39 in *Revista de cercetare si interventie sociala [Journal of Research and Social Intervention]* (2012), p. 109

¹⁰² Save the Children EU Office, 'Children's health and health equity. Policy brief', December 2012, p. 2

¹⁰³ European Roma Rights Centre, 'Hidden health crisis. Health Inequalities and Disaggregated Data', October 2013, p. 17

¹⁰⁴ See *infra* section 4.2.

¹⁰⁵ Lavinia Popp, 'Situția familială și sănătatea femeii de etnie rromă' [The Family And Healthcare Situation of the Roma Woman] in Gianina Catalina Prodan (coord.), see *supra* note 46, p. 81

2.2.2.1. Victimology

The entire socio-economic context discussed so far in relation to Roma women exposes the latter to particular risks of being subjected to anti-social behaviours. Some risks are specific to the private sphere, while other ones are sourced in either of the two types of environments, *i.e.* within or outside the community.

The term 'victimology' here refers to a general exploitation of Roma women's vulnerabilities against the latter by other 'privileged' individuals or to those cases when the socio-economic consequences trigger for a certain anti-social phenomenon affecting Roma women. The following subsections will go into further details to clarify the distinction between different types of victimology.

2.2.2.1.1. Domestic violence

The CoE's Steering Committee for Equality between Women and Men defines violence against women and its consequences to include: "the sexual abuse of little girls, rape (including marital rape), all forms of coercion and means of intimidation, punishment, relegation to gender-stereotyped roles, undermining of self-esteem or personality and impairment of physical or intellectual capabilities".¹⁰⁶ The same content of violence against women is given by the UN, whether occurring in public or in private life, including arbitrary deprivation of liberty.¹⁰⁷

In the field of gender-based violence, the overwhelming majority of available studies explore only the issue of domestic violence. Studies on sexual harassment, rape or other forms of sexual violence can hardly be found in Romania¹⁰⁸, though discourses of sexual crime are articulated in public spaces.¹⁰⁹ However, considering that Roma women are less present in the public sphere, including in the labour market (yet not less affected by such assaults when they participate in the public life), for the purpose of this paper our focus will be on domestic violence.

Above all, it is important to specify that domestic violence is not something specific only to Roma, but it is largely influenced by the general attitudes towards domestic violence. For instance,

¹⁰⁶ Steering Committee for Equality between Women and Men – Council of Europe, 'Ending domestic violence: action and measures', EG/BUC (99) 1, November 1998, p. 88

¹⁰⁷ Article (1), United Nations General Assembly, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993

¹⁰⁸ Raluca Maria Popa – Institute for Human Sciences, 'Quality in Gender+ Equality Policies. State of the Art and Mapping of Competences Report: Romania', 2007, p. 6

¹⁰⁹ Shannon Woodcock – The Havighurst Center for Russian and Post-Soviet Studies at Miami University, 'Ethnicity and Gender in Post-socialist Spaces: Romanian Women's Discourses of Sexual Violence', October 2002, p. 11

while studies show that 90 per cent of Europeans regard sexual violence against women in the couple as a serious problem, sexual violence seems to be more tolerated in Romania.¹¹⁰

There are many barriers in Romania which prevent women to report the violence to the authorities. The procedure in itself is a very arduous one, the victim has to make an official complaint and to provide a medical certificate attesting the injuries prior to any measure deployed by authorities against the aggressor.

Yet, these barriers affect Roma women disproportionately because of their position at the intersection between racism, poverty, sexism¹¹¹, and ethnical particularities. Different studies outline a few factors which put Roma women at risk, emphasizing the women's position within their family and community, and the strict division of gender roles.¹¹² Behaviours that challenge traditional conceptions of Roma men's authority and women's submissiveness and self-sacrifice for their partner and family are frequently cited as justifications for domestic violence: challenging a husband's opinion, refusing to do what he asks, cursing, failing to procreate, refusing sex, or behaving contrary to a boyfriend's or father's wishes. With regards to living conditions, Romani women identify financial worries, unemployment, and insecurity of the future, forced settlement, insufficient food, and alcohol abuse as sources of men's anger and frustration that are expressed through violence.¹¹³

Studies have found that the women steeped in patriarchal traditions may take for granted that failures to adhere to their assigned roles as wives, mothers and women justify violence against them.¹¹⁴ Domestic violence is not perceived as an infringement of their human rights.¹¹⁵ There interferes a normalization and internalization of patriarchal values. Domestic violence can be sometimes understood as part of the Roma women's identity, which worsens their situation.¹¹⁶ This aspect is better portrayed in relation to certain types of domestic violence, *i.e.* the economic and emotional violence.

¹¹⁰ Comparing Sexual Assault Interventions Project – European Commission Directorate-General for Justice, '*Romania Case Study Report*', January 2013, p. 4

¹¹¹ Alexandru Oprea, 'Reimaginarea justitiei sociale de jos în sus: Includerea femeilor rome' [Re-imagination of social justice from bottom to up: Inclusion of Roma women], pp. 8-10, available at <ladyfest-ro.pimienta.org/reimaginarea.pdf>, visited on 1 March 2014

¹¹² Surt Fundacio, 'Combaterea violentei domestice împotriva femeilor rome: prevenire, depistare, recomandari de interventie', [Combating domestic violence against Roma women: prevention, detection, and recommendations for intervention], September 2012, pp. 12-13

¹¹³ The European Monitoring Centre on Racism and Xenophobia, 'Breaking the Barriers – Romani Women and Access to Public Health Care', 2003, p. 59

¹¹⁴ Gabriela Adamesteanu, 'Conclusions by the general rapporteur in Romania' in Steering Committee for Equality between Women and Men, *see supra* note 105, p. 89

¹¹⁵ Surt Fundacio, *see supra* note 112, pp. 11-12

¹¹⁶ *Ibid.*, pp 12-13

According to the UN, “economic violence includes denying a woman access to and control over basic resources”.¹¹⁷ This approach may be seriously challenged, particularly within the traditional Roma communities, as the paper has previously emphasized on internalization of gender roles. Thus, the economic restrictions against women are mostly a consequence of both partners’ cultural heritage of strict gender roles, rather than a voluntary abuse.

As for the psychological/emotional violence, this is quite hard to be quantified because of the same rationale. Psychological violence includes “controlling or isolating the woman, and humiliating or embarrassing her”.¹¹⁸ So if the woman is being taught that she has to be humble, submissive from the very beginning of her life, how can then she consider herself the subject of psychological violence? She is naturally complying with her gender role, when the partner is also naturally exercising his control. This interrelation can be seen either as a duty for the women and a right for the man, or the other way around, *i.e.* a right for the women not to be in charged with providing income and not to have to take decisions, while a duty for the man to take the most important responsibilities of the household.

These last two forms of violence become thus a matter of perception and awareness (a subjective assessment), thus making them hard, if not impossible, to be sanctioned. However, the physical sufferance can be perceived by victims and assessed by authorities totally independent from the cultural background and education (through objective assessment), and thus easier to incriminate. Anyhow, domestic violence represents a serious societal problem; one that due to its features is seen by some specialists also as a form of torture.¹¹⁹

2.2.2.1.2. Human trafficking

Generally speaking, due to its illegal nature, the trafficking in human beings is difficult to quantify. Furthermore, the Romanian policy on data protection refrains the governmental authorities to release information disaggregated by ethnicity. Nevertheless, there have been identified several other highly relevant sources and even other sorts of official data which have been used to point at how Roma women get disproportionately affected by human trafficking.

The Palermo Protocol gives a very comprehensive definition on human trafficking:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power

¹¹⁷ United Nations, Secretary-General, ‘Ending violence against women. From words to action’, 2006, p. 43

¹¹⁸ *Ibid.*

¹¹⁹ Radika Coomaraswamy, ‘Fight against Domestic Violence – Government Obligations’, in UNICEF Innocenti Research Centre, *Innocenti Digest* (no. 10/2000), p. 10 *apud* American Bar Association, ‘Domestic violence in Romania: the law, the court system. Final Report’, April 2007, p. 5

*or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*¹²⁰

*Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*¹²¹

The CoE Convention explicitly covers all forms of trafficking, *whether national or transnational, whether or not connected with organized crime*¹²². Furthermore, the exploitative begging is included among the purposes of trafficking in the EU's *Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims*.¹²³

A report of the European Roma Rights Centre and People in Need (ERRC) which targeted six countries, including Romania confirmed that Roma are trafficked for various purposes, including sexual exploitation, labour exploitation, domestic servitude, organ trafficking, illegal adoption and begging. Roma women and children were the most represented regardless of the purpose of trafficking. In addition, certain practices which do not always constitute trafficking are often linked to Roma, such as prostitution/sex work, forced and child marriages etc.¹²⁴

Another report prepared for the EC makes a profile of the most vulnerable women. These are the poorly educated ones, living in areas of high unemployment and poverty, particularly those with problems of debt or drug dependency, or those who were abused as a child or raised in institutional care.¹²⁵ Some country reports evidence that women who are trafficked have a lower educational level than the national average for women.¹²⁶ The same 'push factors', which have not changed during the past ten years, are indicated by EUROPOL too.¹²⁷

The U.S. Embassy in Romania draws attention to the fact that Romania is the country of origin, transit and destination for trafficked persons, a significant number of victims trafficked in

¹²⁰ Article 3(a), United Nations General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000

¹²¹ *Ibid.*

¹²² Article 2, Council of Europe, *Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197

¹²³ European Parliament and of the Council, *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*

¹²⁴ European Roma Rights Centre and People in Need, 'Breaking the Silence. Trafficking in Romani Communities', March 2011, p. 12

¹²⁵ Colette Fagan *et al* – Directorate-General for Employment, Social Affairs and Equal Opportunities, 'Gender inequalities in the risks of poverty and social exclusion for disadvantaged groups in 30 European countries', July 2006, p. 17

¹²⁶ Chiara Crepaldi *et al* – Expert Group on Gender Equality and Social Inclusion, Health and Long-Term Care Issues – European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, 'Violence against women and the role of gender equality, social inclusion and health strategies. Synthesis report', September 2010, p. 81

¹²⁷ EUROPOL – Special Committee on Organized Crime, Money Laundering and Corruption, 'Trafficking in Human beings in Europe. The Perspective of EUROPOL', File no. 618190, July 2012, p. 4

Europe coming from Romania.¹²⁸ The UN Office on Drugs and Crime finds Romania as one of the hotspots in terms of the origins of human trafficking victims¹²⁹, this also being confirmed by a transnational study of several governmental institutions active in the field that dedicated an entire chapter to “Romania – country of origin”.¹³⁰

The International Organization for Migration confirmed that Roma women are more likely to become victims of human trafficking than non-Roma women.¹³¹ Gender distribution of trafficked victims for 2012 in Romania, the only official data available, show that 69 per cent are female and 31 per cent are male out of 554 persons.¹³² Europol states that the traffickers are often of the same nationality or ethnic origin as the victims.¹³³

Therefore, Roma women in Romania not only meet all the characteristics of the victims’ profile for human trafficking, but there is also certain data confirming their very high presence among victims. There are situations in which tradition is degraded, when also the traditional marriage and economic exchange are used in human trafficking.¹³⁴ This way, a traditional practice accepted by some members of the community can be transformed into an illicit activity.¹³⁵

2.2.2.1.3. Migration-related aspects

The EU enlargement towards Central and Eastern Europe occasioned a process of mass migration of the Romanian Roma minority to other countries. The official data on immigration flows for the period 2001–2010 in several European countries¹³⁶ shows that Romania had the

¹²⁸ Ambasada Statelor Unite la Bucuresti, ‘Raport privind traficul de persoane 2012’ [United States Embassy in Bucharest, ‘Report Regarding Human Trafficking 2012’], available at <romania.usembassy.gov/2013_tip_ro.html>, visited on 20 February 2014

¹²⁹ Fabrizio Sarrica – United Nations Office on Drugs and Crime, ‘Trafficking in Persons; Analysis on Europe’, 2009, p. 11

¹³⁰ See ‘Transnational study on the characteristics of policies in the field of trafficking of human beings for labour exploitation 2009-2011’, Romania having contributed to this study through the National Agency against Human Trafficking. The material is available at <[anitp.mai.gov.ro/en/docs/studii/Studiuper cent20Engleza.pdf](http://anitp.mai.gov.ro/en/docs/studii/Studiuper%20cent20Engleza.pdf)>, visited on 7 May 2014

¹³¹ International Organization for Migration, ‘Who is the next victim? Vulnerability of young Romanian women to trafficking in human beings’, August 2003, p. 41

¹³² Mihai Serban *et al* – Agentia Nationala Impotriva Traficului de Persoane, ‘Raport privind situația traficului de persoane în anul 2012’ [Mihai Serban *et al* – National Agency against Human Trafficking, ‘Report regarding the situation of human trafficking in 2012’], 2013, p. 9

¹³³ EUROPOL, ‘Knowledge product. Trafficking in Human Beings in the European Union’, Europol Public Information, File no. 2565-84, September 2011, p. 6

¹³⁴ Petre Petcut *et al* - Ministry of Education, Research and Youth and the UNICEF, *History and traditions of the Roma*, (RO Media Publishing, Bucharest, 2003), p. 102

¹³⁵ Nicoleta Bitu and Crina Morteau, *see supra* note 66, p. 37

¹³⁶ Albania, Bosnia and Herzegovina, Bulgaria, Hungary, Republic of Croatia, Czech Republic, Moldova, Montenegro, FYR of Macedonia, Romania, Republic of Serbia, and Slovakia.

highest migration rate, 2.5 times more than the average.¹³⁷ Romanian Roma migrated especially, although not only, to those countries with Latinate national languages similar to Romanian. If the proportion of Roma women with labour migration experience was relatively low before Romania's accession to the EU, now the percentage is more than double.¹³⁸ In general, Roma immigrants, especially women, are in a worse position than other immigrants or local Roma in the labour market, struggling to survive in a socially hostile environment.¹³⁹

By analysing the general situation of Romanian Roma in the country of immigration, one can easily notice that they usually follow the pattern from the country of origin, which either perpetuates their problems in the country of origin, or worsens them. As for the particular case of Roma women, the author finds that they cumulate an additional factor of vulnerability, *i.e.* the status of migrant, and often not a legal one, recalling the EC acknowledgment of ethnic minority women to be more exposed to different forms of violence¹⁴⁰. Their lack of human capital for employment (low educational level; low skill level - their work-based skills are not appropriate in a modern labour market, where computer literacy or foreign language proficiency are compulsory requirements; illiteracy, and sometimes even lower official language proficiency)¹⁴¹, discrimination, low social security in the country of immigration (as many of them do not register with the authorities), the daily struggle for survival in a totally new environment, precarious living conditions, and cultural challenges are only but a few of the aspects which amplify the tensions within the Roma community or with other members of the society. This considerably raises the risk of violence against Romanian Roma women in all of its forms.

In Spain for instance, as the country where Romanian Roma seem to integrate better, further hierarchies of representation are said to operate within the Roma community itself. Thus, Spanish-born Roma view themselves to be in a superior position relative to Roma groups that have migrated more recently from Eastern Europe. According to a representative from an ethnic minority organization, the Spanish Roma see Romanian Roma as somewhat more backward, almost as primitive natives. Because they themselves have evolved in a number of aspects, such as housing, they consider the Romanian Roma as inferior individuals. Roma women with Romanian background are said to be looked down upon because they use children to beg for money, whereas Spanish Roma women are now viewed as having left that behind. Furthermore, Romanian Roma

¹³⁷ Stoyanka Cherkezova and Ilona Tomova – United Nations Development programme Europe and the Central Asia, Bratislava Regional Centre, 'An Option of Last Resort? Migration of Roma and Non-Roma from CEE countries', 2013, pp. 11-12

¹³⁸ Collectif National Droits de l'Homme Romeurope, 'Roma Migrants from Bulgaria and Romania. Migration Patterns and and Intergartion in Intaly and Spain. Comparative Report. Eu Inclusive', 2012, p. 5

¹³⁹ Stoyanka Cherkezova and Ilona Tomova, *see supra* note 137, pp 70-71,

¹⁴⁰ Chiara Crepaldi *et al*, *see supra* note 126, pp. 81-82

¹⁴¹ Ana Maria Preoteasa, 'Roma Women and Precarious Work: Evidence from Romania, Bulgaria, Italy and Spain', 43 in *Revista de cercetare si interventie sociala [Journal of Research and Social Intervention]*, (2013), p. 158

women are isolated, since they can not speak Spanish. These representations illustrate the fact that within the marginalized groups, there are hierarchies of subordination which often place women in the position of a minority within a minority – in this case doubly so, as Romanian Roma women are a minority within an already existing minority of Roma women within the broader minority of Roma people in Spain.¹⁴²

Given their often illegal stay in the countries of immigration, their low integration, but especially the pervasive discriminatory practices in relation to the Roma minority, foreign authorities have subjected them to certain treatment at the edge of the law, such as expulsion or financially stimulated relocation to the country of origin.¹⁴³ These actions raised the stigma of Roma communities in Europe, their repercussions having a disparate impact upon the Roma female population whose integration is much lower than the male population. They can be perceived as the biggest burden upon the social systems in the country of immigration, especially as they can give birth to more children who are seen as another responsibility of the state of immigration. Despite the fact that in reality figures show that only a few of them manage to obtain social support and their exploitation of social services is rather a myth¹⁴⁴, states use isolated cases in order to justify their actions against Roma.

2.2.2.1.4. Child abandonment

Severe poverty, neglect, abuse, and insecure and sporadic social services have caused many children to run away or be abandoned by their families since the fall of communism. Abuse and inadequate living conditions in the institutions themselves drive many orphans to the street as well.¹⁴⁵

From the author's perspective, two main forms of separation can be distinguished – voluntary separation, *i.e.* when children run away, and abandonment, *i.e.* as a result of their family initiative. In Romania, social workers reported that the majority of street children are runaways from state care and that most are Romani children. In some cases, these children may be the

¹⁴² Line Nyhagen Predelli and Beatrice Halsaa, *Majority-Minority Relations in Contemporary Women's Movements. Strategic Sisterhood. Citizenship, Gender and Diversity* (Palgrave Macmillian United Kingdom, 2012), pp 150-151

¹⁴³ Germany paid more than 100 Roma to return to Romania in June 2009. In 2010 France also implemented a so called "Voluntary Repatriation Programme", which practically put out of sight the discriminatory nature of the selective expulsion of Romanian and Bulgarian Roma, as those actions were explained with an illegal settlements problem. Another official argument was the high rate of unemployment among those communities. Despite the international criticism, that was just the beginning. In 2012, Roma camps in Lille and Lyon were destroyed with the argument of their "unsanitary" conditions. Sarkozy's course was followed in the Netherlands. Other examples of such policies were the Roma repatriations from Denmark (23 Roma sent back to Romania), Sweden (50 Roma sent to Romania in 2010, 40 Roma in December 2013, and others in February 2014).

