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## **Swiss immigrants' integration policy as inspiration for the Romanian Roma inclusion strategy**

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## Abstract

While the knowledge on immigrants' integration consolidated through the last 50 years, the Roma studies and the research on the Roma inclusion seems at the beginning. The purpose of this research was to assess if and to what extent the Swiss experience in immigrants' integration may inspire an efficient approach to Roma inclusion in the Romanian society.

After highlighting conceptual vagueness, resemblance and difference in the overall social status of Romanian Roma and immigrants in Switzerland and official approaches to the integration or inclusion of each, the research concludes that the Romanian policy on Roma inclusion presumably can be better anchored in the integration conceptual framework and benefit from immigrants' integration experience.

The Romanian choice for framing its Roma policy as 'inclusion' rather than for 'integration' may be appropriate as it applies to a historic minority of citizens needing social justice. The use of an immigration integration policy as model for a Roma inclusion strategy is limited due to the stronger legitimization of historic minorities for shared-ownership of public decision-making. That is the Swiss example of immigrants' integration could only serve Romania as a minimum standard for its Roma inclusion strategy. It can benefit from the Swiss experience on immigrant's integration policy in terms of conception, coordination, monitoring and transparency may be beneficial, while the Roma political participation may find inspiration from the Swiss linguistic communities' participatory mechanisms. The on-going reciprocal learning process connecting academia and public authorities able to transform science into action and experience in knowledge may inspire the Romanian authorities.

**Keywords:** immigrants' integration, Roma inclusion, national minorities

## Introduction

In the last decade, the Roma<sup>1</sup> Studies appeared as a trans-disciplinary field in the humanities and social sciences area accompanying the growing political interest for this topic in Europe. The knowledge on the Roma inclusion builds upon the conceptual structure developed for the inclusion of vulnerable groups in general and for cultural minorities, especially. By difference to the inclusion of other disadvantaged persons, the conception of the integration of immigrants, national minorities and peoples as cultural minorities evolved on the multicultural path and developed a more evident collective perspective. Nevertheless, the concepts of *integration* and *inclusion* are not entirely delineated of others as *assimilation* or *accommodation*, nor the analysis of alternative ways or methods to reach this goal hasn't been exhausted.

The Romanian Roma inclusion policies constituted the subject for several assessment international and Romanian studies<sup>2</sup> which focused on specific aspects or compared the texts of different, mostly Eastern European, national strategies.

While acknowledging that this research covers only a small portion of the unknown, its main goal<sup>3</sup> is to better anchor the Romanian policy on Roma inclusion in the inclusion conceptual framework and to contribute to a possible vision for its development starting from the Swiss immigration integration reach experience, as it will be argued latter (see section 4.2). Additionally, it highlights the limits of using an immigration integration policy as model for a Roma inclusion strategy and evaluates in the Romanian context some other options opened by the research on the Swiss comparative model.

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<sup>1</sup> The internal diversity of Roma was emphasized in the social science literature. The term «Roma» is generally used to encompass a diversity of ethnic groups which nevertheless consider sharing common features. Here «Roma» will be used as a generic name for diverse ethnic groups auto-identified as Roma, Gypsy, Tzigans, Sinti, Manouchs, Romanichels, Kales, Bohemians while nevertheless confess sharing a common history, or comparable traditions, cultures, languages and a feeling of solidarity. The Swiss, German and Austrian Janisches may not pertain to this group, for example.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, National Roma Integration Strategies: *A first step in the implementation of the EU Framework*, COM(2012) 226, Brussels, 21.5.2012, available at [www.eur-lex.europa.eu/LexUriServ.do?uri=COM:2012:0226:FIN:RO:PDF](http://www.eur-lex.europa.eu/LexUriServ.do?uri=COM:2012:0226:FIN:RO:PDF) last viewed May, 10, 2013, *Analysis of the National Roma Integration Strategies*, European Roma Policy Coalition, March 2012, available at [http://www.ergonetnetwork.org/media/userfiles/media/Final%20ERPC%20Analysis%2021%2003%2012\\_FINAL.pdf](http://www.ergonetnetwork.org/media/userfiles/media/Final%20ERPC%20Analysis%2021%2003%2012_FINAL.pdf), last viewed May, 10, 2013, *Review of EU Framework National Roma Integration Strategies (NRIS)* Open Society Foundations review of NRIS submitted by Bulgaria, the Czech Republic, Hungary, Romania and Slovakia Compiled by Bernard Rorke, Director of International Advocacy and Research, Open Society Roma Initiatives, February 2012, available at <http://www.opensocietyfoundations.org/reports/review-eu-framework-national-roma-integration-strategies>, last viewed, May, 10, 2013, Ana Maria Preoteasa, Sorin Cace, Gelu Dumina (coord.), *Strategia nationala de imbunatatire a situatiei romilor: vocea comunitatilor*, Ed. Expert, 2006, available at [http://www.agentiainpreuna.ro/files/publicatii/10-RAPORT\\_tipar-p-ro.pdf](http://www.agentiainpreuna.ro/files/publicatii/10-RAPORT_tipar-p-ro.pdf), last viewed, May, 10, 2013, Simona Ilie, Rusu Mărioara, Stefănia Toma, Iulian Stoian, Arsu Alin *Incluziunea Romilor in Romania, Politici. Institutii, Experiente*, [http://www.romadecade.org/files/downloads/General%20Resources/Soros\\_Romania\\_Foundation\\_Report%20-%20Roma%20inclusion%20in%20Romania%20-%20Policies%20institutions%20and%20examples.pdf](http://www.romadecade.org/files/downloads/General%20Resources/Soros_Romania_Foundation_Report%20-%20Roma%20inclusion%20in%20Romania%20-%20Policies%20institutions%20and%20examples.pdf), last viewed, May, 10, 2013.

<sup>3</sup> The ideas exposed in this work are subject to change as the research projects develops. In this respect, any comment or suggestion is most welcomed.

In constructing my argumentation, I shall rely mainly on the Canadian political philosophy professor Will Kymlicka<sup>4</sup>'s conceptual frame which already penetrated the public sphere and establishes, in my opinion, a clear and coherent foundation to build on. While, in his work, he did tackle the Eastern European Roma situation<sup>5</sup>, his most important contribution to the knowledge of cultural diversity may be in delineating conceptual tools to address traditional national minorities and immigrant's integration<sup>6</sup>.

## 1. Conceptual overview: integration or inclusion?

*Inclusion* and *integration*<sup>7</sup> are terms used in different fields and contexts. When referring to cultural diversity, they are still used with different meanings, the vagueness of their meaning giving sometimes the illusion of agreement between groups involved in express or tacit forms of social negotiations. For the reasons presented below, I'll understand *inclusion* as a set of activities aiming to bring social justice to groups considered disadvantaged and asking for a more active and open mainstream society. *Integration* relies on both vulnerable person and society to participate, seeming more related to *assimilation*.

The political or normative preference for one term or another may find some of its explanation in the state of universal or local knowledge on the topic and in the history of social relationships between various ethnic groups in a specific country.

Despite the vagueness of *integration* and *inclusion* some scholars<sup>8</sup> agree on their interpretation as social justice policies for vulnerable categories. If the targeted vulnerable group has also a different culture, the adequate integration policy combines social justice, anti-discrimination and multiculturalism, designing a participatory structure which accommodate diversity in a different way that autonomy or self-government.

The political science language sometimes identifies (*social*) *inclusion* with *integration* or *social cohesion*. In the framework of cultural minorities protection, *accommodation* is considered a form of multicultural integration while, in different contexts, «special accommodations»<sup>9</sup> seems to go beyond integration in the direction of autonomy and self-governance. While contributing to the coherence of the conceptual framework of immigrant integration exceeds the ambitions of this report, the

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<sup>4</sup> For more on Will Kymlicka's work, see <http://post.queensu.ca/~kymlicka/> last viewed, January, 29, 2015.

<sup>5</sup> See Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, Oxford University Press, 2007. 374 pp.

<sup>6</sup> See his book on *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford University Press, 1995. 280 pp.

<sup>7</sup> Kristin Henrard *The Intractable Relationship Between the Concepts «Integration» and «Multiculturalism»*, Challenges of Multiculturalism, p. 107, Heinrich Böll Foundation, 2013, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2305156](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2305156), Kim, Janine Young, Postracialism: Race after Exclusion (July 31, 2013), p.51 s.a, Lewis & Clark Law Review, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2304338>.

<sup>8</sup> See Sarah Collinson, *Immigrant Minorities in Western Europe*, in Crawford Young (ed.), *Ethnic Diversity and Public Policy. A Comparative Inquiry*, Palgrave, 1998, p.154, Iris Marion Young, *Inclusion and Democracy*, Oxford University Press, 2000, p. 12.

<sup>9</sup> For both uses of *accommodation*, see Will Kymlicka, *Politics in the Vernacular*, Oxford University Press, 2001, p. 177 s.a.

vagueness and sometimes contradictory understanding of the words used to approach cultural diversity policies may indicate this scientific field as being still *in statu nascendi*<sup>10</sup>.

As a public social policy, inclusion aims to bring social justice to groups considered disadvantaged. This category may comprise disabled, women, homosexuals, elderly people, national minorities or immigrants. They may be all vulnerable to a specific form of collective, wide-spread and deeply-rooted inequality: systemic or structural discrimination<sup>11</sup>. Because the injustice cannot be attributed to one behaviour or norm, the structural inequality<sup>12</sup> escapes to the judicial review, but policy-makers try to co-ordinately fight it. Due to the sensitive cultural weight, inclusive policies targeting national minorities and immigrants have some similarities, sometime being defined as *multi- or intercultural*.

The justification of inclusive policies comes from the theory of justice on the path of democracy theory. If we look from the Focarellis' view, for whom justice is protection of the most vulnerable<sup>13</sup>, or from the Rawls perspective for whom «an inequality in the basic structure must always be justified to those in the disadvantaged positions», than inclusiveness would be instrumental to social justice<sup>14</sup> by the path of equality.