¹⁴⁴ Stoyanka Cherkezova and Ilona Tomova, *see supra* note 137, p. 158

¹⁴⁵ Meredith Gamble, 'Sexual Exploitation and Abuse of Street Children in Romania: Catalysts of Vulnerability and Challenges in Recovery', in *Second Annual Interdisciplinary Conference on Human Trafficking*, Paper 17 (2010), p 11

second or third generation born on the streets, invisible to the State due to their lack of identity papers. It was reported that many use drugs and work in prostitution.¹⁴⁶

As for the abandonment, there are no official records on Roma children left in state care, recalling that Romania has strict rules on data processing based on ethnicity, especially if such data can be considered disadvantageous in certain social circumstances. Thus, the investigator's inquiries to the representatives of the General Directorate of Social Assistance and Child Protection for data on the ethnical dimension of institutionalized children remained without result. Yet, there exist some tools for collecting ethnic data in practice. For example the evaluation forms used by social workers include a column to indicate ethnicity. These data do not appear to be systematically collected and they are not communicated to the central authorities. But there are suspicions that social workers provide unofficial information about the children's ethnicity.¹⁴⁷

According to the infield investigations of the ERRC, the presence of Roma children in foster homes goes to about 49 per cent¹⁴⁸, while a report of United Nations Children's Fund (UNICEF) from 2005 found that the percentage was 56.7¹⁴⁹. Also other sources indicate about the same proportion of Roma children among the general population of the foster homes, i.e. more than half.¹⁵⁰

Regarding the gender distribution of abandoned children who end up in placement institutions, there seems to be no concrete data. Nevertheless, by interpreting the general statistics from maternity units, there can be noticed a striking predisposition for baby girls to be abandoned, in some years going up to even 80 per cent.¹⁵¹ The personal experience of the author who worked as a volunteer in social projects in several placement centres in Iasi (Romania) confirms the overrepresentation of girls in state care.

The same conclusion can be taken if we also interpret the official statistics referring to gender distribution of the Roma minority. In this respect we can easily notice a totally atypical phenomenon in comparison with any other major ethnicity in Romania, except for the Turkish one, which, to some extent, shares the same cultural principles on women's status. According to the results of the 2002 Census, the female Roma population is lower than the male population, while at the Romanian and Hungarian ethnicities' levels women recorded a greater share than

¹⁴⁶ European Roma Rights Centre and People in Need, *see supra* note 124, p. 51

¹⁴⁷ Centrul European pentru Drepturile Romilor, 'Copiii romi din România aflați în grija statului' [European Centre for Roma Rights, 'Roma Children from Romania in State Care'], Iunie 2011, p. 27

¹⁴⁸ *Ibid.*, p. 28

¹⁴⁹ Ecaterina Stativă *et al* – UNICEF Romania, 'The Situation of Child Abandonment in Romania', 2005, p. 77

¹⁵⁰ *See* The University of Nottingham - Institute of Work, Health & Organisations, 'Child Abandonment and its Prevention in Europe, Nottingham', January 2012, p. 13

¹⁵¹ *Ibid.*, p. 283

men. This particularity manifests during the entire period of childhood and adulthood of Roma individuals, beginning to follow the normal trend only after the age of 54.¹⁵²

So census data interpretation reveals that there might be a predisposition of the Roma community to abandon girls, as a gender selection process after birth. But the findings based on census reports can also emphasize a high mortality rate among the Roma female population during the above mentioned periods due to precarious health conditions. In support of the latter hypothesis, there is information that in Romania most children who die within 24 hours after being admitted into hospital are girls of Roma ethnicity.¹⁵³

2.2.2.2. Criminality

Ethnic profiling and criminality rate are two aspects which, both the public and, more worrying, the authorities, consider to interrelate with each other. The approach puts forward dangerous criminological assumptions in an effort to scientifically justify a discriminative practice. This results into irrefutable marginalization of certain groups and inherently eliminates any chance of their genuine social integration.

As the next sections will prove, the Roma have been subjected to such approaches for a long time now and not only in Europe, the ethnic women being given a particular attention.

2.2.2.2.1. Ethnic profiling

Ethnic profiling is the utmost form of negative stereotyping which gets institutionalized by state authorities' practice. The procedure implies that the police, without any objective or reasonable justification, based on the characteristics of race, ethnicity, religion or national origin, and not on behaviour, makes decisions about who *might* be involved in criminal activity, when they carry out search, control, surveillance, or investigation activities.¹⁵⁴

The 'Gypsy criminality' is a concept used very often to define the phenomenon among Roma communities and the practice of ethnic profiling of Roma is spread worldwide. The United States has even elaborated a manual on the so called 'Gypsy criminality' which profiles the subjects by gender and origin. According to the manual, 'Gypsy male' physical characteristics are

¹⁵² See The National Institute of Statistics, 'Population and Housing Census, 18th -27th of March 2002. The ethnic and confessional structure. The Population by ethnicity, sex, age group, areas and counties', p.1, available at <www.anr.gov.ro/docs/statistici/statistici/t2.pdf>, visited on 8 August 2013

¹⁵³ See www.aibiworld.org/romania%E2%80%99s-neonatal-mortality-rate-2-3-times-higher-than-eu-average, the website of Associazione Amici dei Bambini, a non-governmental organization created by a movement of adoptive and foster families

¹⁵⁴ Organization for Security and Co-operation in Europe, 'Politia, romii si sinti: bune practici în consolidarea încrederii si înțelegerii' ['Police and Roma and Sinti: Good Practices in Building Trust and Understanding'], SPMU Publication Series, (vol. 9, 2010), p. 5

as follows: “Average height - 5’9” (tend to be stocky); average weight - medium to heavy; hair—dark; eyes—dark; complexion—olive to dark.” The ‘Gypsy female’ is characterized in a similar way.¹⁵⁵ The US Federal Bureau of Investigation also published an article in 1994 on ‘Gypsy criminality’ titled ‘Traveling criminals: take the money and run’, which was meant to describe the physical features of ‘Rom Gypsies and Travelers’ and their criminal behaviour. Here females are described as “wearing low-cut blouses and long skirts, with their hair fixed in a bun”¹⁵⁶. In relation to the crimes of ‘Rom Gypsies’, the article notes that:

*Gypsies often commit a slight variation of the home invasion scam, using only female group members to perform the con and to gain entry. Gypsies also specialize in fortune telling--often seeking out elderly victims or individuals who have recently undergone some emotionally distressing experience. Additionally, Rom Gypsies specialize in crimes known as store diversions.*¹⁵⁷

Ethnic profiling is common among many European countries too. For instance, Czech Airlines and employment agencies in the Czech Republic were discovered to have been identifying Roma with the letter ‘R’ on their records. Similar practices are said to be followed by police forces attempting to combat ‘Gypsy criminality’.¹⁵⁸ Moreover, a Czech NGO published on its website a material on Roma profiling. The material argues for the idea of a certain cultural predisposition of ethnic Roma to commit crimes.¹⁵⁹

The current practice of ethnic profiling in other European countries, especially in very developed ones, such as Sweden, France, the Netherlands etc., is proven by the expulsion measures against Roma, as those mentioned in the previous section on migration. In Sweden the mass media released information that the Police in Lund created a database with the names of 4,029 people of Roma origin, including 1,000 children in 2012. The register includes addresses, social security number and the genealogical tree of the subjects, though it is claimed that it does not have any data on criminality.¹⁶⁰ But this elicits the following question: why would the police itself create such a register, and not the Tax Office which is normally in charge with keeping the population’s information?

¹⁵⁵ Bruce H. Carter – South Carolina Criminal Justice Agency, *Gypsies, Travelers, & Thieves*, (South Carolina, 1987), p. 39

¹⁵⁶ United States Federal Bureau of Investigation, ‘Traveling criminals: take the money and run’, 1994, available at <www.thefreelibrary.com/Traveling+criminals%3A+take+the+money+and+run.-a015658023>, visited on 15 February 2014

¹⁵⁷ *Ibid.*

¹⁵⁸ Project on Ethnic Relations, ‘Roma and the law: demythologizing the gypsy criminality stereotype. Conference paper’, Paris, October 7-8, 1999, p. 13

¹⁵⁹ Roman Krištof, ‘Romany communities’ ways of living in relation to criminality (in the known territories of the Czech Republic and Slovakia’, p 5, available at <www.epolis.cz/download/pdf/materials_31_1.pdf>, visited on 3 March 2014

¹⁶⁰ ‘Suedia: Un registru al poliției cu 4.000 de romi provoacă indignare în rândul autorităților’ [‘Sweden: A register of the Police with 4,000 Roma raises indignation amongst authorities’], 23 September 2013, available at <www.b1.ro/stiri/externe/suedia-un-registru-al-poli-iei-cu-4-000-de-romi-provoaca-indignare-in-randul-autoritatilor-65973.html>, visited on 3 January 2014

As for Romania, in 1996 an extensive study on criminality among Roma titles *Gypsies. The unknown among us* by Tudor Amza¹⁶¹ was published. It is also believed that the concept of 'Gypsy Criminality' guided the elaboration of policies in Romania, where representatives of the Department for the Prevention of Criminality had a role in designing the national program for the Roma.¹⁶² The current operational police cooperation between the Ministry of Interior in Romania and its counterpart institution in France seem to actually have a focus on Roma communities. Officials claim for this cooperation does not to target any particular group. Yet it is presented also to address the 'Roma problem' in relation to criminality.¹⁶³

Moreover, the answer given by the Ministry of Interior to an interpellation titled "Roma destroy the image of Romania in EU and affect the accession to Schengen area. Any measures?" made by a member of the Romanian Parliament, refers only to the police cooperation between the two states on criminal matters.¹⁶⁴ Thus though the question was not specific at all on what affects Romania's image, which, for example, could have also been a problem of victimology (another area of the Ministry of Interior's competence), the institution automatically associated the question with 'Gypsy Criminality'.

The research will further refer to an article published on the website of the Prosecutors' Office attached to the High Court of Cassation and Justice in Romania. Among other issues, the article approaches the situation of a Roma community in Italy comprising Romanian citizens too, which is considered to be more integrated than others. These Roma participate in and organize cultural events and benefit from free accommodation and other social support. However, it is suggested that they still make a life from singing in public transportation, begging, speculation, theft, and prostitution.¹⁶⁵ The authors pejoratively call this community a "model community" about which the public at least learns something, while others remain anonymous until they

¹⁶¹ Tudor Amza, *Țigani necunoscuții de lângă noi [The Unknown Roma Near Us]* (Ed. Atlas Lex, București, 1996)

¹⁶² Project on Ethnic Relations, see *supra* note 157, p. 13

¹⁶³ See 'Titus Corlățean, în Franța: Nu există nicio legătură între problema romilor și aderarea României la Schengen' [Titus Corlățean in France: There is no connection between the issue of Roma and Romania's accession to Schengen], 5 October 2013, available at <www.b1.ro/stiri/externe/titus-corlatean-in-franta-nu-exista-nicio-legatura-intre-problema-romilor-si-aderarea-romaniei-la-schengen-66797.html> - website of a national Television, visited on 5 February 2014

¹⁶⁴ Ministerul Afacerilor de Interne, 'Raspuns catre parlamentul Romaniei privind interpelarea Domnului Deputat Iane Ovidiu Cristian catre Ministerul Afacerilor de Interne prin adresa 8903/DRP/09.10.2013', [Response to the Romanian Parliament on the inquiry made by Mr. Ovidiu Cristian Iane to the Ministry of Internal Affairs], Document No. 12301/23.10.2013, available at <www.cdep.ro/interpel/2013/r679B.pdf>, visited on 2 March 2014

¹⁶⁵ Rodica Mihaela Stănoiu and Aura Constantinescu – "Andrei Radulescu" Institute for Legal Research, Romanian Academy, 'Imigrantul care vine din est in spatiul de libertate, de securitate si de justitie al Uniunii Europene – intre tapul ispasitor si purtatorul dreptului fundamental la libera circulatie: cazul Romaniei' ['The Immigrant that comes from the East in the area of freedom, security and justice of the European Union - between the scapegoat and the holder of the fundamental right to free movement: the case of Romania'] pp. 5-6, available at <www.mpublic.ro/jurisprudenta/publicatii/imigrantul.pdf>, visited on 5 December 2013

commit serious offences.¹⁶⁶ So what else could be more eloquent than the opinion of two renowned academics expressed on the website of the highest investigative authority in Romania in proving the biases against the Roma minority lying behind criminal procedures?

The constant repetition of ethnic characteristics which have no, or only peripheral, relevance, contributes to the public discrimination against particular groups¹⁶⁷, especially when ethnicity is not mentioned in connection to the other minorities in similar contexts. Ethnic profiling affects both men and women belonging to the Roma minority. This makes those Roma who commit certain offences more obvious to the public, than any other offenders. The exception becomes the rule in the authorities and public's perception.

2.2.2.2.2. Criminality rate

The previous discussion requires certain clarifications regarding criminality among the Roma population. As probably expected, Romania has no recent studies on criminality among the Roma minority. However, this doesn't stop the general population and the governmental bodies from making detrimental assumptions on the pervasive practice of criminality by this particular group, mainly as a consequence of their ethnic characteristics. When reading in the newspapers or in the electronic media on the increase of petty crimes and affronts brought against the public decency, one views a new kind of crime, not as a characteristic of the social environment, but as an ethnic one called 'Gypsy criminality'.

The Romanian monograph on ethnic profiling from 1996, which is very often invoked nowadays, found that, after 1989, amid resurgent crime, criminality intensified among Roma. It was emphasized that up to 9 per cent of all crimes recorded in 1995 were committed by Roma. The same study indicated that 1.2 per cent of the adult Roma population at that time was in prison, the rate for the general population being 0.5 per cent.¹⁶⁸

According to the last unofficial information available on a forum of discussion (2006), the Roma population represented about 17 per cent of the total number of inmates¹⁶⁹. In March 2014, the National Administration of Penitentiaries in Romania (NAPR) reported a total number of 33,051 inmates to be incarcerated in Romanian prisons¹⁷⁰. At Roma minors' level, the imprisonment rate is said to go to 39.5 per cent, also according to the same unofficial sources.¹⁷¹ As for Roma women, there is no sort of data referring strictly to them in these particular junctures.

¹⁶⁶ *Ibid.*, p 5

¹⁶⁷ Susan Tebbutt, *Sinti and Roma: Gypsies in German-speaking society and literature*, (Berghahn Books, 1998), p. xii

¹⁶⁸ Tudor Amza, *see supra* note 161, p. 115 *et seq.*

¹⁶⁹ forum.softpedia.com/lofiversion/index.php/t146803-75.html - Romanian forum of discussions on various topics, visited on 24 August 2013

¹⁷⁰ <http://anp.gov.ro> – website of the National Administration of Penitentiaries in Romania, visited on 3 March 2014

¹⁷¹ forum.softpedia.com/lofiversion/index.php/t146803-75.html – *see supra* note 169

The only information comes from an NGO worker who made a personal assessment of the only Romanian women's prison (Târgsor). So it is said that the inmate population would comprise 65 per cent Roma females¹⁷², but the pertinence of the observation can be easily challenged, being based solely on subjective indicators, as in the case of the other categories of Roma inmates. The inquiries made to the Women's Penitentiary in Targdor for the purpose of this paper remained without a result, as the institution refused to provide data on the ethnicity of the incarcerated population.

As most of the discussions relate Roma minority to petty crimes, also known as "survival offending"¹⁷³, a direct link is created between criminality and the economic and social situation of Roma communities.

In lack of any other official or reliable information on the extent of criminality in relation to the Roma minority, this paper will have to rely on the monograph from 1996.

Based on the current available data, a criminality rate amongst Roma has been calculated. So if one keeps in mind that the Roma minority, according to the last census in 2011, officially represents about 3.08 per cent of the total population in Romania of 20,121,641¹⁷⁴, *i.e.* 621,573 of ethnic Roma, the fact that the poverty rate among Roma is four times higher¹⁷⁵, the 9 per cent coverage by Roma of the total crimes at national level (assuming that it kept the same pattern as provided by the 1996 monograph), and it is also considered the total number of inmates who are now serving their sentence for crimes against property (the ones considered to be common amongst Roma) in Romanian penitentiaries, *i.e.* 17,497¹⁷⁶, the resulting criminality rate is 2.53 for Roma and 0.81 for non-Roma in a total of 1,000 inhabitants. The formula applied is the one universally used in criminology.¹⁷⁷

¹⁷² Ruxandra Predescu, 'Lecție despre toleranță via Penitenciarul Târgsor' [Lesson of Tolerance at "Targdor" Prison], 12 March 2012, available at <pinteranduri.eu/2012/03/lectie-despre-toleranta-via-penitenciarul-targdor - blog - visited on of 24 August 2013

¹⁷³ Alex Glennie and Jenny Pennington – Institute for Public Policy Research, 'In transitions. Romanian and Bulgarian migration to the UK', December 2013, pp. 28-29

¹⁷⁴ Institutul National de Statistica, 'Populatia stabila pe sexe; dupa etnie – categorii de localitati, macroregiuni, regiuni de dezvoltare si judete' [The National Institute of Statistics, 'The Stable population by sex and ethnicity - categories of localities, macro-regions, and development regions and counties'], 2013, available at <www.recensamantromania.ro/rezultate-2>, visited on 7 March 2014

¹⁷⁵ United Nations Development Programme (ed.), *see supra* note 69, p. 14 [English version]

¹⁷⁶ *Ibid.*

¹⁷⁶ Administratia Nationala a penitenciarelor din Romania, 'Situatie privind infractiunile savarsite de persoanele existente in penitenciare si centre de reeducare la data de 31.10.2013' [National Administration of Penitentiaries in Romania, 'The situation of offenses committed by persons in prisons and rehabilitation centers by 31.10.2013'], available at <date.gov.ro/dataset/situatie-privind-infractiunile-savarsite-de-persoanele-private-de-libertate/resource/0ad3f58a-d450-4834-af87-f73166bb7cf3>, visited on 28 February 2014

¹⁷⁷ Valeriu Bujor and Octavian Bejan – Institutul de Stiinte Penale si Criminologie Aplicata, *Introducere in criminologie si securitate criminologica* [Valeriu Bujor and Octavian Bejan - Institute of Criminal Sciences and Applied Criminology, *Introduction to criminology and criminological security*](Chisinau 2013), p. 6

Recalling the poverty rate among Roma, the non-Roma criminality rate must be multiplied by 4 so that the data on non-Roma is objectively considered within similar socio-economic circumstances. This will result in a final criminality coefficient of 3.26. The difference between this final coefficient and the one for Roma is 0.73. It is fair now to actually call the final result *the coefficient of resistance against criminality* in favour of the Roma minority. The resistance coefficient would have been much higher if we were to consider what the EU¹⁷⁸ or Amnesty International¹⁷⁹ approximated in terms of the Roma population's size in Romania.

The research does not claim for an absolute value of truth of the above results, especially in lack of official data. Still, they can conclusively challenge the alleged ethnical predisposition towards criminality. The current investigation has rather found an incredible resistance of Roma against criminal behaviours in their daily struggle to meet their needs, both physical and social, by their own means.

Moreover, the assertions are reinforced by general data on criminality, thus exceeding the field of petty crime. If we take a parallel look at the general criminality coefficients for the year 2013 disaggregated by counties¹⁸⁰ and the territorial distribution of Roma population from Romania according to the 2011 Census¹⁸¹, one can notice that those counties with more than 4 per cent Roma population, *i.e.* 13 counties, have a low level of criminality, with the exception of 3 where the criminality is medium.

2.3. *Facts in a nutshell*

Women, their bodies and their social roles became symbols of the Roma minority. While the group awards women symbolic valences revolving around purity, the majority sees them as benchmark of the group's pre-modernity. This ideological conflict causes catastrophic restrictions in different spheres of Roma women's live.