Both political science and juridical sciences argue for inclusion from their different perspectives and with specific instruments. For inclusion or integration to be fully acknowledged as legal terms not only their mentioning in legal norms is needed, but also to be given weight in the reasoning of courts' decisions. This process takes different path in different countries or at the European Union level. Even if the juridical literature on inclusion may not be as vast as the political science one, someone may notice that, from bottom up – reasoning from individual to the collectivity – and arguing from justice – equality – discrimination to special measures lawyers do advocate for inclusion. If the special measures are required on individual human rights basis on equality and non-discrimination, the inclusive policy targets systemic or structural discrimination<sup>15</sup>. By contrast with the notions of direct or indirect discriminations, which focus the individual, the systemic discrimination<sup>16</sup> focuses on «ontological equality, demanding that specific attention is given to the situation of the most subjugated groups of the society, and to the identification of sources of the differential treatment that lie in some sense with the system rather than simply with the individual who represent

<sup>10</sup> Contribution to the coherence of the conceptual framework of immigrant integration have been made, among others, by Will Kymlicka, op.cit., Iris Marion Young, op.cit., Sarah Collinson, op.cit.

<sup>11</sup> Some authors distinguish between systemic and structural discrimination on criteria as intention or public authorities' involvement in discrimination. See Paivi Gynther, *On the Doctrine of Systemic Discrimination and its Usability in the Field of Education*, International Journal on Minority and Group Rights 10/2003, p. 46.

<sup>12</sup> Structural inequalities derive «from the operation of diverse institutions and practices conspires to limit the opportunities of a group to achieve well-being» Iris Marion Young, *Structural injustices and the politics of difference*, in *Multiculturalism and Political Theory*, Antony Simon Laden and David Owen (ed.), Cambridge University Press, 2007, p. 63.

<sup>13</sup> Carlo Focarelli, *International law as social construct*, Oxford University Press, 2012, p. 3.

<sup>14</sup> I use the notion of social justice in John Rawls view, as referring to «the basic structure of society, to the way in which the major social institutions – political constitutions and the principal economic and social arrangements – distribute fundamental rights and duties and determine the division of advantages from social cooperation». See John Rawls, *A Theory of Justice*, Harvard, 2005, p. 7.

<sup>15</sup> On the notion of «structural discrimination» see Christa Tobler, *Indirect Discrimination*, Intersentia, 2005, p. 52.

<sup>16</sup> Paivi Gynther, 2003, p. 46.

it»<sup>17</sup>. This idea is supported by Samantha Besson's observations on the existence of an *endemic discrimination*<sup>18</sup> and by Elliot and Fleras' remarks on *subliminal racism* – a form of racism manifested by people who genuinely and sincerely accept egalitarian values, but who nonetheless, often unconsciously, invoke double standards when evaluation or predicting the actions of different racial groups.<sup>19</sup> Anti-Gypsyism is the racism against Roma. Nicolae<sup>20</sup> considers that in some European countries there was until recently a state sponsored discrimination against Roma<sup>21</sup> because anti-Gypsyism can infect the mainstream of political thought and action. The European anti-Gypsyism has, upon the same author, an institutional<sup>22</sup> dimension visible through the refuse to recognise Roma as a national minority while still recognising other national minorities<sup>23</sup>.

Systemic, structural or endemic discrimination is sometimes criticized from a juridical perspective because, as Carol Lee Bacchi argues, by 'making everything structural' it becomes more difficult to find someone to hold responsible for the discrimination, and that the power relations which install and maintain inequitable organizational systems thereby become difficult to discern<sup>24</sup>.

The norms and jurisprudence protecting national minorities may have brought advance on the reasoning of inclusion policies on at least three points<sup>25</sup>. First, the argument for special, positive measures<sup>26</sup> endorses the need for political decisions and affirmative actions to be taken in order to reach substantive equality – as a human right standard. Secondly, under the national minorities' specific regulations, the right to preserve specific culture was interpreted as imposing on states positive obligations to act for the protection of the minority as a group<sup>27</sup>. Thirdly, the requirement to coordinate public actions and to aim for results on specific public policies was highlighted in the international and European soft law on national minorities and Roma inclusion<sup>28</sup>. These would sup-

<sup>17</sup> Structural discrimination would be, in Hill's view, «the unintended adverse impact on racial minorities of societal processes and changes and institutional policies». See Gynther, 2003, p. 48.

<sup>18</sup> For endemic discrimination see Samatha Besson, *L'égalité horizontale: l'égalité de traitement entre particuliers*, Editions Universitaires Fribourg Suisse, p. 120.

<sup>19</sup> On Elliot and Fleras racism may be spotted in three forms: *red-naked racism* – that is, the explicitly avowed belief that one race is genetically superior to another, *polite racism* – where people who believe in racial superiority avoid saying so in public, and *subliminal racism* – of people who consciously and sincerely reject all racist doctrines. Apud. W Kymlicka 2001, p. 189.

<sup>20</sup> Valeriu Nicolae, *Towards a Definition of Anti-Gypsyism*, 2006, available at <http://www.ergonetwork.org/media/userfiles/media/egro/Towards%20a%20Definition%20of%20Anti-Gypsyism.pdf>, last viewed May, 10, 2013.

<sup>21</sup> Citing a case from United Kingdom. See Valeriu Nicolae (2006), p. 5.

<sup>22</sup> On «institutional racism» see the report in the Stephen Lawrence death Inquiry from Great Britain, <http://www.runnymedetrust.org/uploads/publications/pdfs/StephenLawrenceInquiryReport-2009.pdf>, p. 14, last viewed June, 24, 2013.

<sup>23</sup> Citing the cases of Italy and Netherlands. See Valeriu Nicolae (2006), p. 3.

<sup>24</sup> Gynther, 2003, p. 48, 49.

<sup>25</sup> From a different opinion, social rights are for the excluded ones, see Andreas Auer, Giorgio Malinverì, Michel Hottelier, *Droit constitutionnel Suisse, vol. II, Les droits fondamentaux*, Deuxième édition, Stampfli Editions SA Berne, 2006, p. 12–13.

<sup>26</sup> ECHR Case «Relating to certain aspects of the laws on the use of languages in education in Belgium» CASE v. Belgium, Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) Judgement from 23 July 1968.

<sup>27</sup> HRC Communication No 1023/2001 Länsmän v. Finland CCPR/C/83/D/1023/2001.

<sup>28</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, National Roma Integration Strategies: a first step in the implementation of the EU Framework, COM(2012) 226, Brussels, 21.5.2012, available at [www.eur-lex.europa.eu/LexUriServ.do?uri](http://www.eur-lex.europa.eu/LexUriServ.do?uri) last viewed May, 10, 2013.

port the idea that, in the field of national minorities and more specific in Roma integration, the state has to take positive measures which aim both individual rights and group protection, measures which has to be coordinated and suitable to bring social justice.

In the political sciences seems to prevail, in accordance with the purposes of this discipline, the up-to-bottom perspective and the freedom of linguistic instruments/terminology. Iris Marion Young names the politics of difference<sup>29</sup> – positional and cultural – as equivalent to the identity politics when referring to the way justice claims against difference-blind policy are argued by different social groups. In my understanding, her politics of positional difference would justify the inclusion approach for vulnerable groups, while the politics of cultural difference sustain the multicultural policies for ethnic or cultural minorities which are not, at the same time, socially disadvantaged. For this last category, a combined approach of inclusion and cultural difference policies may be best suited<sup>30</sup>.

As the above arguments shows, inclusion seems to be a policy directly justifiable on social justice arguments. Instead, integration seems to be the preferred label for policies targeting immigrants, even if it is also use for social justice policies oriented towards vulnerable groups, be they women, disabled or ethnic minorities. Semantically, inclusion seems to ask for a more active and open mainstream society while integration relies on both vulnerable person and society to participate.

For Will Kymlicka «integration is a two way street. It requires a willingness on the part of the minority group to adapt to certain features of the mainstream society (...). But it equally requires a willingness on the part of the majority to accept the minority as equal citizens.» The Swiss Law of foreigners defines foreigners' integration as a process aiming the coexistence of the Swiss and foreign population on the basis of constitutional values, respect and mutual tolerance (Article 4 para.1) and implying a partnership between the immigrant, the host-society and the public authorities. The Czech Roma Integration Strategy defines it through its main goal – «achieving conflict-free<sup>31</sup> coexistence between Roma communities and the rest of society». In the context of immigrants' integration this process seems to refer mainly to economic, social and cultural life, and not to political life. If, the political participation of foreigners may be limited on the argument that this is, traditionally, a citizenship right, the nationals' political participation, including to decision-making, may enter under the scope of an inclusion policy adapted to them.

More broadly, for Kristin Henrard<sup>32</sup> an optimal inclusion means nothing else than «integration without assimilation», but would encompass also some form of participation to decision-making<sup>33</sup> which,

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<sup>29</sup> Iris Marion Young, 2007, p. 60 s.a.

<sup>30</sup> Will Kymlicka, *The New Debate on Minority Rights (and postscript)* in *Multiculturalism and Political Theory*, Antony Simon Laden and David Owen (ed.), Cambridge University Press, 2007, p. 42. For a distinction between a politics of redistribution and a politics of recognition see Nancy Fraser and Axel Honneth, *Redistribution or Recognition: A Philosophical exchange*, Verso Books, London, 2003.

<sup>31</sup> Not everyone agree with the Czeeg Government perspective on conflict. On other opinions, conflict may be good, it could foster development, only violent conflict are to be avoided. From this point of view, how the conflict is dealt with seems decisive.

<sup>32</sup> Kristin Henrard, 'Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their reflections in the Supervision of the FCNM and Several Human Rights Conventions, *International Journal on Minority and Group Rights* 12/2005, p.134.

<sup>33</sup> See for a different approach on the minorities participation to decision-making David Fontana, *Government in opposition*, Yale Law Journal, 119/2009.



even if it gives «a say» to the included ones, does not go as far as autonomy or internal self-determination does.

Nevertheless, there seems to be two main ways to conceive an integration policy: a needs-based and a rights-based approach<sup>34</sup>, especially the former recommendable to be funded on a factual needs-analysis. If the needs-based approach mainly aims to bring social benefits closer to the disadvantaged group, the rights-based conception is funded on justice and equality and aims to end and compensate structural racial discrimination. Current integration policies combine antidiscrimination and social justice on a multiculturalist framework in varying ways, the needs-based approach seeming to be favored, in my view.

Integration or inclusion potentially refers to two distinct public policies. One may be synonym with assimilation<sup>35</sup> and mean «extending already constituted institutions and practices to people not currently benefitting from them enough, and thereby expecting them to conform to the hegemonic norms». In this conception, the political process is «enfolded its participants in a single public with a single discourse of the common good»<sup>36</sup>, the social outsiders being welcomed to adapt to a society already designed by the cultural majority without original input from those to be integrated<sup>37</sup>. If it leads to forced assimilation, this understanding contradicts the right to identity<sup>38</sup>, which is protected by various minority instruments and has as a corollary the prohibition of forced assimilation<sup>39</sup>.