The number of Roma women who attend formal education is far behind that of any other members of the society. Their fertility rate goes up to three times higher than that of non-Roma

¹⁷⁸ European Commission, *Commission staff working document accompanying the document 'Communication from the Commission to 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 final}*, SWD(2012) 133 final', p. 51

¹⁷⁹ Laura Renzi – Amnesty International Italy, 'Roma people in Europe: A History of Discrimination', in *Social Watch-Thematic Reports*, p. 41, available at <www.socialwatch.eu/wcm/Roma_a_long_history_of_discrimination.html , visited on 24 August 2013

¹⁸⁰ Directia de Ordine Publica, 'Coeficienti de criminalitate specifica la nivel de judete pe anul 2013' [Directorate of Public Order, 'Coefficients of specific criminality at county-level in 2013'], available at <www.igpr.ro/Ordine_publica/evaluarea_riscului_la_securitatea_fizica.htm, visited on 10 March 2014

¹⁸¹ www.incont.ro/infografice/evolutia-comunitatilor-etnice-in-romania-judetul-unde-sunt-cei-mai-putini-romani-12-6-din-populatia-totala.html - news website which made available an interactive map on population's distribution, visited on 10 March 2014

women, with poor access to prenatal and postnatal healthcare, resulting in serious health problems for themselves, but also for their children. Furthermore, high unemployment rate, informal labor, lack of identity documents are only but a few of the group's features that also prevent the access of Roma women to social security, condemning them to absolute poverty. Because of the situation on the previous social spheres, Roma women generally live in very poor conditions without chances to improve them by their own means, and they also lack property rights over the house. Their lack of human capital for employment aggravates their situation especially when they travel abroad. Without a source of income and often within a similar stigmatization environment, Roma women became victims of their own peers alike.

When vulnerable from so many points of view, Roma women became victims of different antisocial behaviors, within and outside their private sphere, ranging from domestic violence to human trafficking, and from child abandonment to undermining the individual's personality. The general Romanian society, manifesting resistance against diversity and having its own patriarchal structure, is amplifying the risks faced by Roma women lowering the chances for the latter to be properly protected.

Furthermore, given the fact that Roma women have a specific responsibility in perpetuating traditional values by children, and their deep internalization of the unequal status, they vividly transmit the pattern to future generations as standard way of living. This enhances ethnic individuals' feeling of belonging solely to the Roma group, as a reactive response to their exclusion by non-Roma. The current research has found this to be reflected entirely in the collective imaginary which emphasizes social control and intra-ethnic cohesion, not recommending inter-ethnic mixtures. So, in the context of interethnic relations, Roma women get to be perceived by and subjected to gendered norms in their own community and discriminated against by the majority population alike, becoming an instrument through which the two communities interrelate and compete with each other.

These phenomena are disclosing the very central role which Roma women play in the interethnic relationship, which should be acknowledged accordingly by the stakeholders by means of law and policies.

3. Conceptual Landmarks on Intersectional Discrimination

The findings in the previous chapter revealed the complex causal *nexus* between gender and ethnical vulnerabilities and the everyday reality of Roma women in terms of their immediate and extended social spheres. After thousands of years of sharing not only the same territory, but also the entire European history, with all its inhuman suffering, it is a paradox to still find ourselves, both Roma and non-Roma, still struggling to get along with each other. And the impact of this fight with our own misconceptions is consequently reflected in the entire society, where the balance is unfairly leaning against the minority.

Yet, within the human rights system to which Romania has joined years ago, the right to non-discrimination has been awarded its deserved status of core legal principle in the Romanian society. In this context, the present chapter will elaborate on how the principle is assessed in specific cases of intersectional discrimination on grounds of gender and ethnicity. Is the law receptive to such type of discrimination and how do justice-makers and other (quasi-judicial) bodies cope with it?

3.1. *Historical premises of current regulations*

Human rights and minority issues had been dismissed from the public or professional debate in Romania before 1989¹⁸² and replaced by a nationalizing process subjecting minorities.¹⁸³ In the 19th century nearly all states, also those in Western Europe, pursued such policies, being more prevalent in the inter-war period. The newly formed states conceived themselves as nation-states and envisaged to create their ethnically homogenous societies.¹⁸⁴ Furthermore, the subordinate/dominant relationship among ethnic groups in Romania also has a long and deeply-rooted history in which Romanians themselves were for a very long time a subjected people with no political rights, particularly in Transilvania, but also during various periods and under different conditions in the Danubian Principalities.¹⁸⁵

¹⁸² Gabriel Andreescu, 'Romanian research in the field of national minorities', in François Rüegg *et al* (eds), *Interculturalism and Discrimination in Romania. Policies, Practices, Identities and Representations*, (Lit Verlag, Berlin 2006), p. 282

¹⁸³ Zoltan Kantor, 'Nationalism, nationalizing minorities and kin-state nationalism', in François Rüegg *et al.*, *see supra* note 182, p. 256

¹⁸⁴ *Ibid.*

¹⁸⁵ Sam Beck, 'The Origins of Gypsy Slavery in Romania', 14 in *Dialectical Anthropology* (Kluwer Academic Publishers, Netherlands, 1989), p. 53

Nevertheless, in return for the acquisition of new territory after World War I¹⁸⁶, Romania was obliged to commit itself to international agreements relating to human rights and it was therefore hoped that the lives of minorities would improve¹⁸⁷. But the growth of fascism and the eventual outbreak of the war transformed these hopes into wishful thinking.¹⁸⁸ Adolf Hitler's opinion on Roma is well known. In Romania, Marshall Ion Antonescu's pro-Nazi government was vehemently anti-minority, and especially anti-Roma.¹⁸⁹ Immediately after World War II, the minorities' situation in Romania seemed to have finally taken the right turn. In February 1945 Romania adopted a special law on minorities' protection, providing that "the difference of language, religion, race or nationality, could not be an obstacle to any Romanian citizen to acquire or use civil and political rights, to be admitted in public positions, or to exercise any profession"¹⁹⁰.

Yet, during the Communist regime, especially in the 60's, nationalism became a first class ideological tool as a counteracting strategy against the Kremlin policy and a proof of Romania's independence.¹⁹¹

The 1989 Revolution that marked the end of communism in Romania was an auspicious occasion to bring national minorities back into public debate once again. The cultural and media discussions on minorities restarted in the first weeks of 1990 and preceded theoretical research on ethno-cultural diversity and related areas. The approach the Romanian legal doctrine took at that time was that non-discrimination should be sufficient to cover most concerns about ensuring a high standard of national minority rights.¹⁹² This particular view seems to have been embraced by the Constituent Assembly, transposed in the 1991 Romanian Constitution¹⁹³, and also entirely

¹⁸⁶ In 1918, at the end of World War I, Transylvania, Bukovina and Bessarabia united with the Kingdom of Romania. This union was ratified in 1920 by the Treaty of Trianon (for Transylvania, Crisan, Banat and Maramures) and the Treaty of Versailles (for Bukovina and Bessarabia). Romania also attach Quadrilateral, after the defeat of Bulgaria in 1913 in the framework of the Second Balkan War.

¹⁸⁷ David Crowe, 'The Gypsy Historical Experience in Romania' in David Crowe and John Kolsti (eds.), *The Gypsies of Eastern Europe*, (New York, M.E. Sharpe, 1991), pp. 66-69

¹⁸⁸ Donald Kenrick, 'How Many Roads?' 27:4, in *Index on Censorship - Gypsies: Life on the Edgem* (1998), p 139

¹⁸⁹ Human Rights Watch Helsinki, 'Destroying Ethnic Identity: The Persecution of Gypsies in Romania', August 1991, p. 13

¹⁹⁰ Art. 3, *Law no. 86 /1945 on the Status of Minority Nationalities*, in Official Gazette no. 30, 7 February 1945

¹⁹¹ Emanuelle Pons, *Tigani din Romania : o minoritate in tranzitie [Gypsies in Romania: A minority in Transition]* (Bucharest, Compania AltFel , 1999), p. 29

¹⁹² Gabriel Andreescu, *see supra* note 181, pp. 280-282

¹⁹³ *The Constitution of Romania*, *see supra* note 4

preserved after the law's revision in 2003. At the same time, the state's status being party to the UN¹⁹⁴, CoE¹⁹⁵ and EU¹⁹⁶ alike shaped the Romanian legislation on discrimination to a great extent.

3.2. *Hypostases of discrimination by law*

The Constitution, or the *Fundamental Law*, as it is also referred to in Romania, discusses equality and non-discrimination in general terms. Human dignity¹⁹⁷, along with unity and solidarity of Romanian citizens, and non-discrimination "on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin"¹⁹⁸ are set as basic principles in Romania. Equality on grounds of religion has to be corroborated with the freedom of conscience which is separately addressed by the Constitution as "freedom of thought, opinion, and religious beliefs".¹⁹⁹

"The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity"²⁰⁰, while the protection measures towards the above "shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens".²⁰¹ Equality before the law is also provided as a core constitutional principle, in the sense of not allowing privileges in favour of, or discrimination against any citizen before law and public authorities.²⁰² The Constitution prohibits "any instigation to [...] national, racial, class or religious hatred, including any incitement to discrimination".²⁰³

It can be noticed that the Constitution does not explicitly provide protection against discrimination on grounds of disability²⁰⁴; instead, without further clarifications within the body of the text or in any other law, it specifies about language, opinion, political adherence, property and social origin.

¹⁹⁴ Romania joined UN on 14 December 1955 by signing the Charter of the United Nations, San Francisco, 26 June 1945

¹⁹⁵ Romania was invited to join the CoE through Resolution 37/1993 of the Committee of Ministers (CM), adopted on 4 October 1993. On 7 October 1993, Romania signed the statutory documents and the European Convention on Human Rights and Fundamental Freedoms, on the occasion of the first CoE Summit held in Vienna.

¹⁹⁶ Romania became a Member State of the European Union on 1 January 2007, having previously signed in 2005 the Treaty of Accession to the EU, published in the Official Journal of the European Union L 157/ 21 June 2006

¹⁹⁷ Art. 1 (3), *The Constitution of Romania*, see *supra* note 4

¹⁹⁸ *Ibid.*, Art. 4 (1)

¹⁹⁹ *Ibid.*, Art. 29

²⁰⁰ *Ibid.*, Art. 6 (2)

²⁰¹ *Ibid.*, Art. 6 (1)

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ Recital 11, *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, published in the Official Journal L 303/2 December 2000

The constitutional provisions are being implemented by means of specific legislation adopted in August 2000, as the former are not self-enforcing. The *Anti-Discrimination Law*²⁰⁵ has been subsequently and significantly improved since 2000²⁰⁶ in order to comply with the EU's *Equality Directives*²⁰⁷.

The specific law defines discrimination in a more comprehensive approach as:

*... any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, beliefs, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms or any other rights recognized by law in the political, economic, social and cultural field or in any other fields of public life.*²⁰⁸

The same law also offers a definition of the disadvantaged groups, as “the category of persons that is either placed in a position of inequality as opposed to the majority of citizens due to personal identity differences or is faced with rejection and marginalization”.²⁰⁹ The law leaves the interpretation on the meaning of ‘disadvantaged group’ open to the national equality body or the courts deciding in discrimination cases²¹⁰. Overall, the *Anti-Discrimination Law* seems to take an inclusive view upon the problem of discrimination. The concept of ‘disadvantaged group’ and the ending formula of the protected grounds’ list, *i.e.* ‘any other criterion’, transformed the non-discrimination principle into a broader equality principle, especially when discrimination has a different ground than those listed above. Despite its merits on introducing the concept of ‘disadvantaged groups’, the *Anti-Discrimination Law* does not give clarification on the other relevant grounds.

The problem of disability is even taken outside the framework on non-discrimination and addressed as a ‘handicap’ in a separate law, where the term describes...

... those persons whose social environment hinders completely or limits their access to equal opportunities in the life of society, requiring protective measures for supporting their integration and

²⁰⁵ *Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination*, as republished in the Official Gazette no. 166/ 7 March 2014

²⁰⁶ See the website of the Deputies’ Chamber of the Romanian Parliament presenting the law’s evolution since 2000 onward: www.cdep.ro/pls/legis/legis_pck.htm_act?ida=25684, visited on 14 April 2014

²⁰⁷ *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, published in Official Journal L 180/19 July 2000; and *Council Directive 2000/78/EC*, see *supra* note 204

²⁰⁸ Art. 2, *Government Ordinance no. 137/2000*, see *supra* note 205

²⁰⁹ *Ibid.*, Art. 4

²¹⁰ The Romanian anti-discrimination system provides for a mixed system of venues: contraventional, civil and criminal. In case of an alleged act of discrimination, the victim of discrimination or any person interested can choose between filing a complaint with the National Agency for Combating Discrimination (the equality body), and/or filing a civil complaint for financial remedies with the court law, unless the act is criminal and in such a case the criminal law shall apply.

*social inclusion, as the social environment is not adapted to their physical, sensorial, psychological, mental and/or associated impairments.*²¹¹

For the particular situation of ethnicity, race and national origin, the grounds lack legal guidelines for their assessment. Not even the law on ratification of the UN *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD)²¹² provides for any sort of explanation. This has an impact on the very concept of ‘minority’. Considering that, among other criteria, minorities can be distinguished by the three criteria above, *i.e.* ethnicity, race and nationality²¹³, the national legislation in the field should have been a source for delineating these concepts.

The Constitution of Romania includes provisions for the protection of minorities²¹⁴, but they offer no explanation on what a national minority means by law. At this very moment, Romania does not have a unitary law on minority’s protection. The 1945 one became obsolete, while a new law is just a draft forgotten on the Parliament’s table since 2005. Meanwhile, there are about 200 documents related to minority rights²¹⁵, including international and regional instruments²¹⁶, but none of them provides a definition of minorities.

Nonetheless, some clarifications may come from specific bodies’ case law. The National Council for Combating Discrimination (NCCD)²¹⁷ has a mandate for overseeing the problem of discrimination and to take legal or policy action against such practices²¹⁸ as the national equality body. NCCD was found by a country report on discrimination to use the term ‘ethnic origin’ for

²¹¹ Art. 2, *Law no. 448/2006 on the Protection and Promotion of the Rights of Persons with a Handicap*, as subsequently amended and completed, republished in the Official Gazette, no. 1/3 January 2008

²¹² The United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, New York, 7 March 1966, has been accessed by Romania at 15 September 1970 by Decree no. 345, published in the Official Bulletin no. 92/ 28 July 1970

²¹³ Dezideriu Gergely - Centrul Romilor pentru Interventie Sociala si Studii, ‘Romii si Conventia Cadru pentru Protectia Minoritatilor Nationale’ [Dezideriu Gergely - The Roma Center for Social Intervention and Studies – Romani CRISS, ‘Roma and the Framework Convention for the Protection of National Minorities’], p. 12, available at <www.romanicriss.org/Romii%20si%20Conventia%20Cadru%20%20Protectia%20Minoritatilor%20Nationale.pdf>, visited on 15 April 2014

²¹⁴ Art. 6, *The Constitution of Romania*, see *supra* note 4

²¹⁵ See www.ispmn.gov.ro/page/despre-proiect - website of the Romanian Institute for Research on National Minorities, visited on 7 April 2014

²¹⁶ *E.g.* United Nations General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, A/RES/47/135, 18 December 1992; United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, New York, 7 March 1966; Council of Europe, *Framework Convention for the Protection of National Minorities*, Strasbourg, 1 February 1995; Council of Europe, *European Charter for Regional or Minority Languages*, Strasbourg, 5 November 1992 etc.

²¹⁷ Established by *Government Ordinance no. 137/2000*, see *supra* note 205

²¹⁸ *Ibid.*, Art. 16 *et seq.*

Roma, 'nationality' when referring to other cases of national minorities or foreigners, and 'race' when addressing to victims of African or Asian descent.²¹⁹

By looking at the equality body's case law presented in its latest report²²⁰, the institution does not seem to distinguish between nationality and ethnicity in the same way as implied by the above mentioned material. Actually, except for the status of foreigner, 'nationality' seems to appear in those cases incorporating a particular collective element with the potential to have a great echo within groups beyond national borders. In Romania, this element can be found solely in the case of 'transnational minorities'²²¹. Thus, 'nationality' was assessed as ground for discrimination in the following types of cases: displaying a banner with chauvinistic and xenophobic messages against the Hungarian minority²²²; using the Holocaust as a term of comparison with a stray dog a campaign for animal protection initiated by an NGO²²³; enrolling students in a German school based on undocumented family ties with ethnic Germans²²⁴.

Though indeed Roma situations are considered as those concerning 'ethnicity' in absolutely all cases referred to NCCD²²⁵, the criterion is not exclusively dedicated to Roma²²⁶. Thus, when the collective element is not present, the criterion applies also to transnational minorities, as in the following situations: discriminatory statements against a politician with Arab origins²²⁷; existence in the Romanian Dictionary of a certain word with no equivalent in other languages used as synonym for Jew, which have been considered by the NCCD to be rather offensive²²⁸; addressing offensive expressions to a particular individual belonging to the Hungarian minority²²⁹; inscription of the name of state institutions only in Romanian language in areas inhabited mostly by the Hungarian minority²³⁰.

²¹⁹ Romanita Iordache – European Network of Legal Experts in the Non-Discrimination Field, 'Report on Measures to Combat Discrimination. Directives 2000/43EC and 2000/78/EC. Country Report – Romania. State of Affairs up to 1st January 2013', 2013, p. 24

²²⁰ See Consiliul National pentru Combaterea Discriminarii, 'Raport de activitate 2012' [National Council for Combating Discrimination, 'Activity Report for 2012'], 19 June 2013, pp. 72-77

²²¹ For the purpose of this research, the formula of 'transnational minorities' emphasizes certain cumulative factors such as geographical origin, identity and cultural affiliations, which create a clear link between the minority and another State than Romania, but whose members are Romanian citizens

²²² National Council for Combating Discrimination, Decision no. 59/22 February 2012

²²³ National Council for Combating Discrimination, Decision no. 207/4 July 2012

²²⁴ National Council for Combating Discrimination, Decision no. 481/12 November 2012

²²⁵ *E.g.* Exclusion of Roma by real estate ads from the possibility to rent a room. National Council for Combating Discrimination, Decision no. 103/28 March 2012; discriminatory attitude at school against Roma children and the complainant, who was a female school mediator and professor of Romani language. National Council for Combating Discrimination, Decision no. 480/12 November 2012

²²⁶ See National Council for Combating Discrimination), *supra* note 2014, pp. 82-92

²²⁷ National Council for Combating Discrimination, Decision no. 88/29 February 2012

²²⁸ National Council for Combating Discrimination, Decision no. 2/11 January 2012

²²⁹ National Council for Combating Discrimination, Decision no. 222/11 July 2012

²³⁰ National Council for Combating Discrimination, Decision no. 440/29 October 2012

Overall, there is not a strict allocation of ‘ethnicity’ to Roma and of ‘nationality’ to foreigners and other minorities, as implied. But indeed Romanian case law always considers Roma in the framework of ethnicity. The term ‘race’ has not been found as the reason for discrimination as such in any of the cases administrated by NCCD in 2012.

Nevertheless, for practical purposes, the current research prefers not to strictly distinguish between ethnicity and race, which is in line with the general practice. CERD incorporates ethnicity into race²³¹, while the EU protects ethnicity and race through its regulatory framework on equality with no concrete distinction between the terms²³². Furthermore, the European Court of Human Rights (ECtHR)²³³ also prefers to refer the two concepts in strong connection, ethnicity being assessed to derive from race.²³⁴

As for gender-based discrimination, through specific instruments Romanian law is addressing the issue under the conceptual framework of ‘equality of opportunity’.²³⁵ “[E]quality of opportunity and treatment between men and women means to consider the different capacities, needs and aspirations of men and women, respectively and their equal treatment”.²³⁶

Both the *Anti-Discrimination Law* and the *Gender Equality Law* differentiate between direct and indirect discrimination. In the former instrument’s approach, direct discrimination is identical with the general definition it provides for the phenomenon.²³⁷ The *Gender Equality Law* seems to clarify the concept in a better manner: *direct discrimination means the situation when a person is treated less favourably than another one on grounds of sex in a comparable situation*.²³⁸ This definition transcends the strict gender discussion, having a general applicability in the field for a better understanding of discrimination.

According to the *Anti-Discrimination Law*, indirect discrimination may consist of...

...any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected grounds from para. 1, unless these practices, criteria and provisions

²³¹ Art. 1, The United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, New York, 18 December 1979, has been accessed by Romania at 15 September 1970

²³² *Council Directive 2000/43/EC*, see *supra* note 207

²³³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, was ratified by Romania in May 1994

²³⁴ “Ethnicity and race are related concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies on the basis of morphological features such as skin color or facial characteristics, ethnicity has its origin in the idea of societal groups marked in particular by common nationality, religious faith, shared language, or cultural and traditional origins and backgrounds. Discrimination on account of a person’s ethnic origin is a form of racial discrimination”. *Sejdić and Finci v. Bosnia and Herzegovina*, Applications nos. 27996/06 and 34836/06, Judgement of the European Court of Human Rights, Strasbourg, 22 December 2009, para. 43

²³⁵ *Law no. 202/2002 on Equal Opportunities between Women and Men*, republished in the Official Gazette no. 326/5 June 2013

²³⁶ *Ibid.*, Art. 1 (2)

²³⁷ See *supra* note 208

²³⁸ Art. 4 (a), *Law no. 202/2002*, see *supra* note 235

are objectively justified by a legitimate aim and the methods used to reach that purpose are appropriate and necessary.²³⁹

The *Gender Equality Law's* definition overlaps with the one of the former instrument, with emphasis on *those persons of a particular sex in relation to persons of the other sex*.²⁴⁰ Harassment is also the subject of both instruments. The *Anti-Discrimination Law* sets the general frame of reference, while the *Gender Equality Law* limits it to grounds based on sex²⁴¹.

*Harassment represents any behaviour on grounds of race, nationality, ethnic origin, language, religion, social status, beliefs, gender, sexual orientation, belonging to a disadvantaged group, age, disability, refugee or asylum seeker or any other criterion, which leads to establishing and intimidating, hostile, degrading or offensive environment.*²⁴²

Additionally, the *Gender Equality Law* particularly condemns sexual harassment.

*Sexual harassment means the situation when an unwanted behaviour with sexual connotation occurs, expressed physically, verbally or nonverbally, with the object or effect of violating the dignity of a person, especially when creating an intimidating, hostile, degrading, humiliating or offensive environment.*²⁴³

Direct and indirect discrimination, harassment and sexual harassment represent the forms of sexual discrimination which occur "at work or in another place in which a person operates, including any other less favourable treatment caused by rejection of such conduct by the person or the latter's submission to the conduct".²⁴⁴

Romanian Law does not contain express prohibition of discrimination based on perception or presumption of certain characteristics. Nor does Romanian law specifically address discrimination based on association with persons belonging to certain categories under the protection of the *Anti-Discrimination Law*. However, the latter is broad enough to allow interpretation of its provisions in order to cover also the above mentioned aspects. For this reason the analysis recalls the ending formula of the discrimination's definition, *i.e.* 'any other criterion'.²⁴⁵

Discrimination is sanctioned by the *Criminal Code*²⁴⁶. The problem is firstly addressed from the perspective of torture where civil servants are the perpetrators. Thus, any strong physical or psychological suffering caused by a civil servant based on discrimination is punishable by criminal

²³⁹ Art. 2 (3), *Government Ordinance no. 137/2000*, see supra note 205

²⁴⁰ Art. 4 (b), *Law no. 202/2002*, see supra note 235

²⁴¹ *Ibid.*, Art. 4 (c)

²⁴² Art. 2 (5), *Government Ordinance no. 137/2000*, see supra note 205

²⁴³ Art. 4 (d), *Law no. 202/2002*, see supra note 235

²⁴⁴ *Ibid.*, Art. 4 (g)

²⁴⁵ See supra note 205

²⁴⁶ *Law no. 286/2009 – The Criminal Code*, subsequently amended and completed, published in the Official Gazette no. 510/24 July 2009

law.²⁴⁷ The *Criminal Code* also sanctions the incitement to hatred or discrimination²⁴⁸, complying with the EU recommendations²⁴⁹, but also with CERD²⁵⁰, though not to the full extent²⁵¹. There still are extremist organizations, either civil or political, which make racial statements or engage in racial manifestations.²⁵²

Remedies in discrimination cases are made available through the *Civil Code*²⁵³ which recognizes the equality of all persons before the civil law, with some additional protected grounds.

*Race, color, nationality, ethnic origin, language, religion, age, sex or sexual orientation, opinion, personal beliefs, political or union affiliation, appurtenance to a certain social or disadvantaged category, property, social origin, intellectual level, and any other similar situation, have no influence on one's civil capacity.*²⁵⁴

3.3. Tackling Intersectionality

The Romanian regulatory system of protection against discrimination is a comprehensive one addressing discrimination on all grounds. Moreover, the criminal law, together with the contraventional and civil law regulations formally invested the relevant bodies with teeth in cases of discrimination. However, the intersectional type of

²⁴⁷ *Ibid.*, Art. 282 (1) d)

²⁴⁸ *Ibid.*, Art. 369

²⁴⁹ Council of the European Union, *Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law*, published in the Official Journal of the European Union L 328/55/6 December 2008

²⁵⁰ Art. 4, United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, New York, 7 March 1966: "States [s]hall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; [s]hall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; [s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination".

²⁵¹ CERD Committee particularly asked Romania to give full effect to Art. 4 of the relevant Convention. United Nations Committee on the Elimination of All Forms of Racial Discrimination, 'Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination. Romania', presented at the seventy-seventh session, 2-27 August 2010, CERD/C/ROU/CO/16-19, para. 13

²⁵² *E.g.* By using a dummy in a public manifestation in 2011, extremists belonging to the Hungarian Platoon, an organization affiliated to the Hungarian Guard, another extremist entity, symbolically 'hanged' Avram Iancu – a Romanian leader who fought against Hungarian troops in 1848 – 1949. This was meant to mark the 'Day of Hungarians from Everywhere'. See 'Avram Iancu, hanged by Hungarian extremists in Miercurea Ciuc', in *Evenimentul Zilei*, 16 March 2011, available at <www.evz.ro/avram-iancu-spanzurat-la-mircurea-ciuc-de-extremistii-maghiari-924102.html>, visited on 23 April 2014

²⁵³ *Law no. 287/2009 – The Civil Code*, subsequently amended, republished in the Official Gazette no. 505/15 July 2011

²⁵⁴ *Ibid.*, Art. 30

discrimination is characterized by a certain specificity of both the grounds and the impact of such a treatment.

The following section is allocated to the clarification of the intersectional discrimination and of the judicial bodies' perceptions of the concept in relevant cases. The section takes an expository approach on the current practice and it ends with a discussion of how the other entities cope with intersectional discrimination.

3.3.1. Conceptualizing the intersectional discrimination

The situation which Roma women face at all levels is based on two discriminatory grounds, *i.e.* ethnicity and gender. Both grounds operate in combination towards serious consequences. Within these circumstances, social exclusion has a twofold impact, both as a cause and a result. "Social exclusion completes the vicious circle perpetuating and reinforcing intersectional discrimination against Roma women, thus making it even more difficult to break this cycle".²⁵⁵

Having already depicted the complex interaction between gender and ethnicity at intra- and inter-ethnic relations and their impact upon the individual, group and society, which degenerated into or has been amplified by social exclusion, it is now the time to look into legal instruments able to protect this particular group.

Theories on equality identify two conceptual dimensions: "formal equality, which requires everyone to be treated in exactly the same manner, and substantive equality, which acknowledges differences in starting positions that might necessitate differential treatment in order to reach real, effective equality"²⁵⁶. The previous section has already presented the national framework of 'formal equality'. The research will further seek to identify how law complies with the 'effective equality's' requirements by addressing intersectionality between gender and ethnicity.

The current legislation approaches the discrimination on several grounds under the concept of 'multiple discrimination'. The concept was transposed at the national level following the wording of the EU *Equality Directives* which use 'multiple discrimination' to emphasize the particular vulnerability of women in regulation focusing on the protected grounds of race and ethnicity outside the labour market²⁵⁷ and also within the employment field in relation to religion or belief, disability, age or sexual orientation²⁵⁸. This EU equality framework is supplemented by

²⁵⁵ Kristina Koldinska, 'EU Non-Discrimination Law and Policies in Reaction to Intersectional Discrimination against Roma women in central and Eastern Europe' in Dagmar Schiek and Anna Lawson (eds), *European Union Non-Discrimination Law and Intersectionality. Investigating the Triangle of Racial, Gender and Disability Discrimination* (Ashgate Publishing Limited, Aldershot, 2011), p. 244

²⁵⁶ *Ibid.*

²⁵⁷ Recital 14, *Council Directive 2000/43/EC*, see *supra* note 207

²⁵⁸ Recital 3, *Council Directive 2000/78/EC*, see *supra* note 204

the *Goods and Services Directive*²⁵⁹ built around the principle of gender equality. Nevertheless, the *Equality Directives* do not provide any definition for ‘multiple discrimination’, thus leaving room for national interpretations.

Romania was found to be one of a very small number of countries in the EU to specifically regulate ‘multiple discrimination’²⁶⁰. The *Gender Equality Law* states that “multiple discrimination is represented by any discriminative act based on several criteria”²⁶¹, without elaborating more than the EU directives, but the Romanian *Anti-Discrimination Law*²⁶² has sketched the concept a little better and awarded it a particular sense of aggravating circumstance.

*Any distinction, exclusion, restriction or preference based on two or more of the criteria foreseen in para. 1²⁶³ shall constitute an aggravating circumstance in establishing the contraventional responsibility, unless one or more of its components is not subject to criminal law.*²⁶⁴

Still, the way in which Romanian legislation describes multiple discrimination does not reflect intersectionality in its real sense, as the paper will elaborate further, but rather other dimensions of discrimination.

The European Network against Discrimination (END) has divided multiple discrimination into ‘sequential discrimination’²⁶⁵, ‘additive discrimination’²⁶⁶, and ‘intersectional discrimination’, with emphasis on the latter, as the “heart of multiple discrimination”. Intersectional discrimination “occurs when the discrimination involves more than one ground and the grounds interact with each other in such a way that they are completely inseparable and cannot be disentangled”.²⁶⁷

The current research embraces the above understanding of intersectionality as a subcategory of multiple discrimination in which several grounds inextricably converge towards a particular vulnerability. Therefore, the mere identification of disparate grounds in discrimination does not necessarily indicate intersectionality, unless they all lead to a particular result. The legal doctrine has also identified ‘the node concept’ of intersectionality, where race, gender and disability make the most common ‘ingredients’ of this type of discrimination.

²⁵⁹ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, published Official Journal of the European Union L 373/37/21 12 2004

²⁶⁰ Out of 27 EU Member States analysed in 2013, only Austria, Bulgaria, Germany, Greece, Italy and Romania covered ‘multiple discrimination’ or ‘discrimination on more than one ground’ in their legislation. European Union Agency for Fundamental Rights, ‘Inequalities and multiple discrimination in access to and quality of healthcare’, 2013, p. 85

²⁶¹ Art. 4 (h), Law no. 202/2002, see *supra* note 235

²⁶² Government Ordinance no. 137/2000, see *supra* note 205

²⁶³ See *supra* note 208

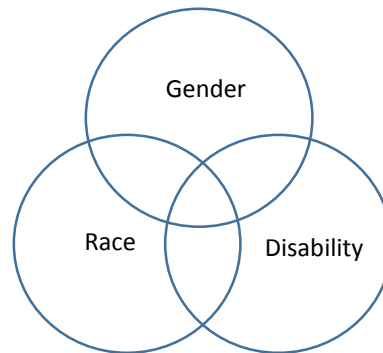
²⁶⁴ *Ibid.*, Art. 2 (6)

²⁶⁵ “[S]equential discrimination can occur when someone experiences discrimination on different grounds but on separate occasions”. European Network against Discrimination, see *supra* note 25, p. 4

²⁶⁶ “[A]dditive discrimination can occur where requirements are cumulative, for instance, a series of desired attributes are stated in a job description, so that the lack of one merely decreases the chance of success in getting the job, but the lack of a further characteristic will additionally decrease the chance of success”. *Ibid.*

²⁶⁷ *Ibid.*, p. 5

Figure 1. The node concept in intersectionality



Source: Dagmar Schiek, 'Multiple Discrimination', Centre for European Law and Legal Studies, School of Law, University of Leeds, presentation held at the European Academy of Law, 18 September 2012, p. 21

3.3.2. Intersectionality and the national practice

The limited perspective of the Romanian legislation on multiple discrimination is affecting the implementation of intersectionality by the national bodies providing decisions in cases on discrimination. Because the law does not clearly delineate the intersectionality within multiple discrimination, the way the courts and the equality body address the issue in relation to Roma women is detrimental.

The method generally used for proving intersectional discrimination is based on the 'single-ground approach'. The method requires for each ground of discrimination to be proven separately, also increasing the burden of proof on the complainant. This approach can totally hamper claims on intersectional discrimination, because discrimination on any of the single ground alleged may not be strong enough on individual basis.²⁶⁸ For instance, if a Roma woman would claim to have been subjected to both racial and gender discrimination, she has to prove these grounds one by one. So the victim must separately prove that the 'perpetrator' discriminated her against for being a Roma, and for being a woman, respectively. But the perpetrator may not have anything against all the Roma minority and neither against women in general, but only against a particular group of the minority, *i.e.* the Roma women. Yet, even when the grounds would be proven separately, this will only lead to the acknowledgement of multiple discrimination and not to that of intersectional discrimination, with a different content and impact.

A way to facilitate the process of tackling intersectional discrimination would be the use of relevant statistical data before the courts and the equality bodies. This could give the possibility of setting in place a presumption of intersectional discrimination in favour of the plaintiff

²⁶⁸ European Union Agency for Fundamental Rights, *see supra* note 260, p. 85

whenever gender and ethnicity would come together. However, due to the state policy on data processing, which is unitarily interpreted to forbid any use of data on ethnicity (except for the census reports that collect mere demographic information in this regard based on respondents' voluntary acknowledgement of their ethnicity), there is no precedent of such an evidential approach.²⁶⁹

This reveals another challenge in substantiating intersectionality, which is closely connected to the 'single ground approach', *i.e.* the need for a comparator. "The comparison that must be made according to the law²⁷⁰ makes a claim on more than one ground more difficult, because the more grounds that are applicable, the more complicated it becomes to find a comparator".²⁷¹ A country report on the implementation of EU *Equality Directives*²⁷² precisely held that the national equality body didn't develop clear comparators to be applied in cases of multiple discrimination²⁷³. Fortunately the international literature makes a great contribution by providing the required comparators in intersectional discrimination on grounds of sex and race.

According to END, the full extent of intersectional discrimination can be assessed only by relating to three types of comparators, *i.e.* diagonal, vertical and horizontal ones.²⁷⁴ Taking the END's theory as starting point, the current research used a Cartesian coordinate system to emphasize the position of Roma women in relation to the identified comparators. Roma women stay at the origin of the axes, their rights being equally linked to those of the other comparators. Because of their intrinsic ethnic and gender characteristics, the genuine investigation of their human rights' situation can only be achieved diagonally. In the assessment of the current research, a 'single axis' approach would automatically imply the negation of one of the intrinsic features. The diagonal comparator represents the maximum extent of effective human rights enjoyment at a given period of reference. At the same time, the graphic below also indicates the only way in which Roma women's rights have to be enforced, meaning only diagonally, with equal focus on gender and ethnicity.

²⁶⁹ Romanita Iordache, *see supra* note 219, p. 40

²⁷⁰ At national level, the need for a comparative element, or 'comparator', is made more obvious by the terminology used in Art. 4 (a), Law no. 202/2002, *see supra* note 235

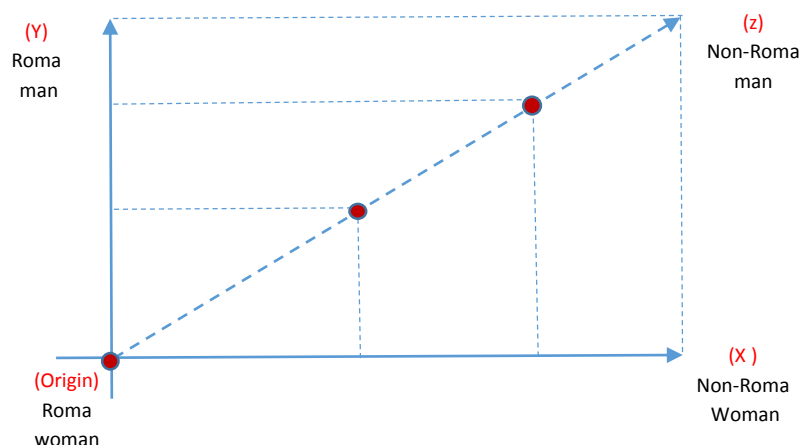
²⁷¹ European Union Agency for Fundamental Rights, *see supra* note 260, p. 85

²⁷² *See supra* notes 204 and 207, respectively

²⁷³ Romanita Iordache, *see supra* note 219, p. 29

²⁷⁴ European Network against Discrimination, *see supra* note 260, p. 5

Figure 2. Comparators in intersectional discrimination against Roma women



Source: based on the theory of the European Network against Discrimination, see supra note 260

As the Romanian system does not recognize intersectional discrimination as such, but only multiple discrimination, the relevant bodies' case reports relate only to this concept. Still, their data on multiple discrimination is intriguing. The last time when NCCD has officially reported cases of multiple discrimination was in 2004, while in a subsequent response to a requirement for public information it claimed to have provided decisions in several other cases during the following years.²⁷⁵ Whatever the cases' situation on multiple discrimination may be, their underreporting indicates the poor consideration given by NCCD to multiple discrimination, thus confirming the jurisprudential prevalence of single-ground approaches.

To provide insights on the actual practice of the national equality body in multiple discrimination and inherently on intersectional discrimination, this paper refers to a case which, due to the parties' status and the context in which the events took place, could not escape the public's eye.

In 2007 the President was accused of offending a journalist by calling her 'birdie'²⁷⁶ and 'filthy Gypsy'.²⁷⁷ From a legal point of view, the case raises several issues: firstly, the situation can be assessed in terms of discrimination based on the presumption that the journalist belongs to the Roma ethnicity; secondly, as the victim was a woman, the case also transcends into the area of gender discrimination, especially when recalling the pejorative term; thirdly, the association of the two words 'filthy' and 'Gypsy' could be a clear indication of stereotyping, enforcing the first argument on presumptive discrimination.

²⁷⁵ Romanita Iordache, *see supra* note 219, p. 29

²⁷⁶ A pejorative with strong sexual connotations addressed strictly to women

²⁷⁷ National Council for Combating Discrimination, Decision no. 92/23 May 2007

Nevertheless, the NCCD rejected the aggravating circumstance of multiple discrimination invoked by a Roma NGO²⁷⁸ and, based on the argument of stereotyping Roma, it found the President responsible for offending the minority. NCCD argued that the term ‘birdie’ can have other meanings than its pejorative connotations based on gender and its use as such was not able to be sanctioned²⁷⁹. So, not only were the grounds for intersectional discrimination eliminated in terms of gender and ethnicity, but in the end the decision also ignored the individual victim.