From a Romanian perspective, Dan Oprescu<sup>40</sup>, former senior Adviser at the National Agency on Roma of the Romanian Government highlights the choice for inclusion rather than for integration: «Nowadays, the current «politically correct attitude prohibits the open approach of the «social integration» school of thought, preferring very much the transparent euphemism of «social inclusion. (...) The key word in mainstreaming», but integration or inclusion is assimilation.

In the other conception, to which I refer as the multicultural one, integration/inclusion policies allow or encourage cultural minorities<sup>41</sup> to preserve and express distinctiveness, public institutions also modifying their rules, practices or symbols to accommodate the beliefs and practices of the minori-

<sup>34</sup> For example, Will Kymlicka, Dan Opreescu Zenda, Kristin Henrard.

<sup>35</sup> I use *assimilation* in Patrik Thornberry's view as the process that «involves the disappearance of a culture through absorption into another, usually larger and more dominant group». Article 12 in *The Rights of Minorities*, edited by Marc Weller, Oxford University Press, 2005, p. 366.

<sup>36</sup> Iris Marion Young, *Inclusion and Democracy*, Oxford University Press, 2000, p. 12.

<sup>37</sup> For this policy Will Kymlicka uses the term *Anglo-conformity* when referring to immigrants' inclusion. See W.Kymlicka, 2001, p. 153.

<sup>38</sup> The Framework Convention premises are that identity is shaped through interaction with others and that identity is multiple or hybrid. (Patrik Thornberry 2005, p. 392.) Acknowledging that the (national, ethnical or cultural) identity may not only be multiple or hybrid, but entirely a myth may, at some point, shape a different form of the right to identity which would require a different argument against forced assimilation. See Mark Terkessidis, *Interkultur*, 2010.

<sup>39</sup> K Henrard, 2005, p. 134, footnote no. 6.

40 Dan Oprescu Zenda, *Roma Issues in Romania – The Year 2000 and Beyond*,  
[http://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=23&ved=0CFoQFjAMOAo&url=http%3A%2F%2Fifish.de%2Ffile-CORE%2Fdocuments%2Fyearbook%2Fenglish%2F00%2FOprescu.pdf&ei=nx\\_KVJzwEMqBadXrgtgJ&usg=AFQjCNF85L\\_fKhgcpGdLsDX-y4WeSqbOJQ&bvm=bv.84607526,d.d2s&cad=rja](http://www.google.ro/url?sa=t&rct=j&q=&esrc=s&source=web&cd=23&ved=0CFoQFjAMOAo&url=http%3A%2F%2Fifish.de%2Ffile-CORE%2Fdocuments%2Fyearbook%2Fenglish%2F00%2FOprescu.pdf&ei=nx_KVJzwEMqBadXrgtgJ&usg=AFQjCNF85L_fKhgcpGdLsDX-y4WeSqbOJQ&bvm=bv.84607526,d.d2s&cad=rja).

<sup>41</sup> Both new or old minorities, in Will Kymlicka, *The New Debate on Minority Rights (and postscript)* in *Multiculturalism and Political Theory*, Antony Simon Laden and David Owen (ed.), (Cambridge University Press, 2007).

ties<sup>42</sup>. The multiculturalism is still an integration policy<sup>43</sup> limited by the principles in the framework of which such a policy evolves: the recognition and use of the official language in the public life, the respect for liberal democratic values, including human rights and equal opportunity for all, including women, and respect for pluralism, openness and tolerance of others' differences<sup>44</sup>.

Prof. Nathan Glazer's comment «we are all multiculturalists now»<sup>45</sup> states the difficulty to scientifically legitimize nowadays the assimilationist, Anglo-conformity perspective. This is not to say that multiculturalism has become a general public conception. On the contrary, from the beginning of the XXI century, the multiculturalism embraced as a public policy in the '70s is under question<sup>46</sup>.

There seems to be three main known path for national minorities to develop<sup>47</sup>, from which integration is only one: i). to engage into a nationalist movement for self-government, ii). to become isolated enclaves, marginalised, that do not participate in the larger society or iii). to integrate into the existing societal culture while seeking better or fairer terms to do so. From these alternatives, only the last two are open for new minorities or immigrants. Instead, Iris Marion Young argues that isolated minority enclaves do not necessarily equates marginalisation. Minorities' political participation in the larger society on the basis of equal opportunity is possible in residentially segregated communities<sup>48</sup> by mean of «differentiated solidarity». The differentiated solidarity policy avoids marginalisation and exclusion while still distinguishing itself from the integration approach, in her opinion. When applied to segregated communities (or isolated enclaves, in Kymlicka's wording) integration would promote the mixing of segregated groups mostly by the entrances of racial minorities into the more privileged sites or enclaves<sup>49</sup>. By contrast, the differentiated solidarity would imply moving the benefits to the ghettos under the obligation of justice towards differentiated others and by means of institutions of regional federalism<sup>50</sup>. The existence of communities residentially segregated by individual own choice are legitimated by the desire to form and maintain affinity grouping as forms of freedom of association, acknowledging the problem as being the spatial distribution of benefits, and not the existence of residential clustering *per se*. While agreeing that moving benefits to the clustered community could be a more fair and effective path towards social equity, I see differentiated solidarity as a form of multicultural integration rather than a distinct policy, at least because none of the «definitions» of the integration excludes *ab initio* the existence of culturally homogenous neighborhoods.