Another case, this time brought before a national court, *i.e.* the Craiova Court of Appeal²⁸⁰, also reveals serious problems when dealing with several grounds of discrimination. In this case, a female teacher refused to allow a Roma girl access to her classes.²⁸¹ The girl and her brothers were transferred at the same time amid the death of their mother. Because of their precarious situation, the father had to arrange for the children to be left in the care of some relatives in another village so that he could work abroad. The two brothers were both transferred to the same school and they were able to attend classes. For unspecified reasons during the transfer procedure, the girl was registered in a separate school where the teacher invoked arguments linked to the girl’s Roma ethnicity, the latter’s low intellectual capacity and the illegality of the transfer for justifying why she would not allow her to participate in classes.

The father of the Roma girl filed a criminal complaint, including a request for damages on grounds of the torts clauses of the *Civil Code*, as well as a complaint with the national equality body – NCCD. Surprisingly, NCCD considered that there was no sufficient evidence for discrimination and dismissed the case.²⁸² The prosecutor has applied an administrative fine of approx. EUR 250 for abuse in service damaging the individuals’ interests (so not exactly for discrimination).²⁸³ The first Court decided in favour of the plaintiff and awarded moral damages of approx. EUR 360 against the local school inspectorate and the teacher.²⁸⁴ All of the parties appealed and the Tribunal increased the remedies’ amount to EUR 5,000. The Court of Appeal finally and irrevocably awarded EUR 10,000 to the plaintiff.²⁸⁵

Though the case went in the plaintiff’s favour, it has to be mentioned that all the courts discussed the problem in mere racial terms, with no reference to multiple grounds for

²⁷⁸ *Ibid.*, p. 3

²⁷⁹ *Ibid.*, para. 1 *et seq.* from the conclusions

²⁸⁰ The courts of appeal are the superior courts of Romania. Currently, Romania has 16 courts of appeal which verify the legality and validity of the solutions delivered by the first courts and tribunals – 2nd courts, in their jurisdiction area. However, it can also act as the first court in certain circumstances. The solutions issued by the courts of appeal, except for the irrevocable ones, may be appealed to the Romania’s High Court of Cassation and Justice.

²⁸¹ *Daba Lenuta v. Ciurescu Pompiliu and Mehedinti County School Inspectorate*, Craiova Court of Appeal, Civil Decision no. 706/19 May 2009, File no. 8011/101/2009

²⁸² National Council for Combating Discrimination, Decision no. 335/15 October 2007

²⁸³ Prosecutor Office of Strehaia First Court (Judecatorie), Ordinance issued on the File no. 476/P/2007

²⁸⁴ *Ciurescu Pompiliu v. Daba Lenuta and Mehedinti County School Inspectorate*, Court of (Judecatoria) Strehaia, Civil Decision no. 143/29 January 2009, File no. 2088/313/2007

²⁸⁵ See *supra* note 281

discrimination. They did not even raise the question of why the girl had to be distributed to another school than her brothers. This could have given hints on a particular vulnerability. Probably the teacher's gender led to an automatic assumption that persons of the same sex can not discriminate against each other based on gender, which would be totally wrong in both single and multiple-ground approaches. Nevertheless, some additional elements, such as the victim's status of child and the teacher's assumption of her mental disability (presumptive discrimination) could have also indicated multiple (intersectional) discrimination. Until the teacher's refusal of access to classes, the girl's situation was not questioned at all by any of the parties. The Court of Appeal was the only one to invoke the *Civil Code* in conjunction with the *Anti-Discrimination Law* in its decision, yet only in respects of the civil courts' competence to investigate the issue²⁸⁶.

The current research has drawn the attention to the fact that Roma women are discriminated against not only in relation to non-Roma, but also within their own group. Based on cultural reasons, the community makes a clear distinction between gender roles and gives women a particular symbolic connotation to converge into ethnic identity elements.²⁸⁷ It is this very aspect that increases Roma women's vulnerability making their case unique. The intra-community intersection between gender and ethnicity acquires another more profound dimension, yet more difficult to tackle legally than the previous one.

The first challenge in this respect lies behind the traditional paradigm of rights. According to it, the function of human rights is to protect the individual against the State's interference in his or her liberty. Corresponding to this traditional view, there is also a particular interpretation of equality, as a negative duty refraining the State and private individuals from discriminating against (other) individuals. The paradigm concretizes itself into an 'individualization of rights' which assumes that "the subject is an autonomous and discrete individual, whose self-realization consists in protecting his or her freedom of choice and action".²⁸⁸ The individualization of rights is found to ignore the value of social interaction and the way in which breaches of rights operate in a collective and institutional way. This particularly points at gender inequality for which there is no single actor to blame. Usually courts lack the competence to deal with the 'polycentric issue' which arises once rights are located within their collective and institutional setting.²⁸⁹

So is the case of Roma women. At the intra-community level, the institutional setting is represented by the traditional norms, while the collective aspect is made by the community's obedience to these norms triggering the inequalities faced by Roma women. The practices inconsistent with human rights are found to be common objections against minorities and the

²⁸⁶ Art. 27 (1), *Government Ordinance no. 137/2000*, see *supra* note 205

²⁸⁷ See *supra* subsection 2.1.1.

²⁸⁸ Sandra Fredman, 'Changing the norm: Positive duties in equal treatment legislation', 12:4 in *Maastricht Journal of European and Comparative Law* (2005), pp. 369-398

²⁸⁹ *Ibid.*

state is usually asked to try to reach a balance in this respect²⁹⁰. What refrains the Romanian state from a specific intervention focused on Roma women might precisely be the ethnic identity connotations. From this perspective, the individualization of rights seems to be a more comfortable solution and thus less likely to change. Supposing a court or special body would try to address intra-community intersectionality by alleviating traditional norms, this would result in an antagonism between individual rights and the Roma identity reverberating in discourses on collective rights. “[W]here gender equality is portrayed as a western imposition, not appropriate for women in the minority community in question, [...] a key question concerns whose portrayal of the community view of gender is taken as authoritative”.²⁹¹

As a general observation, the existence in the national legal framework of provisions on minority and women’s rights²⁹² may be regarded as elements of substantive/effective equality in addition to the formal equality²⁹³, recognizing the need for special measures to remedy the disadvantages of minority groups and those of women. Such approaches are seen as developments of the traditional notion of equality.²⁹⁴ Yet, the conceptualization of multiple discrimination by national law does not literally reach ‘effective equality’ for Roma women either because of the ‘single-ground approach’, no effective implementation of ‘diagonal comparison’, or the ‘individualization of rights’. Lawyers are also often found responsible for their tendency of reducing the case’s complexity by choosing the strongest ground and neglecting the other ones and their convergence. There is also a general lack of awareness of most stakeholders.²⁹⁵

The current state of law and practice in Romania in terms of intersectionality could be translated into a *de facto* ignorance of the critical and unique situation of Roma women by the Romanian legal system, including legislative²⁹⁶, the national courts, the specialized bodies and legal professionals. The failure to consider the matter of Roma women at the maximum extent diminishes the act of justice in Romania premised by the right to a fair trial²⁹⁷ and equality before the law²⁹⁸.

²⁹⁰ Interights, *Non-Discrimination in International Law. A Handbook for Practitioners*, (London, 2011), p. 240

²⁹¹ Sandra Fredman, ‘Double Trouble: multiple discrimination and EU law’, 2 in *The European Network of legal Experts in the Non-Discrimination Field, European Anti-Discrimination Review*, (October 2005), p. 16

²⁹² See *supra* section 3.2.

²⁹³ Interights, see *supra* note 290, p. 239

²⁹⁴ *Ibid.*, p. 239

²⁹⁵ Dagmar Schiek – Centre for European Law and Legal Studies, School of Law, University of Leeds, ‘Multiple Discrimination’, presentation held at the European Academy of Law, 18 September 2012, p. 19

²⁹⁶ See discussion on the legal national framework on minorities lacking a definition of the concept of minority, a unitary law and a list of the recognized minorities, *supra* section 3.2.

²⁹⁷ Art. 21, *The Constitution of Romania*, see *supra* note 4

²⁹⁸ *Ibid.*, Art. 16

3.3.3. Patterns in broader contexts

The Romanian legislative framework is not the only one to be blamed for falling short in tackling intersectionality. In fact, Romania is just reproducing the international and regional lacunas in this regard. At the international level, there is a clear awareness of the intersection between race and sex, but very poor indication on how to achieve a situation of greater fairness and justice²⁹⁹. There are various structural issues in approaching intersectionality, as the case of CERD, which does not cover sex, and vice versa. The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) does not address race. Therefore, this does not allow for an individual complaint to the monitoring committees to raise claims on grounds of intersectional discrimination based on gender and race. The present state of the international legislation on discrimination verges on covering only separated (single) grounds³⁰⁰, while CRPD remains the only international agreement which explicitly recognizes multiple discrimination.³⁰¹

Despite the lack of a multi-grounded perspective on discrimination in the international system, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) admitted that “discrimination based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health status, age, class, caste, and sexual orientation and gender identity”.³⁰²

At the EU level, the same reproaches are being made. EU regulatory framework reflects an effort to balance the protection between different grounds of discrimination, but little preoccupation is given to how the different inequality dimensions interact and how an accentuated competition between different grounds in terms of level of protection could play out.³⁰³ The above section discussed how EU *Equality Directives* do not even mention ‘multiple discrimination’ within their binding part, except for recitals.³⁰⁴ Not even the recent EU developments indicate a greater lean towards mainstreaming gender into the other equalities.³⁰⁵

²⁹⁹ European Union Agency for Fundamental Rights, *see supra* note 260, p. 23

³⁰⁰ United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, New York, 18 December 1979. *See also Annex*

³⁰¹ Art. 1, United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, New York, 13 December 2006: “The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.

³⁰² UN Committee on the Elimination of Discrimination against Women, ‘General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women’, CEDAW/C/GC/28, 16 December 2010, para. 18

³⁰³ Lise Rolandsen Agustín, *Gender Equality, Intersectionality, and Diversity in Europe (Politics of Intersectionality)*, (Palgrave Macmillan, New York, 2013), p. 51

³⁰⁴ *See supra* notes 257 and 258

³⁰⁵ Dagmar Schiek, Jule Mulder, “Intersectionality in EU Law: A Critical Re-appraisal” in Dagmar Schiek and Anna Lawson (eds), *see supra* note 255, p. 272

For instance, the *Equality Directive in Self-employment*³⁰⁶ nowhere brings the discussion on multiple discrimination or intersectionality.

The European Court of Justice (ECJ) was recently referred a case on multiple grounds for discrimination, including sex, age and ethnic origin which could have occasioned a precedent and called upon states to effectively enforce the protection against multiple discrimination. The plaintiff was a Russian women who applied for a job in Germany. Though at a first analysis she seemed to have fulfilled all the eligibility criteria advertised for the position, the woman claimed that the employer has never called her for an interview and neither did he give the woman a reason for rejecting her application. The Court showed availability for considering all these discrimination grounds invoked next to each other, but given the fact that the *Equality Directives* do not put an obligation for a company to justify its recruiting choices and to give feedback to those rejected. So there was no document issued by the employer to prove the mistreatment and consequently the Court could not make a case on discrimination on the alleged grounds.³⁰⁷

As for the CoE, both the ECHR³⁰⁸ and additional Protocol 12³⁰⁹ prohibit discrimination on several grounds, making a claim for more than one ground theoretically possible. This indicates a great potential for the CoE to combat multiple discrimination. However, the problem of multiple discrimination, especially in the form experienced by minority women, has not been acknowledged yet either by ECtHR, the European Commission of Human Rights (EComHR), or the European Commission against Racism and Intolerance (ECRI), a worrying fact notified by several organizations alike.³¹⁰ CoE only disposes of instruments of potential use in combating multiple discrimination, but it did not issue any document, recommendation or information which could at least, in part, support in tackling intersectional discrimination.³¹¹

All in all, the international and the regional human rights systems lack a precedent which could lead to a formal recognition of the intersectional discrimination and consequently to an enhanced attention for the group at stake. In these circumstances, the discussion will assess how

³⁰⁶ *Council and European Parliament's Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC*, published in the Official Journal of the European Union, 15 July 2010

³⁰⁷ *Galina Meister v. Speech Design Carrier Systems GmbH*, Case C-415/10, Judgment of the European Union Court of Justice (Second Chamber) of 19 April 2012 19 April 2012

³⁰⁸ Art. 14, *see supra* note 233

³⁰⁹ Art. 1, Council of Europe, *Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination*, 4 November 2000

³¹⁰ *E.g.* European Union Agency for Fundamental Rights, *see supra* note 260, p. 23; Human Rights Commission - Ontario, 'Other approaches to multiple grounds', available at <www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims/other-approaches-multiple-grounds#fn39>, visited on 23 April 2014

³¹¹ Kristina Koldinska, 'EU Non-Discrimination Law and Policies in Reaction to Intersectional Discrimination against Roma women in central and Eastern Europe' in Dagmar Schiek and Anna Lawson (eds), *see supra* note 255, p. 257

the affirmative action manages to take over and to alleviate the jurisprudential shortcomings by expressly approaching the intersectional discrimination.

4. Affirmative action

By recognizing ingrained patterns of discrimination and exclusion, the affirmative action stands out as one of the few existing tools for improving the position of Roma women towards breaking out the *coloured feminization of poverty*, gaining access to institutional power sources, and to elevate their status.³¹² The conceptual dimension of the ‘affirmative action’ is expressly associated with “a definition of fairness”³¹³ and it encompasses...

*...any measure, beyond simple termination of a discriminatory practice, that permits the consideration of race, national origin, sex, or disability, along with other criteria, and which is adopted to provide opportunities to a class of qualified individuals who have either historically or actually been denied those opportunities and/or to prevent the recurrence of discrimination in the future.*³¹⁴

Without addressing intersectionality...

*...women of colour are boxed into either race- or gender-based identities. If the intersectionality of race and gender is not recognized, their lived realities are bisected and fractured. The traditional power structure from which women of colour are excluded or within which they are marginally represented exacerbates the intensified discrimination arising out of notions of intersectionality and multiple consciousness. Power is typically acquired through education, money, and family and social connection.*³¹⁵

Thus, the affirmative action includes policies and legislative measures that take into consideration different grounds for discrimination and that aim at correcting certain ‘social imbalances’ by promoting an underrepresented group.³¹⁶

4.1. Legitimizing the intervention within the human rights system

The words ‘affirmative action’ do not appear in the *Universal Declaration of Human Rights* (UDHR), but the Declaration supports the concept through remedial justice³¹⁷ and economic equity³¹⁸. Its provisions on education are more specifically into the rationale, requiring for

³¹² Laura M. Padilla, *see supra* note 1, p. 847

³¹³ U.S. Commission on Civil Rights – Office of the General Counsel, ‘Briefing Paper for the U.S. Commission on Civil Rights: Legislative, Executive and Judicial Development of Affirmative Action’, Washington, D.C., March 1995

³¹⁴ *Ibid.*

³¹⁵ Laura M. Padilla, *see supra* note 1, p. 849

³¹⁶ Leyla-Denisa Obreja, ‘Affirmative action: friend or foe?’, 16 April 2014, available at <www.opendemocracy.net/leyladenisa-obreja/affirmative-action-friend-or-foe>, visited on 17 April 2014

³¹⁷ Art. 8, United Nations General Assembly, *Universal Declaration of Human Rights*, adopted and proclaimed by resolution 217 A (III) of 10 December 1948: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

³¹⁸ *Ibid.*, Art. 22: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.

‘promotion’ of “understanding, tolerance and friendship among all nations, racial or religious groups”.³¹⁹

There are several instruments that expressly call for the use of some ‘special measures’, which is a term assimilated to affirmative action. The *International Covenant on Civil and Political Rights* (CCPR)³²⁰ has been interpreted to require states to take specific action in eliminating those conditions that cause or help the perpetuation of discrimination, this involves preferential treatment.³²¹ The International Labor Organization’s *Convention on Discrimination* also states that special measures or assistance will not constitute discrimination.³²² CEDAW also approves temporary special measures for achieving effective equality between genders.³²³ Furthermore, the CEDAW Committee is expressly urging Romania to implement “targeted measures”³²⁴ for Roma women within specific timetables, in all areas, and to monitor their implementation. The CERD Committee also calls for “appropriate measures to ensure that the economic crisis doesn’t affect vulnerable groups, including Roma”³²⁵, thus both monitoring committees make the affirmative measures very specific in terms of gender and harsh economic circumstances, respectively.

At EU level, the two specific *Equality Directives* also allow for affirmative measures. ‘Positive action’, as conceptually promoted by the EU, has been introduced in both the Directive

³¹⁹ *Ibid.*, Art. 26 (2)

³²⁰ Art. 2 (2), United Nations General Assembly, *International Covenant on Civil and Political Rights*, New York, 16 December 1966, signed by Romania on 27 June 1968 and ratified on 9 December 1974: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant”.

³²¹ Karen K. Narasaki, ‘Affirmative Action in a Global Context: Diversity and the Intersection of Civil and Human Rights’, paper presented at the 2004 Diversity Symposium, Equity, Affirmative Action and Diversity, 1 September 2004, Lansdowne, p. 3

³²² Art. 5, International Labour Organization, *Convention concerning Discrimination in Respect of Employment and Occupation*, Convention No. 111, 25 June 1958: “Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination. Any Member may, after consultation with representative employers’ and workers’ organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination”.

³²³ Art. 4, United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, see *supra* note 297: “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory”.

³²⁴ UN Committee the Elimination of Discrimination against Women, see *supra* note 302, para. 27

³²⁵ United Nations Committee on the Elimination of All Forms of Racial Discrimination, see *supra* note 251, para. 10

on racial discrimination³²⁶ and the one on gender equality in employment³²⁷. Furthermore, the *Treaty on the Functioning of the EU* clearly provides for the possibility of affirmative measures, by introducing the concept of “policies and activities” for combating discrimination.³²⁸

The ECHR keeps the same approach as the other entities in respect of affirmative action and, in its Protocol no. 12, explicitly confirms state’s possibility to take this type of approach on discrimination issues.³²⁹

The inquiry will now proceed into analysing how affirmative measures are being implemented at national level in relation to Roma women, given the fact that such incentives are being legitimized by the entire human rights system to which Romania is party.

4.2. *The suitability of the national legal approach on affirmative action for Roma women*

The *Anti-Discrimination Law* defines affirmative action as an exception from the prohibition against discrimination, covering all the protected grounds.

*Measures taken by public authorities or by legal entities under private law in favour of a person, a group of persons or a community, aiming to ensure their natural development and the effective achievement of their right to equal opportunities as opposed to other persons, groups of persons or communities, as well as positive measures aiming to protect disadvantaged groups, shall not be regarded as discrimination under the ordinance herein.*³³⁰

The *Social Assistance Law*³³¹ represents the general framework in the field of affirmative action, being in accordance with both the constitutional provisions on the social character of the state³³² and the national practices in other countries alike. Social protection systems are considered to play a significant role in eradicating poverty and achieving inclusive development. Social assistance aims at offering the poorest and most vulnerable individuals a basic level of

³²⁶ Art. 5, *Council Directive 2000/43/EC*, see *supra* note 207: “[w]ith a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin”.

³²⁷ Art. 2 (5), *Council Directive 2000/78/EC*, see *supra* note 204: “[t]his Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others”.

³²⁸ Art. 10, European Union, *Consolidated versions of the Treaty on the Functioning of the European Union*, 2012/C 326/50, published in the Official Journal of the European Union, 26 October 2012. According to the Treaty, “[i]n defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

³²⁹ Preamble, Para. 3, Council of Europe, *Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination*, see *supra* note 309: “the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures”.

³³⁰ Art. 2 (9), Government Ordinance no. 137/2000, see *supra* note 205

³³¹ Law no. 292/2011 – Law of Social Assistance, published in the Official Gazette no. 905/20 December 2011

³³² Art. 3 (1), The Constitution of Romania, see *supra* note 4

consumption (and, as a consequence, aggregate demand in economy) and the means for accessing public goods. Social protection systems also contribute in redistributing wealth, guaranteeing social justice and ensuring the right to a decent standard of living³³³.

The *Social Assistance Law* in Romania “acts to prevent, mitigate or eliminate the temporary or permanent situations that lead to poverty and social exclusion of individuals, families, groups or communities”.³³⁴ The system has a twofold dimension, encompassing a subsystem of social assistance benefits and one of social services.³³⁵ The former represents a supplementary or substitutive method to the income obtained through work in order for the beneficiaries to have a minimal standard of living and to promote social inclusion.³³⁶ They support the children and their families, persons with special needs and also address ‘special situations’.³³⁷ Social services represent those activities meant to respond the individual, family, or group’s social and special needs in the view of overcoming the difficult situations, prevention and combating the risk of social exclusions, promotion of the social inclusion and increasing the quality of life.³³⁸ Social services cover a wide range of vulnerable persons, such as children and/or families, disabled persons, the elderly, victims of domestic violence, street persons, persons with different addictions, and victims of human trafficking, inmates, persons criminally sanctioned by educative measures or non-custodial sentences under the supervision of the probation services, persons with mental impairment, persons living in isolated communities, long-term unemployed individuals, but also the beneficiaries’ caregivers.³³⁹ Furthermore, the overall social protection in Romania has two components: social assistance within the contributory system, and non-contributory social assistance³⁴⁰.

The *Social Assistance Law* is offering a comprehensive context of social protection by conceptualizing different elements of it. The law distinguishes between social inclusion and social integration. Social inclusion refers to multidimensional actions taken in the field of social protection, employment, housing, education, health, information, communication, mobility, security, justice and culture for combating social exclusion and ensuring the active participation of people in all economic, social, cultural and political aspects of Romanian society³⁴¹. Social

³³³ www.sustainabledevelopment.un.org/index.php?page=view&type=9500&menu=1562&nr=3488 – the website of the UN Division for Sustainable Development, visited on 18 April 2014

³³⁴ Art. 2 (1), Law no. 292/2011, *see supra* note 331

³³⁵ *Ibid.*, Art. 2 (2)

³³⁶ *Ibid.*, Art.7

³³⁷ *Ibid.*, Art.9 (1)

³³⁸ *Ibid.*, Art. 27

³³⁹ *Ibid.*, Art. 30 (2)

³⁴⁰ *Ibid.*, Art. 6 (ee)

³⁴¹ *Ibid.*, Art. 6 (cc)

integration limits the interrelation between the individual or the group and the social environment through which parties should reach a functional balance³⁴².

The entire process of social intervention is justified by two types of needs, as defined by the above law. The social needs describe all the essential requirements in ensuring the strict living conditions necessary for people's social participation or their social integration.³⁴³ The special need refers to those requirements essential for the social integration of persons who, because of their health conditions, either genetic or acquired during their life, have a disability, and also people who, for various social reasons, are disadvantaged in their personal development.³⁴⁴

The national system of social assistance is being governed by an extensive set of principles, such as social solidarity, human dignity, focus on the individual's situation, private-public partnership, transparency, efficiency, equal opportunities, non-discrimination etc.³⁴⁵ The last principle, according to which all vulnerable persons are entitled to measures and actions of social protection without differentiating on the same grounds listed by the *Anti-Discrimination Law*³⁴⁶ anticipates the fact that the affirmative measures under the current *Social Assistance Law* disregard intersectionality.

The intersectionality between ethnicity and gender is based on innate particularities. By not positively discriminating on either of these grounds, not to mention their convergence, the national social protection system is focusing on combating social difficulties rather than preventing them by a risk approach, which is in contradiction with its declared goals³⁴⁷. It is true that many Roma women may be eligible for some type of social protection, but only because of their already precarious situation which the law do not assess in terms of ethnical or gender vulnerabilities.

The Romanian legal framework contains other provisions on affirmative measures that address specific areas of social life in relation to certain criteria. For instance, the *Gender Equality Law* requires the measures to promote equal opportunities and treatment between men and women to be applied in all levels of public and private sectors³⁴⁸. It also obliges all institutions, central and local public authorities, civil and military, economic and social units and political parties, trade unions and employers' organizations and other non-profit entities to take measures in promoting and supporting the balanced participation of women and men in leadership positions and at the decision-making level.³⁴⁹

³⁴² *Ibid.*, Art. 6 (dd)

³⁴³ *Ibid.*, Art. 6 (w)

³⁴⁴ *Ibid.*, Art. 6 (x)

³⁴⁵ *Ibid.*, Art. 5

³⁴⁶ *Ibid.*, Art. 5 (i)

³⁴⁷ *See Ibid.*, Art. 2 (1)

³⁴⁸ Art. 2 (1), Law no. 202/2002, *see supra* note 232

³⁴⁹ *Ibid.*, Art. 21 (1)

The *Law on Protection of Persons with Handicap* introduced fiscal benefits for those employers hiring disabled persons³⁵⁰ and also for the employees belonging to the protected category³⁵¹. Furthermore, it also imposed a minimum per cent from the personnel's capacity to be obligatorily allocated to handicapped persons when the company has more than 50 employees.³⁵² According to their type of handicap³⁵³, these persons are entitled to certain social benefits.³⁵⁴

By the same manner, the *Housing Law*³⁵⁵ provides for access to social housing facilities for persons with low incomes, youth below 35, youth older than 18 coming from social protection institutions, persons with disabilities, retired persons, veterans and widows of war veterans.³⁵⁶

The *Law on Unemployment*³⁵⁷ provide protection measures for unemployed citizens. The law includes provisions on unemployment allowances and different services available for finding employment and stimulating the labour market. The law identifies a more specific vulnerable group, *i.e.* 'youth at risk of marginalization', referring to unemployed youth between 16 and 26 years old who find themselves in the following situations: persons with disabilities; those without a family to financially support them; youth with dependent children; persons who executed one or more custodial sentences or who are victims of human trafficking.³⁵⁸ The law establishes a special status for the employer hiring youth at risk of social marginalization, *i.e.* 'insertion employer'³⁵⁹.

Grants, fiscal benefits and advantageous credits awarded to employers are generally used for stimulating the employment rate among both youth and other categories of unemployed. The affirmative-action-oriented character of the *Law on Unemployment* is highlighted by the opening statement that the "[m]easures and special rights granted by this law to certain categories of disadvantaged persons do not represent discrimination".³⁶⁰

³⁵⁰ Art. 84, *Law no. 448/2006 on the Protection and Promotion of the Rights of Persons with Handicap*, as subsequently amended and completed, republished in the Official Gazette, no. 1/3 January 2008

³⁵¹ *Ibid.*, Art. 83

³⁵² *Ibid.*, Art. 72 (2)

³⁵³ *Ibid.*, Art. 86: the handicap can be qualified as light, medium, severe, or accentuated.

³⁵⁴ *Ibid.*, Art. 72 (2)

³⁵⁵ *Law no. 144/1996 – The Housing Law*, subsequently amended and completed, republished in the Official Gazette no. 393/31 December 1997

³⁵⁶ *Ibid.*, Art. 42 and 43

³⁵⁷ *Law no. 76/2002 on the Unemployment Insurance System and Employment Stimulation*, subsequently amended and completed, published in Official Gazette no. 103/6 February 2002

³⁵⁸ *Ibid.*, Art. 5 (IV3)

³⁵⁹ *Ibid.*, Art. 93⁴(1)

³⁶⁰ *Ibid.*, Art. 4 (2)

The *Law on Unemployment's* provisions on youth are supplemented by a more specific act, the *Law on combating and preventing social exclusion*³⁶¹ that goes beyond the employment sphere.

*The purpose of this law is to ensure an effective access, particularly of young people, to elementary and fundamental rights, such as the right to a job, a home, to healthcare, to education, as well as to establish measures to prevent and combat social exclusion and to mobilize the institutions with responsibilities in this field*³⁶². Social exclusion, in the sense of the present law, is defined by peripheral social position, isolating individuals or groups with limited access to economic, political, educational and communication resources of the community; it is manifested by the absence of a minimum social conditions of life.³⁶³

By urging central and local institutions to design measures and to take action in combating social exclusion/marginalization³⁶⁴, this law takes a global approach on youth, without establishing any prioritizing criteria based on protected grounds. Marginalization is determined strictly on the basis of income³⁶⁵. The measures proposed by this law are meant to financially compensate low income through access to social services such as housing, education and healthcare, and to a monthly payment of the guaranteed minimum income³⁶⁶. The law's section on access to a job was abolished in 2013³⁶⁷, while keeping the other types of rights. Access to housing is prioritized by types of beneficiaries as follows: youth coming from placement centers or other such state public services in the field of children protection; persons not older than 35 with children; then those without children and other persons.³⁶⁸ In the field of education, the law awards study scholarships for children from marginalized families³⁶⁹, and literacy grants for adults.³⁷⁰ The provisions on access to healthcare are closely connected to a special law to be discussed below.

The *Law of Education*³⁷¹ also contains elements of affirmative measures by establishing rights for certain categories of persons, including the 'marginalized' ones. Thus, according to this law, pupils and students coming from disadvantaged families or institutionalized children (in the state care) are entitled to scholarships.³⁷² Furthermore, the state guarantees the right to

³⁶¹ *Law no. 116/2002 on Preventing and Combating Social Exclusion*, subsequently amended and completed, published in the Official Gazette no. 193/21 March 2002

³⁶² *Ibid.*, Art. 2

³⁶³ *Ibid.*, Art. 3

³⁶⁴ *Ibid.*, Art. 4

³⁶⁵ *Ibid.*, Art. 23

³⁶⁶ *Law no. 416/2001 on Minimum Income*, subsequently amended and completed, published in the Official Gazette no. 401/20 July 2001

³⁶⁷ *Law no. 250/2013 for amending and completing the Law no. no. 116/2002* (see supra note 361) and *Law no. 76/2002* (see supra note 357), published in the Official Gazette no. 457/ 24 July 2013

³⁶⁸ Art. 15, *Law no. 116/2002*, see supra note 361

³⁶⁹ *Ibid.*, Art. 19

³⁷⁰ *Ibid.*, Art. 20

³⁷¹ *Law no. 1/2011 – National Education Law*, subsequently amended and completed, published in Official Gazette no. 18/10 January 2011

³⁷² *Ibid.*, Art. 12 (1)

education of all persons with special educational needs. Special education and special integrated education are part of the national school system³⁷³ representing a form of differentiated instruction, and also a form of educational, social and medical complex assistance for people with special educational needs³⁷⁴.

The *Law of Education's* methodological norms on special education define the concept as the whole process of implementing programs and learning activities to support the recovery, compensation, medical, social, and cultural adaptation of those persons who fail to independently reach the level of development appropriate to their age for achieving basic skills necessary in their adult life.³⁷⁵ The *Law of Education* provides for minorities' right to study and receive instruction in their mother tongue at all levels, types and forms of school education³⁷⁶.

The *Healthcare Law*³⁷⁷ provides for health insurance for certain persons on a non-contributory basis to the state budget. The focus is on youth not older than 26, disabled persons, women during pregnancy and confinement, if they have no other sources of income.³⁷⁸ However, there are also some rewarding health insurances for war prisoners, persons politically persecuted between 1940 and 1945, including on ethnic grounds³⁷⁹, war veterans etc.³⁸⁰ The *Law on combating and preventing social exclusion* particularly sends to the *Healthcare Law's* provisions on eligibility criteria for allowing access to healthcare for marginalized categories.³⁸¹

Except for the legislation on gender equality and that on disabled persons taking affirmative action based on the 'single-ground' approach, all the other specific laws presented above follow the 'non-discriminative pattern' promoted by the *Social Assistance Law*. Overall, the Romanian legal framework on affirmative action shows no sensitivity to intersectionality between gender and ethnicity.

Additionally, the measures as such are ineffective. Firstly, the expenditure for social protection in Romania is the lowest in the EU-27, more than 7 times under the average

³⁷³ *Ibid.*, Art. 12 (6)

³⁷⁴ *Ibid.*, Art. 12 (7)

³⁷⁵ Art. 3 (b), the Ministry of Education, Research, Youth and Sports, *Order no. 5574/2011 approving the methodology for organizing the educational support services for children, students and young people with special educational needs in mainstream schools*, published in the Official Gazette no. 785/4 November 2011

³⁷⁶ Art. 45, Law no. 1/2011, *see supra* note 371

³⁷⁷ *Law no. 95/2006 on Healthcare Reform*, subsequently amended and completed, published in the Official gazette no. 372/ 28 April 2006

³⁷⁸ *Ibid.*, Art. 213 (1)

³⁷⁹ *Decree - Law no. 118/1990 regarding the granting of rights to persons persecuted for political reasons by the dictatorship established starting on March 6, 1945, and those deported abroad or in prison*, subsequently amended and completed, republished in the Official Gazette no. 631/23 September 2009

³⁸⁰ Art. 213 (1), Law no. 95/2006, *see supra* note 377

³⁸¹ Art. 16, Law no. 116/2002, *see supra* note 361

expenditure per capita in the area³⁸². For 2014 the guaranteed minimum income amounts between approx. EUR 31.4 (for a family of one person) and EUR 117 (for a family of 5 persons) plus EUR 8.11/person for families with more than 5 members.³⁸³ This aspect, particularly combined with the high unemployment rate among Roma women³⁸⁴, also ignored by the specific law, amplifies their critical situation. Furthermore, being unemployed and lacking sufficient income for paying health insurance, Roma women face obstacles in accessing healthcare services, a fact confirmed by specific studies³⁸⁵. The *Healthcare Law* does not include Roma women *per se* in the list of beneficiaries of the non-contributory health insurance, as this law is also ‘non-discriminative’ in absolute terms.

The Law of Education recognizes that there are people who need special education, but the very definition of it leads to the idea of mental impairments, as most of the words used to describe special education have psychiatric or psychological connotations. Even the mere terminological association of special cultural and social needs with concepts implying intellectual inability has a serious negative effect. The placement of Roma pupils or students in such a programme contribute to their stigmatization and undermine their intellectual capacity. The itinerant/supportive teacher’s website created for professionals working in the field of special education³⁸⁶ confirms the above rationale on the impact of the current frame of special education of Roma youth. The website makes reference to the educational doctrine to prove that educational special needs go beyond deficiencies.³⁸⁷ Nevertheless, when arguing in this sense, ‘children with a normal intellect’ are presented in contrast with “street children; children of some minorities, and abused children”, the latter categories being expressly placed in the area of deficiency.³⁸⁸

³⁸² Expenditure on social protection for 2010 represented 17.6 per cent of GDP. The average expenditure per capita in the EU-27 was of EUR 7 184.7, while Romania had EUR 1 017.4. Eurostat – European Commission, ‘European social statistics’, 2013, p. 199

³⁸³ The data has been calculated in accordance with Art. 4, Law no. 416/2001, *see supra* note 366. The social indicator of reference for 2014 is of approx. EUR 111.11. The transposition of data in EU currency was performed at an exchange rate of RON 4.5 for EUR 1, by rounding the annual average rate for 2014 issued by the Romanian National Bank, *i.e.* RON 4.4941.

³⁸⁴ Roma women’s employment rate is of 19 per cent, while the men’s one is of 42 per cent. United Nations Development Programme, World Bank, European Commission, ‘The Roma pilot project: tools and methods for evaluation and data collection’, 2011, p. 118

³⁸⁵ Florin Moisa *et al* – Decade of Roma Inclusion Secretariat Foundation, ‘Raportul societății civile asupra implementării Strategiei Naționale de Integrare a Romilor și a Planului de Acțiune al Deceniului în România în 2012’ [Florin Moisa *et al* – Decade of Roma Inclusion Secretariat Foundation, ‘Civil Society’s Report on the Implementation of the National Strategy for Integration of Roma and the Roma Decade Action Plan in Romania in 2012’] 2013, p. 87

³⁸⁶ www.profesoriiitineranti.wordpress.com, visited on 19 April 2014

³⁸⁷ Ecaterina Vrasmas, ‘Copiii cu cerinte educative speciale’, 3 in *Revista de educatie speciala* [Ecaterina Vrasmas, ‘Children with special educational needs’ in *Review of Special Education*] (1994), pp.69-72

³⁸⁸ “[C]hildren with special educational needs are not only in the area of deficiencies (street children, children of minorities, child abuse, etc.), but they can be detected also among those with a normal intellect”.

Another shortcoming is revealed by the *Gender Equality Law*. For example, the obligation for a ‘balanced’ participation of women in all public and private spheres leaves a margin of appreciation in terms of the actual powers given to women in leadership positions, and types of decisions to participate in. Moreover, though it mentions multiple discrimination risks, it doesn’t provide for any measure meant to emphasize concrete junctures in which such type of discrimination occurs. It has been particularly emphasized by the doctrine that an important way of embedding proactive measures into the organisational culture is to make the duty as specific as possible.³⁸⁹

Furthermore, the body responsible with gender equality went through several transformations during the time. The initial National Agency for Equality between Men and Women was established in 2005³⁹⁰, then, by amending the *Gender Equality Law*, it was subsequently substituted by other institutions: the Directorate for Equal Opportunities between Women and Men (2010)³⁹¹ and the Department for Equal Opportunities between Women and Men (2014)³⁹². Between August 2013 and late March 2014 no such body functioned anymore, but only a general Directorate for Equal Opportunities³⁹³. Under none of these forms was the gender equality body entitled with the power to provide solutions, but it must instead refer the cases to other institutions, i.e. courts or NCCD.³⁹⁴

Nevertheless, the *Social Assistance Law* gives a glimpse of hope by providing for the social services to be implemented in conjunction with public policies. According to the law, the latter should contribute to the promotion, respect and guarantee for the beneficiaries’ rights to an independent life, fulfilled and dignified, but also for the latter’s participation to social, economic, political and cultural life³⁹⁵. This is the subject that the next section will address, evaluating how effective this instrument is in the case of Roma women.

<www.profesoritineranti.wordpress.com/2013/01/10/cerinte-educationaleeducative-speciale>, visited on 19 April 2014

³⁸⁹ Sandra Fredman, *see supra* note 290, pp. 369-398

³⁹⁰ *Government Ordinance no. 84/2004 on Modification and Completion of Law no. 202/2002 on Equal Opportunities between Women and Men*, published in the Official Gazette no. 799 /30 August 2004

³⁹¹ *Emergency Ordinance no. 68/30 June 2010 on Measures to Reorganize the Ministry of Labour, Family and Social Protection and the Activity of the Institutions under Its Subordination or Authority*, published in the Official Gazette no. 446/1 July 2010

³⁹² *Governmental Ordinance no. 250/2014 on the Organization and Functioning of the Department for Equal Opportunities between Women and Men*, published in the Official Gazette, no. 248/7 April 2014

³⁹³ *Governmental Ordinance no. 517/2013 for the Modification of Laws on Labour, Family, Social and Elderly’s Protection*, published in the Official Gazette no. 488/2 August 2013

³⁹⁴ *See Art. 23 et seq.*, Law no. 202/2002, *see supra* note 232

³⁹⁵ Art. 3 (2), Law no. 76/2002, *see supra* note 359

4.3. Relevant policy instruments

The research has found the Romanian legal framework to be unable to deal with the particular problem of Roma women by its own means. There might be voices arguing that the law's focus on formal equality is justified by the fact that the situation of Roma women is rather a transitional problem than a constant fact, implying that there is a need for a transitional action, than for a permanent protection as law would offer. Law should only address generally valid issues in relation to all citizens, while policies are responsible for the law's implementation towards substantive equality among certain groups in a given period of reference. Policies could be considered more flexible both in time and territorially, being able to address the particularities of specific groups according to how the situation evolves. Such opinions may be shared by the author of this research up to a certain extent, but not in the national context where the situation of Roma women has always been the same. The legislative gap on intersectionality has a crucial impact over the public's awareness, especially when policies are not legally binding.