<sup>42</sup> See W. Kymlicka, 2001, p. 159.

<sup>43</sup> See W. Kymlicka, 2001, p. 174.

<sup>44</sup> W. Kymlicka, 2001, p. 280.

<sup>45</sup> See Nathan Glazer, *We Are All Multiculturalists Now*, Cambridge, Mass. Harvard University Press, 1997.

<sup>46</sup> Attempts to build a multicultural society in Germany have «utterly failed», Chancellor Angela Merkel says on 16 October 2010 <http://www.bbc.co.uk/news/world-europe-11559451>, British PM David Cameron's says also that Multiculturalism has failed: «Under the doctrine of state multiculturalism, we have encouraged different cultures to live separate lives, apart from each other and the mainstream.» (5 February 2011) [http://www.nbcnews.com/id/41444364/ns/world\\_news-europe/t/british-pm-multiculturalism-has-failed/#.UYjO28rAksk](http://www.nbcnews.com/id/41444364/ns/world_news-europe/t/british-pm-multiculturalism-has-failed/#.UYjO28rAksk), last viewed on 7 May 2013. For an answer to these questions see Will Kymlicka, *The new debate on minority rights (and postscript)*, in *Multiculturalism and Political Theory*, Antony Simon Laden and David Owen (ed.), Cambridge University Press, 2007, p. 49 s.a.

<sup>47</sup> W. Kymlicka, 2001, p. 161.

<sup>48</sup> Which, in my opinion, would correspond to the second choice W.Kymlicka mentioned. W. Kymlicka, 2001, p. 161.

<sup>49</sup> Iris Marion Young, *Inclusion and Democracy*, Oxford University Press, 2000.

<sup>50</sup> Which value local autonomy, requiring intergovernmental negotiation, mediation, joint-planning and regulation. See Iris Marion Young, 2000, p. 196 s a

From sociology professor Yasmin Nohaglu Soysal perspective, the European states follow one of the two policies for the inclusion of immigrants<sup>51</sup>: one type «provide opportunities for language learning, training etc., at the same time that they discourage groups from forming group-specific organizations». The other ones «allow or even encourage the self-organization of migrant groups to provide services and represent the interests and perspectives of these groups in politics and policy». From prof. Young perspective, only the first one is «guided by an ideal of integration, while the latter align more with the ideal of differentiated solidarity»<sup>52</sup>. I am not convinced a line can be drawn between integration in its multiculturalist form and the differentiated solidarity conception; I rather see the differentiated solidarity as a multiculturalist option designed to integrate segregated communities. Allowing or encouraging the self-organization of migrant groups can touch clustered as well as dispersed cultural communities. Moreover, the integration term has never been limited to refer only to the inclusion of dispersed cultural communities, as opposed to territorially segregated ones.

As public policy for vulnerable cultural or ethnic minorities, I think inclusion or integration would entail state's obligation to devise a set of coordinated programs, special measures and instruments to fight structural discrimination and aim effective equality and cultural distinctiveness. It implies minority participation, but differentiates from assimilation and from autonomy or self-government as well.

## 2. Roma as national minority

The specificity of Roma can be resumed in this community being at the same time understood as a national minority, an emerging people and a social vulnerable group – in some Easter European countries.

According to Kymlicka, there are three typical cultural minorities: national minorities, ethnoreligious sects and immigrants<sup>53</sup> differentiable upon needs, demands and their justifications<sup>54</sup>. African Americans, Roma, guest-workers in Germany or Russian settlers in the Baltics are some hybrid cases whose claims to minority rights may be understood as «a response to perceived injustices that arise out of nation-building policies»<sup>55</sup>.

In most European Union countries<sup>56</sup> Roma are recognised as a national, cultural, linguistic or an ethnic minority<sup>57</sup>, alongside with other groups which gained a comparable status.

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<sup>51</sup> Yasmin Nohaglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Chicago, University of Chicago Press, 1994, apud. Iris Marion Young, 2000, p. 219.

<sup>52</sup> Iris Marion Young, 2000, p. 219.

<sup>53</sup> Aside national minorities and indigenous people. Sometimes, W.Kymlicka also adds metics (the immigrants who were not supposed to become citizens and has not been exposed to an integration policy, but to the contrary), Will Kymlicka, 2007, p. 45.

<sup>54</sup> For details see, Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford University Press, 1995, p. 11–19.

<sup>55</sup> Will Kymlicka, 2007, p. 42.

<sup>56</sup> See Roma integration by EU country, [http://ec.europa.eu/justice/discrimination/roma-integration/index\\_en.htm](http://ec.europa.eu/justice/discrimination/roma-integration/index_en.htm)

<sup>57</sup> The meaning of the notions *national*, *ethnic*, *cultural*, *linguistic minorities* and the relations between those notions differ between schools of law. In the German conception, a minority is «national» if it belongs to a nation in another state, while in the French view, a national minority is one which is numerically un-dominant, has a

But Roma has its specificities as a national minority because it is a European, non-territorial, with no kin-state, and, most important for this study purposes, because it is subject to the vicious circle of social exclusion. Researches<sup>58</sup> have additionally highlighted its specific combination of ethnic and social features, the internal diversity of the Roma minority, the multiple and intersectional discrimination as a specific form of inequality Roma persons experience, the often hybrid and multiple identity of the Roma and the current stage of creation of a national Roma identity and of a Roma elite.