Nevertheless, it has to be acknowledged that the law has made progress in setting in place important principles and concepts against discrimination in relevant areas, which can be used to protect the rights of the victim before a court, to obtain some remedies, and to also set policies with more specific measures.

Romania's first concrete policy initiative for improving the situation of Roma was established in 2001 in a 10-year national strategy for Roma³⁹⁶. In this strategy, Roma women represented only a marginal concern. This resulted in a pervasive lack of concrete measures for Roma women, absence of gender indicators correlated with ethnic ones in the monitoring process, and a reduced expertise on gender issues of the human resources involved in the strategy's implementation. The critique brought against the 2001-2011 strategy are revealed by a report regarding the governmental policies and programmes implemented between 2008 and 2011. The report mentions the yearly allocation of 3,000 places for Roma in high schools, establishment of special school inspectors and mediators for Roma, allocation of scholarships for Roma, increasing the national network of Roma sanitary mediators to 600, establishment of county offices for Roma and of local experts for Roma in the local councils.³⁹⁷ Despite the great amount of quantitative indicators, there is no data on gender distribution of the achieved results. There were also some

³⁹⁶ *Governmental Ordinance no. 430/2001 on the approval of the Government Strategy for the Improvement of Roma's Situation*, subsequently amended, published in the Official Gazette no. 252/16 May 2001

³⁹⁷ Secretariatul Tehnic Permanent al Pactului Regional pentru Ocupare și Incluziune Socială în Regiunea Centru, 'Politici și programe publice pentru romi, implementate de autoritățile guvernamentale ale României (2008 – 2011)' [Permanent Technical Secretary of the Regional Pact for Employment and Social Inclusion in the Central Region, 'Public policies and programs for Roma implemented by governmental authorities in Romania 2008 – 2011'], available at <www.stpcentru.ro/uploads/media/Politici_publice_pentru_romi_ANR.pdf>, visited on 19 April 2014

inclusion programs³⁹⁸, but most of them had a general target group, not limited to Roma, and gender was not assessed separately.

On the allocation of special places at the university level, the measure has been applied in Romania since the academic year of 1992/1993³⁹⁹, and so there was no innovative element in this regard. Yet, these places are usually left unfilled. This is either because Roma student's need to prove their ethnicity by certain documents and they prefer to keep their ethnic status private, or because they do not have a baccalaureate diploma to make them eligible for higher education.⁴⁰⁰

Some modicum results were still achieved by the first strategy on Roma, certain programmes⁴⁰¹ having an indirect impact on the group in question by slightly increasing Roma girls' participation in education, in contrast with the employment and healthcare's situation which were found to have gotten worse.⁴⁰² It was also during the first strategy when the Romanian Government forwarded the Parliament a proposal for establishing a specialized agency for Roma.⁴⁰³ The NAR⁴⁰⁴ is under the Government's subordination and it came into force in 2005 and since then it's tasks have been to "initiate, participate in and promote actions, projects and sectorial programs in order to improve the situation of Roma", having to cooperate with other institutions and nongovernmental organizations.⁴⁰⁵ Nevertheless, NAR's performance is not free from criticism, many of its failures being revealed in the discussions to follow on strategies' effectiveness on Roma women.

In 2005 Romania was among the first countries to join the regional incentive of Decade of Roma Inclusion⁴⁰⁶ and to even hold the first presidency. In this context, the Romanian Government

³⁹⁸ E.g. 'Education of Roma children - the path to a better job', 'The school - a chance for everyone', 'Together for a better society', 'The participation of vulnerable groups in the social economy', 'Together on the labour market', 'Establishment of the social network of the local Roma experts'. A full list of projects is available at <www.anr.gov.ro/html/evenimente.html> – website of the National Agency for Roma, visited on 20 April 2014

³⁹⁹ Office of the State Secretary for Education in the Minorities' language and the Relationship with the Parliament – Ministry of Education, Research and Innovation, 'Notification on providing 493 distinct places for young Roma in public higher education in for the academic year 2009/2010', Document no. 29614/18 March 2009

⁴⁰⁰ 'The university places for Roma remained unfilled' in *Adevarul*, 17 September 2011, available at <adevarul.ro/locale/galati/locurile-romi-universitate-ramas-neocupate-1_50ad1c187c42d5a6638ecf04/index.html>, visited on 19 April 2014

⁴⁰¹ E.g. 'Access to Education for Disadvantaged Groups', 'Money for High school', 'Croissant and Milk', 'School Supplies', 'Social Scholarships', 'Special Places'.

⁴⁰² Asociația Femeilor Rome din România, 'Document de politică publică privind incluziunea socială a femeilor rome din România' [The Association of Roma Women in Romania, 'Public Policy Document on Roma Women's Social Inclusion in Romania'], 2011, pp. 12-13

⁴⁰³ *Governmental Emergency Ordinance no. 78/2004 for establishing the National Agency for Roma*, published in the Official Gazette no. 969/21 October 2004, approved by Law no. 7/2005, published in the Official Gazette no. 183/3 March 2005

⁴⁰⁴ www.anr.gov.ro – website of the National Agency for Roma

⁴⁰⁵ Art. 5, *Governmental Decision no. 1.703/2004 on the Organization and Functioning of the National Agency for Roma*, subsequently amended and completed, published in the Official Gazette no. 887/4 October 2005

⁴⁰⁶ *Declaration of the Decade of Roma Inclusion*, Sofia, 2 February 2005.

has elaborated a national action plan for each area of concern, *i.e.* education, healthcare, employment and housing. The action plan in healthcare⁴⁰⁷ specifies providing sanitary education to Roma women and increasing their access to healthcare services, while the plan for the employment area⁴⁰⁸ speaks about an information campaign addressing Roma women and their involvement in trainings on how to run a business. The action plans for housing⁴⁰⁹ and education⁴¹⁰ do not discuss gender aspects. None of these documents goes beyond basic principles, looking more like sketches that, in no more than 2 pages, list some general problems facing the Roma minority.

As the governmental 2001-2011 strategy for Roma expired, the Romanian Government, through NRA, had to elaborate another policy document. Being already a member of the E.U.⁴¹¹, the new strategy had to comply with certain requirements developed at the regional organizational level. The EC developed the *Framework Strategy for Roma*⁴¹². The document establishes four priority areas for Roma inclusion, *i.e.* education, employment, healthcare and housing, reproducing those of the Decade of Roma Inclusion. Roma women are mentioned only in terms of healthcare⁴¹³ and employment⁴¹⁴, the overall approach being general, which does not make it very different from the first Romanian strategy in this regard. However, the *EU Framework Strategy for Roma* refers to the '10 Common Basic Principles on Roma Inclusion'⁴¹⁵ requiring 'gender awareness' (principle no. 5), in the sense explained below.

⁴⁰⁷Agentia Nationala pentru Romi, 'Planul National de actiune al Deceniului de Incluziune a Romilor in domeniul sanatatii' [National Agency for Roma, 'National Action Plan for the Decade of Roma Inclusion in the Field of Health'], available at <www.anr.gov.ro/docs/deceniul/deceniului_de_incluziune_a_romilor_in_domeniul_sanatatii.pdf>, visited on 20 April 2014

⁴⁰⁸ Agentia Nationala pentru Romi, 'Planul National de actiune al Deceniului de Incluziune a Romilor in domeniul sanatatii' [National Agency for Roma, 'National Action Plan for the Decade of Roma Inclusion in the Field of Employment'], available at <www.anr.gov.ro/docs/deceniul/deceniului_de_incluziune_a_romilor_domeniul_ocuparii.pdf>, visited on 20 April 2014

⁴⁰⁹Agentia Nationala pentru Romi, 'Planul National de actiune al Deceniului de Incluziune a Romilor in domeniul sanatatii' [National Agency for Roma, 'National Action Plan for the Decade of Roma Inclusion in the Field of Housing'], available at <www.anr.gov.ro/docs/deceniul/deceniului_de_incluziune_a_romilor_domeniul_locuirii.pdf>, visited on 20 April 2014

⁴¹⁰ Agentia Nationala pentru Romi, 'Planul National de actiune al Deceniului de Incluziune a Romilor in domeniul sanatatii' [National Agency for Roma, 'National Action Plan for the Decade of Roma Inclusion in the Field of Education'], available at <www.anr.gov.ro/docs/deceniul/deceniului_de_incluziune_a_romilor_domeniul_educatiei.pdf>, visited on 20 April 2014

⁴¹¹ Romania became a Member State of the European Union on 1 January 2007, after the Treaty of Accession, which was signed on 25 April 2005, has been ratified by all Member States

⁴¹² European Commission, 'An EU Framework for National Roma Integration Strategies up to 2020', COM(2011) 173 final

⁴¹³ *Ibid.*, p. 7

⁴¹⁴ *Ibid.*, p. 6

⁴¹⁵ The Common Basic Principles were presented for the first time at the meeting of the European Platform for Roma inclusion in Prague on 24 April 2009. On 8 June 2009 the Council of Ministers in charge of Social Affairs annexed the Principles to their conclusions and invited Member States and the Commission to take them into account.

*Roma women are more likely to experience social exclusion than both Roma men and women in the majority community. Roma women are particularly vulnerable and suffer disadvantages such as limited access to employment, education, health and social services. They are often victims of double discrimination: discrimination on the grounds of gender and ethnic origin. Moreover, they run a higher risk of being victims of domestic violence, trafficking and exploitation than women in mainstream society.*⁴¹⁶

Recalling the earlier discussion on vertical, horizontal and diagonal comparators on intersectionality⁴¹⁷, it can be observed that the ‘gender awareness’ principle, in the way understood by the EU, does not actually address the issue to its full extent, but it shows an increased sensitivity to the problem than the 2001-2010 Romanian strategy.

The guidelines on ‘gender awareness’ given by EU are the following:⁴¹⁸

- *Address the specific needs of Roma women in the design, implementation and evaluation of policies and activities.*
- *Pay attention to related issues (e.g. multiple discrimination, domestic violence, exploitation, access to health/childcare).*
- *Ensure that Roma women participate and play a leading role in consultative bodies or monitoring committees.*

The gap of the EU’s *Framework Strategy for Roma* in addressing the gender dimension in all priority areas has been subsequently covered by further policy recommendations asking for sensitivity to several ‘transversal issues’ that feed into each of the priority areas, such as gender equality and discrimination.⁴¹⁹ The policy guidelines also draw attention to the increased risks of Roma women to face violence, including domestic violence, trafficking in human beings, underage and forced marriages, and begging.⁴²⁰

So after a decay of attempts to address the problems faced by Roma, and also after receiving some indications on how to approach the matter, the Romanian Government came up with another strategy for the period between 2012 and 2020⁴²¹. The new strategy incorporated the principle of ‘gender awareness’ in conjunction with the ‘equality of opportunity’ invoking the central role that women play within the family and the minority. The rule of these principles should enhance the level of Roma women’s education and employment, and their involvement in

⁴¹⁶ European Commission, ‘The 10 Common Basic Principles on Roma Inclusion. Vademecum’ available at <www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf>, visited on 19 April 2014

⁴¹⁷ See *supra* section 3.3.2.

⁴¹⁸ European Commission, see *supra* note 416

⁴¹⁹ European Commission, ‘What works for Roma inclusion in the EU. Policies and model approaches’, 2012, p. 17

⁴²⁰ Council of the European Union, ‘Recommendation on effective Roma integration measures in the member states’ presented at the Employment, Social Policy, Health, and Consumer Affairs Council Meeting, Brussels - 9 and 10 December 2013, para. 2.5.

⁴²¹ *Governmental Ordinance no. 1221/2011 for the approval of the Strategy of the Romanian Government for the Inclusion of the Romanian Citizens Belonging to the Roma Minority for the period 2012 – 2020*, published in the Official Gazette no.6 /4 January 2012 available at <ec.europa.eu>, visited on 9 April 2014

activities to increase the families' welfare, family cohesion and development of future generations.⁴²² Furthermore, it also adds two more areas of focus, *i.e.* culture and social infrastructure, going even beyond the EU's framework.

The incorporation of these principles into the new strategy does not appear to really reflect lessons learned from the first strategy. Civil society's experts from Romania and the express a variety of technical complaints against the new strategy. The document is said to have been hastily elaborated under pressure of state's obligations towards EU, with insufficient attention to the minimum standards in the public policies set by the Romanian Government in 2006⁴²³, with no effective assessment of the previous activities, a lack of a relevant presentation of the current state of affairs and without setting specific targets⁴²⁴. The new strategy has used no baseline study, and thus the progress indicators are usually missing and the budgetary indications are also very general.⁴²⁵ The EC's assessment on the Romanian strategy for 2012-2020 supports the above criticism pointing out the same types of shortcomings, such as incommensurate targets with the specific situation in all priority areas, lack of clear indicators and budget allocations.⁴²⁶ The overall strategy has acquired the reputation of being based on perceptions rather than anchored in the social realities of the Roma minority⁴²⁷, as a minimalist attempt of combating 'anti-Gypsyism' and of promoting a proactive approach to Roma inclusion⁴²⁸.

In terms of gender mainstreaming, except for some broadly enunciated measures in the field of public health⁴²⁹ and employment⁴³⁰, which experience the same problems in terms of scarcity of quantitative and qualitative indicators, the education, housing, and the additional

⁴²² Chapter VI, para. 5, Annex (*i.e.* the Strategy) of the Governmental Ordinance no. 1221/2011, *see supra* note 421

⁴²³ *Governmental Ordinance no. 870/2006 approving the Strategy for Enhancing the Development, Coordination and Planning of Public Policies at the Central Public Administration's Level*, published in the Official Gazette no. 637/24 July 2006

⁴²⁴ Florin Moisa *et al*, *see supra* note 385, p. 7

⁴²⁵ European Roma Policy Coalition, 'Analysis of the National Roma Integration Strategies', March 2012, p. 18

⁴²⁶ European Commission, 'National Roma Integration Strategies: a first step in the implementation of the EU Framework – COM (2012) 226', 2012, pp. 55-56

⁴²⁷ "Împreună" Agency for Community Development, 'Romanian Government's Strategy of Inclusion of the Romanian Citizens Belonging to Romani Minority for 2012-2010 - The position of the "Împreună" Agency for Community Development', March 2012, pp 7-9

⁴²⁸ European Roma Policy Coalition, *see supra* note 425

⁴²⁹ Chapter VII (C), direction for action no. 1 and 13, Annex (*i.e.* the Strategy) of the Governmental Ordinance no. 1221/2011, *see supra* note 431: "Raising the awareness and informing the members of Roma communities on certain health issues: preventive campaigns carried out at local level, intended especially for women and children; [i]mplementing information campaigns among Roma women concerning the risks associated to early marriage, preventing and fighting against domestic violence and trafficking in persons".

⁴³⁰ *Ibid.*, Chapter VII (B), direction for action no. 2 and 7: "Identifying job opportunities based on flexicurity (*i.e.* flexible work places but with social securities paid) for vulnerable groups, especially the women belonging to the Roma minority (flexible jobs, but paid social security contributions), income generating activities and small family businesses, apprenticeship and tutoring programs, together with ensuring support for the access to education and health care systems: nurseries and kindergartens, 'afterschool'; [e]ncouraging entrepreneurship among persons belonging to disadvantaged groups, focusing on women belonging to the Roma minority".

priority areas of culture and social infrastructure did not tackle gender. As education is inherently connected at least to employment and healthcare, this reveals a weak commitment of the Romanian Government to bring positive change into Roma women's life.

Generally speaking, it can be said that the current strategy remains as neutral to gender as the first one, and it is actually mostly copying the national action plans of the Decade of Roma Inclusion. The declared principles of gender awareness and equality of opportunity are not to be found in the concrete measures proposed by the Government. The deliberate disregard of gender under 'uniformizing citizenship statements' through the very scope of the strategy⁴³¹ may be interpreted as a concealed form of discrimination.⁴³²

It is interesting to observe that, besides technical observations, the EC has no specific complaints on 'gender neutrality' in its assessment documents. The first document from 2012 does not mention gender at all in relation to Romania⁴³³, while a 2013 analysis notes some initial steps in tackling multiple discrimination against Roma women without elaborating further⁴³⁴.

The general criticism brought to the 2012-2020 strategy, especially on the absence of civil society from the process of drafting the document⁴³⁵, finally drew the Government's attention and triggered a review process. Several meetings were held with both Roma and non-Roma NGOs and experts who also established special committees. The strategy is said to be under consideration by local and central authorities alike.⁴³⁶

Yet, no amended version of the document has been issued. Furthermore, by looking at the special committees' first drafts by priority areas, the expectations for a better gender mainstreaming should be regarded with scepticism. Though these materials are claimed to be completed by 'transversal domains', they do not seem to go any further on gender issues than the current version of the strategy⁴³⁷. Additionally, except for only one non-Roma NGO which elaborates more on the particularities of Roma women, by paying attention to several aspects,

⁴³¹ *Ibid.*, Chapter V, paras 1 and 2: "The scope of the Government Strategy for the inclusion of Romanian citizens belonging to the Roma minority for the period 2012 – 2020 is to ensure the social and economic inclusion of Romanian citizens belonging to the Roma minority, by implementing integrated policies in the fields of education, employment, health, housing, culture and social infrastructure. Moreover, the Government Strategy aims at making the local and central public authorities, the Roma minority and the civil society responsible for the increase of the level of social and economic inclusion of the Romanian citizens belonging to the Roma minority".

⁴³² Maria Carmen Pantea – United Nations Development Programme (Bratislava Regional Centre), 'Gender mainstreaming in the National Action Plans for the Decade of Roma Inclusion', December 2009, p. 41

⁴³³ See European Commission, *supra note* 426

⁴³⁴ European Commission, 'Steps forward in implementing national Roma integration strategies,' COM(2013) 454 final, Brussels 2013, p. 9

⁴³⁵ European Roma Policy Coalition, *see supra* note 425, p. 17

⁴³⁶ For more information on the revision process, see www.anr.gov.ro/html/strategiep.html, visited on 20 April 2014

⁴³⁷ See the full list of first drafts as proposed by the revision committees by priority areas at www.anr.gov.ro/html/documente.html, visited on 20 April 2014;

such as domestic violence, healthcare, family planning, early marriage, human trafficking⁴³⁸, *i.e.* issues related mainly to women's immediate sphere than to their social life, none of the other entities involved in this reviewing process shows a complex concern from a gender point of view.⁴³⁹

Nevertheless, the strategies for Roma inclusion achieved some positive outcomes through the program of sanitary mediation implemented since 2002⁴⁴⁰ and which involves mostly Roma women. The communities where such mediators undertake their activity record an increased access to healthcare services for the Roma female population. In 2008 there were about 688 such mediators.⁴⁴¹

Currently, the program is compromised by a lower budget allocation. Thus, according to civil society report that assesses the performance of the 2012-2020 strategy in its first year, there were only 420 funded positions for sanitary mediators⁴⁴². For the same period of reference, *i.e.* 2012, the same report finds that there was no perceived progress in addressing multiple discrimination of Roma women in Romania. Roma NGOs and governmental agencies have implemented some programs that address gender, including awareness campaigns especially with the support of the European Social Fund⁴⁴³, but there is no concrete data on the results achieved.⁴⁴⁴ In its report for 2012, NAR argues that its performance in implementing the 2011-2020 strategy is affected by insufficient funding and human resources, political appointments in leadership positions, unrepresentativeness of the regional offices, the turbulent political situation in Romania, and the general economic austerity.⁴⁴⁵ It is completely true that these problems have a major impact on the Agency's overall activity, but the issue of Roma women is not genuinely reflected in the body's agenda anyway.