The Parliamentary Assembly of the Council of Europe<sup>59</sup> use the concept of «European minority» to underline the need for a common European action to make sure the European democratic tradition and principles, including human rights apply to all its inhabitants. From an international law perspective, this notion, as the «transnational minority» one, has currently no significance<sup>60</sup>, even if, from a sociological perspective, may be accurate to point out that Roma traditionally live mainly in Europe<sup>61</sup>.

The notion of «new minorities» emerged from the comparison of immigrants with the autochthonous minorities. The numerically inferior and non-dominant ethnic groups who traditionally live on a certain state territory are generally designate by the notion of «historical minorities», while the foreigners arrived from the XX century form the new ones. From this point of view, Roma belongs to the category of historical minorities, their arrival in Europe being dated in the XIV–XV centuries.

Roma is also a non-territorial minority, compared with the Jewish one and differentiated by the most numerous national minorities in Europe who inhabit a determinable area inside certain states, being though called «territorial minorities». Territorial minorities may use general democratic mechanisms to participate in the decisions affecting them if the state delineates the zone they inhabit as a separate administrative unit thus transforming the national minority in a regional/local majority. This mechanism of political inclusion does not work for non-territorial minorities; they remain minorities at the national and regional/local level as well. For this particular cases personal autonomy (named also cultural autonomy or personal federalism) measures may be put in place to allow the spread community to more or less self-govern mostly on cultural issues as education, culture, media, native language public use etc.

As a common situation in Europe, territorial minorities represent majorities in another state, often neighbour with the one in which the ethnic group represents a minority. Because of the cultural and historical link with the minority, the mother-state or the kin-state – the one in which the group forms the majority – claims to have a legitimate right or at least interest to care for the members of the same group forming a minority and living in the neighbour state called state of citizenship or host-

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common culture, traditions, religion or language, as well as a will to preserve the common identity, among other characteristics. See Joelle Sambuc Bloise, *La situation juridique des Tziganes en Suisse*, Schulthess Verlag, Zürich, 2008, p. 179, point 620. For example, the distinction between an *ethnic* and a *cultural* minority might be done through the attribute of *exotic* which comes together with the *ethnicity* in some views.

<sup>58</sup> Marica Ionescu, Sorin Cace, *Politici publice pentru Romi. Evoluții și perspective*, Expert Publishing House, 2006, Laszlo Foszto, *Colectie de studii despre romii din Romania*, Editura ISPMN, Cluj-Napoca, 2009.

<sup>59</sup> The report of the Parliamentary Assembly of the Council of Europe of 11 January 1993, «The Gypsies in Europe».

<sup>60</sup> Joelle Sambuc Bloise, 2008, point 478.

<sup>61</sup> The particularity – Global approach, countries coordination in this respect, no citizenship requirement for being national minority – a case by case review on FCNM and a clear answer «no» on ICCPR jurisprudence see Joelle Sambuc Bloise, 2008, points 413–419.

state<sup>62</sup>. Because the concrete form of caring for the minority may oppose general principles of international law, namely, the principle of non-intervention (in the internal affairs of other states), the notion of kin-state or its rights are not yet clearly delineated. Roma has no kin-state to intervene on its behalf, so it isn't perceived as a potential challenge to the state of citizenship's security, but also let them without the important support a kin-state generally represents for the minorities sharing the same culture, history, language etc.

In the late decades, the internationally active Roma stressed on these features and argued on the existence of the whole Roma community, which overpass the specific internal diversity. They pointed out that Roma are no threat to national unity<sup>63</sup> of the European state – since they have no ground for asking autonomy or secession – and nor to the national security – lacking a kin-state. Nevertheless, the unity of language and history across Europe entitle them to a coordinated protection by recognising their legal status as national minority in every country they live. Moreover, the existence of a Roma people<sup>64</sup> or nation is reasoned in the same way. One of the features of a people is the existence of a feeling of solidarity which adds to the objective common features. The first step on the direction of recognising a Roma people was made in 2000 with the «Declaration of the Gypsy Nation» of the International Romani Union intending to prove Roma solidarity. While agreeing that an international recognition of the Roma as people and not only as minority, would entitle them to auto-determination and international representation, we have also to acknowledge the obstacles: not only the quality of the International Roma Union as democratic and legitimate representative of the Roma and not merely an auto-appointed representative NGO is to be proved, but the qualification as a people is, as a common rule, connected with the existence of any kind of legitimate structure of representation. Also, the lack of a territory makes the claim distinctive and might imply a reconsideration of the international public law on people. It challenges the principle of territorial democracy and the Westphalian international order or, from another perspective, the trinity state-nation-territory, which, nevertheless, are already under challenge as the theories on diasporas, global civil society and cosmopolitanism suggest.

Currently, the particular feature of being considered a socially vulnerable group<sup>65</sup> plays an important role in the European scale mobilisation for the inclusion of Roma. This is especially true for the Romanian Roma which are not only the most numerous in the European Union<sup>66</sup> but had also been

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<sup>62</sup> The term of host-state may be less adequate 1) to express the equal entitlement of the national minorities to participate to public life on the same footing with the majority or 2) to support the civic nation conception (as opposed to the ethnic nation).