⁴³⁸ 'Proposals of OvidiuRo Association on the Romanian Government for the Inclusion of the Romanian Citizens Belonging to the Roma Minority for the period 2012 – 2020', available at <www.anr.gov.ro/docs/reuniuni/Sanatate%20-%20recomandarii%20AW_OIM_OR.doc>., visited on 20 April 2014

⁴³⁹ See the full list of working documents elaborated by non-Roma NGOs by priority areas at www.anr.gov.ro/html/documente2.html, visited on 20 April 2014

⁴⁴⁰ Ministry of Health and Family, *Order no. 619/2002 Approving the Profession of Sanitary Mediator and the Technical Norms on the Organization, Functioning and Financing the Mediators' Activities in 2002*, published in the Official gazette no. 655/2002

⁴⁴¹ Florin Moisa *et al*, see *supra* note 385, p. 16

⁴⁴² *Ibid.*

⁴⁴³ E.g. 'With Us, Among Us, About Us, the Women' – information and awareness campaign in the field of healthcare with focus on Roma women. See project description at www.anr.gov.ro/docs/programe/campanii/CAMPANIE.pdf, visited on 20 April 2014. The full list of the programs and activities elaborated for the Roma minority through the European Social Fund, out of which only three are expressly for women, is available at <www.anr.gov.ro/docs/proiecte_actualizate/Lista%20contracte%20proiecte%20romi.pdf>, visited on 20 April 2014

⁴⁴⁴ Florin Moisa *et al*, see *supra* note 385, p. 58

⁴⁴⁵ Agentia Nationala pentru Romi, 'Raport de activitate pentru 2012' [National Agency for Roma, 'Activity report for 2012'], p. 3, available at <www.anr.gov.ro/html/Rapoarte.html>, visited on 23 April 2014

Traditionally, the programs for Roma women take the form of pilot projects and address a limited number of beneficiaries. So is the case of a particular project addressing precisely the social inclusion of Roma women developed by an NGO in cooperation with NAR.⁴⁴⁶ However, the NGO in question also managed to independently elaborate on a policy document in this sense for 2011-2020⁴⁴⁷ and to present it to the public⁴⁴⁸. Despite this effort, the document was not on the NAR's website which includes the materials considered in the revision process⁴⁴⁹, neither was it discussed during the meetings between NAR and Roma NGOs⁴⁵⁰. Actually, the NGO in question did not even attend those meetings. The NGO's strategy is not reflected in any of the first drafts elaborated by the NAR's special committees by priority areas.⁴⁵¹

At a short analysis of the NGO's policy document, this material also seems to have serious issues: the proposed measures by priority areas are not broken down into concrete activities; there are no details on the method used for calculating the budgets and on the criteria for determining the number of beneficiaries; there is often confusion between the quantitative and qualitative indicators; the document lacks an impact assessment by each measure proposed, presenting only global objectives for the entire strategy; the document puts most of the responsibility on the central authorities' shoulders, which, due to increased bureaucracy, are very difficult to set in motion, etc.⁴⁵² Anyhow, the document was a good exercise for raising awareness of Roma women's particularities and their needs' specificity.

Although it might have been expected that the problems faced in the process of inclusion of Roma women would be somewhat offset by other incentives, the findings do not look very optimistic, neither within the EU nor at the national level. While EC equality policies focus on addressing several grounds of discrimination together, adding them rather than looking at their

⁴⁴⁶ E.g. 'Social Inclusion of Roma Women' was a project developed by the Association of Roma Women from Romania between 2009 and 2012. The project focused on elaboration of public policies based on the principle of 'equality of opportunity'. The implementation was undertaken in the development regions of Bucharest - Ilfov, South-Muntenia, South-East, North - East. The beneficiaries were described as it follows: 3200 Roma women - to receive training; 1800 Roma women to receive information, counselling, and vocational guidance; 160 people to receive training in entrepreneurship and writing projects for accessing European funds; 400 Roma women to obtain employment; 400 women/girls to receive social grants and merit scholarships (middle school, high school). There couldn't be identified any data on the final achievements of this project in connection with the envisaged number of beneficiaries. See www.incluziuneafemeilorrome.ro – website presenting the above mentioned project, visited on 21 April 2014

⁴⁴⁷ Association of Roma Women from Romania, *see supra* note 402

⁴⁴⁸ Association of Roma Women from Romania, 'Press Release on the Annual Conference on Roma Women's Social Inclusion', Bucharest, 2 December 2011. According to the press release, the policy document was presented during the conference, where representatives from all relevant state authorities participated, but also media, NGOs, parliamentary members representing the Roma minority.

⁴⁴⁹ *See supra* note 436

⁴⁵⁰ Minutes of all the meetings on the revision process by May 2014 are available at: www.anr.gov.ro/html/reuniuni2013.html, visited on 8 May 2014

⁴⁵¹ *See supra* note 437

⁴⁵² *See* Association of Roma Women from Romania, *see supra* note 402, pp. 19-63

intersectionality⁴⁵³, Romania does not even have a valid strategy on gender equality. The national strategy on equality of opportunities expired in 2012⁴⁵⁴ and the one proposed for 2014-2017 is still in a draft stage in the public debate⁴⁵⁵. The draft's text body keeps the line of the special relevant law in the field, i.e. *Gender Equality Law*, meaning that the affirmative measures are neutral to ethnicity.

Other examples of strategies which could have supported the national strategy for Roma are: the National Strategy in the Field of Youth for 2014-2020⁴⁵⁶; the National Strategy for the Protection and Promotion of Children's Rights for 2014-2020⁴⁵⁷; and the National Strategy for Promoting Social Inclusion and Combating Poverty 2014-2020. The first two strategies, which are still in public debate, identify Roma as a highly vulnerable group. While arguing for this finding, the documents do not bring into discussion the particular intersection between gender and ethnicity but they are limited at comparing Roma with non-Roma, and men with women, respectively. The last mentioned strategy on social inclusion was supposed to be issued by the end of 2013, as the Government has officially taken this responsibility.⁴⁵⁸ By May 2014, no such strategy was available, not even for public consultations.

Social inclusion and poverty alleviation have been found as priorities within another draft, i.e. the National Strategy for Regional Development for 2014-2020⁴⁵⁹. This time multiple discrimination is mentioned as a problem faced by Roma in a gender-neutral context.⁴⁶⁰ The document does not provide for any specific measures targeting the minority in question. In fact, the entire section on social inclusion is just a description of the general precarious situation of

⁴⁵³ Lise Rolandsen Agustín, *see supra* note 303, p. 52

⁴⁵⁴ *Governmental Ordinance no. 237/2010 - the National Strategy for equality between women and men for the period 2010 - 2012 and the Plan of Action for implementing the National Strategy for equality between women and men for the period 2010 – 2012*, published in the Official Gazette no. 242/15 April 2010

⁴⁵⁵ On 29 November 2013 the Ministry of Labour, Family, Social Protection and of Elderly released for the public debate the 'Draft of the Governmental Ordinance on approving the National Strategy on equal opportunities between women and men for the period 2014-2017 and the Plan of Action the period 2014-2017 for the implementation of the Strategy, available at <www.mmsf.ro/pub/imagemanager/images/file/Legislatie/HOTARARI-DE-GUVERN/HG237-2010.pdf>, visited on 21 April 2014

⁴⁵⁶ The Ministry of Education, Research, Youth and Sports, 'Draft of Governmental Decision on National Strategy in the Field of Youth for 2014-2020', available at <www.mts.ro/wp-content/uploads/2013/09/Strategie-Dezbatere-Publica-2014-2020.pdf>, visited on 24 April 2014

⁴⁵⁷ The Ministry of Education, Research, Youth and Sports, 'Draft of Governmental Decision on National Strategy for the Protection and Promotion of Children's Rights for 2014-2020', available at <www.copii.ro/Files/2014-02-03_Anexa1_HG_Strategie_protectia_copilului.pdf> visited on 24 April 2014

⁴⁵⁸ Ministry of Education, Research, Youth and Sports, 'Response to the inquiry made by Ms. Deputy Marioara Nistor regarding the support of families in need from Braila County', 2275/MC/03.07.2013, p. 3, available at <www.cdep.ro/interpel/2013/r1526A.pdf>, visited on 24 April 2014

⁴⁵⁹ Ministry of Regional Development and Public Administration, 'The National Strategy for Regional Development for 2014-2020', p. 258, available at <www.adrmuntenia.ro/documente/strategia-nationala-dezvoltare-regionala---iulie-2013_sndr2013.pdf>, visited on 24 April 2014

⁴⁶⁰ *Ibid.*, p. 259

several vulnerable groups, while the measures are listed in no more than five bullet points emphasizing access to information and social services.⁴⁶¹

The general situation of equality policies is in contrast with the clear recommendation made by the CEDAW Committee. In its last report on Romania, the CEDAW Committee manifested a strong concern for the situation of Roma women, urging for intervention by all means.⁴⁶²

*The Committee is concerned at the situation of Roma women and girls who face multiple and intersecting forms of discrimination based on sex, ethnic or cultural background and socio-economic status. [...]The Committee urges the State party to take a holistic approach to eliminating the multiple and intersecting forms of discrimination that Roma women face and to accelerate achievement of their de facto equality through the coordination of all agencies working on Roma, non-discrimination and gender equality issues.*⁴⁶³

Another relevant body in evaluating Romania's performance in ameliorating the problems faced by Roma is the CERD Committee. The last report emphasized the insufficient data on the national strategies' impact, plans and programs to prevent and combat discrimination and protect the most vulnerable groups and it showed preoccupation with the law on national minorities, which then, as now, was still a draft.⁴⁶⁴ The CERD Committee takes a general approach to the Roma minority, without referring to women, but this might be explained by the absence of "precise and reliable data on the ethnic composition of the population, particularly the number of Roma" that CERD has been complaining about.⁴⁶⁵ The same problem was previously signalled by CEDAW, especially in relation to women, asking to information pertaining to all socio-economic spheres.⁴⁶⁶

All the policy shortcomings presented throughout this section indicate a low awareness of most stakeholders in relation to the intersectional discrimination, especially that faced by Roma women, and also serious technical issues at national level in the process of designing and implementing the existing (incomplete) policy framework.

4.4. Brief overview

The above analysis on national policies for Roma social inclusion in connection to regional and international standards and practice, revealed an ineffective system. Despite being discriminated against because of an enhanced number of vulnerabilities not limited to ethnicity, Roma women make only a marginal concern and are merely seen as collateral victims of pervasive

⁴⁶¹ *Ibid.*

⁴⁶² United Nations Committee on the Elimination of Discrimination against Women, 'Concluding Comments of the Committee on the Elimination of Discrimination against Women. Romania', presented at the thirty-fifth session, 15 May – 2 June 2006, CEDAW/C/ROM/CO/6, available at <www.bayefsky.com/pdf/romania_t4_cedaw_35.pdf>, visited on 21 April 2014

⁴⁶³ *Ibid.*, paras. 26-27

⁴⁶⁴ United Nations Committee on the Elimination of All Forms of Racial Discrimination, *see supra* note 251, para. 8

⁴⁶⁵ *Ibid.*

⁴⁶⁶ United Nations Committee on the Elimination of Discrimination against Women, *see supra* note 471, para. 27

discrimination against Roma in general. The specific policies on the Roma minority, just like the national, regional and international legal instruments, do not give Roma women the means to effectively protect themselves against intersectional discrimination. The entire anti-discrimination system (at all levels) is rather blind to the particular intersectionality between gender and ethnicity, with only some indigent policy remarks in terms of healthcare and employment, or mere recommendations for 'gender awareness'.

Furthermore, even if the current national strategy is under consideration for amendments because of several national and regional critics, the proposals made by the revisal committees do not take a broader view on Roma women. Not even civil society acted differently in this regard, but it actually reproduced the current national strategy's shortcomings.

These lacunas on intersectionality are not covered by the Romanian broader legal and social system in any other way, as particularly examined in relation to other relevant policies and laws on women, children, youth, poverty, unemployment, education etc.

By neglecting the idiosyncrasy of the intersection between gender and ethnicity, Roma women continue to fall prey to blatant violations of human rights, being totally overlooked from the central role they play in the inter-ethnic relationship and their potential for strategically spurring the minority's inclusion.

General Conclusions

The intersectionality between gender and ethnicity has proven to have transformed into a tremendous burden for Roma women both within and outside their communities.

Prejudices, gender roles and introversion of a lower status have resulted in all sorts of social limitations, sometimes taking the most acute forms. Illiteracy, unemployment, and poverty rates are very high amongst Roma women. They are mostly dependent on other family members' income or social assistance, with poor access to healthcare services, and enter into marriage at a very early age with all the inherent consequences. Domestic violence, together with their exploitation through human trafficking, child abandonment, trans-border stigmas and criminal labelling are infelicitous situations that Roma women encounter.

The Romanian system in its current state and the regional incentives do not seem to cope successfully with this complex challenge, mostly because of a poor understanding of what intersectional discrimination is really about. The concept has not been (genuinely) institutionalized at any of the levels investigated.

On the one hand, the law is generally focused on covering separated grounds of discrimination. Romanian legislation in itself does an admirable effort in covering even supplementary grounds. Yet, this is not sufficient for ensuring a full legal protection against the phenomenon when the grounds are intersectional. Indeed, unlike most European states, there is some legal sensitivity to multiple discrimination in Romania, as a broader concept which doctrinally encompasses intersectionality. However, both the courts and the equality bodies fall short in implementation, there being no relevant jurisprudence to address the overall issue.





Furthermore, when targeting certain 'disadvantaged groups' by affirmative action, the law focuses on the critical situations which have already occurred, and not that much on prevention. The size of income represents the main tool for measuring the need for intervention in Romania. This seems to actually transform a consequence of discrimination based on the convergence of innate features, such as gender and ethnicity, into a social indicator. In short, there is no legal acknowledgement of the fact that the social risks can lie in starting positions.

On the other hand, policies address the situation of Roma women, but only as a marginal concern in strategies designed for broader groups, usually for Roma or for women. In addition, even when considering Roma women, policy' implementation is focused on providing information as the basic instrument for diminishing the gender disparities in the field of labour and health, with slight consideration to other areas. Nevertheless, when recalling that in the broader Romanian society gender roles are also present and they affect the female population to a great extent, especially in the field of labour despite their higher education levels in comparison to men, this proves that an intervention meant solely to provide knowledge will not solve the problem.

Given the context, this entire analysis might have set the basis for a turning point in the process of social inclusion not only for Roma women, but for the entire minority. The research has emphasized on Roma women's essential role in their communities, especially in perpetuating ethnic identity. Moreover, Roma women are also regarded by non-Roma as benchmarks in establishing the degree of development in their communities. Thus, the overall situation of Roma is not only a consequence, but also an enhancer of the interethnic critical relationship. All these in the circumstances of ineffective legal and policy systems should constitute starting points in further research on finding solutions. There should be a shift from the current approach towards culture and genuine interethnic dialogue, where women shall represent the main tool in achieving the social integration of Roma.

Annex

Table: The human rights system's approach on discrimination: parallel overview

Protected grounds																			
	UN Charter ⁴⁶⁷	UDHR ⁴⁶⁸	CCPR ⁴⁶⁹	CESCR ⁴⁷⁰	CEDAW ⁴⁷¹	CRPD ⁴⁷²	CERD ⁴⁷³	ILO Convention	ECHR ⁴⁷⁵	Protocol 12 ECHR ⁴⁷⁶	EU Charter ⁴⁷⁷	TFEU ⁴⁷⁸	2000/43/EC	2000/78/EC	2004/113/EC	Constitution of Romania	Anti-Discrimination Law	Gender Equality Law	Civil Code
race	x	x	x	x			x	x	x	x	x	x			x	x			x
colour		x	x	x			x	x	x	x									x
sex	x	x	x	x	x			x	x	x	x			x	x	x	x	x	x
age											x	x		x					x
sexual orientation											x	x		x					x
language	x	x	x	x					x	x	x				x	x			x
religion	x	x	x	x				x	x	x	x			x	x	x			x
belief											x	x		x					x

⁴⁶⁷ Art. 1 (3), Charter of the United Nations, *see supra* note 194

⁴⁶⁸ Art. 2, United Nations General Assembly, *Universal Declaration of Human Rights*, *see supra* note 317

⁴⁶⁹ Art. 2 (1), United Nations General Assembly, *International Covenant on Civil and Political Rights*, *see supra* note 320

⁴⁷⁰ Art. 2 (2), United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, New York, 16 December 1966, signed by Romania on 27 June 1968 and ratifies on 9 December 1974

⁴⁷¹ Art. 1, United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women* (*see supra* note 300) defines 'discrimination against women' as "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

⁴⁷² Art. 2, para. 3, United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, *see supra* note 301. The instrument defines 'discrimination on the basis of disability' as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

⁴⁷³ Art. 1 (1), United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, *see supra* note 214. According to the Convention, 'racial discrimination' "shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".





⁴⁷⁴ Art. 1 (a), International Labour Organization, *Convention concerning Discrimination in Respect of Employment and Occupation*, *see supra* note 322

⁴⁷⁵ Art. 14, Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, *see supra* note 233

⁴⁷⁶ Art. 1, Council of Europe, *Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination*, *see supra* note 309

⁴⁷⁷ Arts 21 and 51, European Union, *Charter of Fundamental Rights of the European Union*, published in the Official Journal of the European Communities, 18 December 2000

⁴⁷⁸ Art. 10, European Union, *Consolidated versions of the Treaty on the Functioning of the European Union*, *see supra* note 328

Protected grounds																		
	UN Charter	UDHR	CCPR	CESCR	CEDAW	CRPD	CERD	ILO Convention	ECHR	Protocol 12 ECHR	EU Charter	TFEU	2000/43/EC	2000/78/EC	2004/113/EC	Constitution of Romania	Anti-Discrimination Law	Gender Equality Law
political or other opinion		x	x	x			x (only political opinion)	x	x	x					x (opinion)			x (opinion)
political adherence															x			x
national origin		x	x	x			x (national extraction)	x	x						x (nationality)	x (nationality)		x
social origin		x	x	x			x	x	x	x					x	x (social status)	x	x
ethnic origin										x	x	x			x	x (ethnicity)		x
descent							x											
genetic features										x								
property		x	x	x				x	x	x					x			x
birth		x	x	x				x	x	x								
intellectual level																		x
association with a national minority								x	x	x (membership)								
noncontagious chronic disease																x		
HIV positive status																x		
belonging to a disadvantaged group																x		x
appurtenance to a certain social group																		x
disability						x				x	x		x			x		
other status		x	x	x				x	x							x		x (other similar situation)
multiple discrimination						x						x (rectal)	x (rectal)			x	x	
affirmative action	x	x	x		x	x	x		x		x	x	x			x	x	

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