<sup>63</sup> Roma do not aspire to create a separate state or to acquire administrative autonomy. See Joelle Sambuc Bloise, 2008, point 517 citing Tove H Malloy.

<sup>64</sup> Arguments on the Roma qualifying as an autochthonous people and more specific, as a tribal people can be found in Joelle Sambuc Bloise, 2008, point 590.

<sup>65</sup> On these two features of the Roma community see: Gabriela Mirescu, *Between Ethno Nationalism, Social Exclusion and Multicultural Policies. The case of Roma in Romania*, 2010, p. 82 («Roma are not only seen as belonging to a distinct ethnic group, but they have built in time a distinct economic and social class»), Dan Oprescu, *Un pas gresit in directia cea buna. Minoritatile nationale din Romania 1990–2010*, Ed. Universității din București, 2010, Will Kymlicka, 2007, p. 42.

<sup>66</sup> This characteristic is preserved under the official or the estimate statistics as well. See [http://www.coe.int/t/dg3/romatravellers/default\\_en.asp](http://www.coe.int/t/dg3/romatravellers/default_en.asp), last viewed on the 6<sup>th</sup> of May 2013.

subject to slavery<sup>67</sup>. The social vulnerability of Roma in some European countries does not outshine the common ethnic identity which justifies the protection as national minority<sup>68</sup>.

The European Union member states have adopted a national strategy for Roma inclusion or have integrated this subject in their general strategies for the inclusion of immigrants and other vulnerable categories<sup>69</sup>, while the EU itself has, since 2011, a Framework for the National Roma Integration Strategies. Nor the Council of Europe or the Organization for Security and Cooperation in Europe (OSCE) remained outside of this trend. Within the Parliamentary Assembly of the Council of Europe there was adopted the first text on Roma, in 1969, while the OSCE (former CSCE) was first to recognize the particular problems of the Roma, in the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

Beside the questions of the Roma representatives who could legitimately sustain Roma interests at the European or national levels and of a common Roma political agenda, two are the issues which recurrently seem to limit progress on this file: the Roma number and the Roma identification methods and criteria. Evidently, they are very closely related one another and essential to design and assess public policies tailored on the dimension of the targeted group. To exemplify, the accuracy of the scientific findings on the different demographic evolution of Roma ethnics comparing with other European national groups depends on the methods and criteria to establish the ethnicity of the study subjects.

The inconsistencies in relation to the number of Roma originate, in my view, in public policies, Roma specificities and the systemic feature of anti-Gypsyism. Some countries' conception over nationhood prevents the recognition of national minorities (France). Others define minorities on cultural or linguistic criteria which sometimes prevent them as well to gather consistent ethnic data<sup>70</sup>. Others recognize national ethnic minorities and also recognize Roma as a national minority but consider ethnic data gathering a discriminatory practice or only manifest concerns about the possibility to ensure the protection of individuals with regard to the processing of personal data (most of the EU members). Some of these countries gather few ethnic data by periodic official census. Some others gather ethnic data continuously and as a legal obligation. In the United Kingdom they are disaggregated on age, education level, employment and religion.

When and where do ethnic data are collected, the issue of the fear of victimization or stigmatization as result to the deeply-rooted anti-Gypsyism is raised to explain the small number of people officially auto-identifying as Roma. Additionally, as most of the people, many of those auto- or hetero-

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<sup>67</sup> In Moldova and Valachia.

<sup>68</sup> Joelle Sambuc Bloise, 2008, pct. 402.

<sup>69</sup> See the Communication «National Roma Integration Strategies: a first step in the implementation of the EU Framework» available at [http://ec.europa.eu/justice/discrimination/files/com2012\\_226\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/com2012_226_en.pdf), last viewed on the 6<sup>th</sup> of May 2013.

<sup>70</sup> For example, Switzerland has established the groups recognised as national minorities through an interpretative declaration when ratifying the Council of Europe Framework Convention for the protection of national Minorities in October, 1998. It recognised, among others, the travellers as national minorities, but not the Roma. More details can be found in section 4.1 of this report.

identified as Roma consider themselves having a hybrid or multiple identities<sup>71</sup> which make choosing only one ethnic group difficult and variable.

But who can, would or should be Roma? Trying to answer this involves researching on what it is known on who can establish one's identity. Presumably, there are two main sources for identification: self-identification, or the identification of the self-person and hetero-identification, or the identification of others. Hetero-identification, seems unable to provide an objective basis for policy design or evaluation while self-identification may significantly vary from one individual or period of life to another. Between labeling, as an extreme form of hetero-identification and evolving and subjective self-identification, the international standard on this issue establishes that ethnic or national identification is a question of free choice, but consistent with objective criteria as family tradition, culture, mother language etc. Also, no disadvantage may occur in relation with this choice, if made.

### **3. To what extent is an integration policy appropriate for Romanian Roma?**

To the extent to which it is itself included in a wider accommodation policy based on effective Roma participation, an integration policy may be suitable to address the social vulnerabilities of the Roma.

Because an assimilationist policy has been already argued as illegal, unjust and unacceptable for immigrants and for national minorities, I will consider as already proven that an assimilationist policy for Roma is equally unacceptable<sup>72</sup>. That is why, when mentioning integration policies I will refer to the multicultural type.

Being designed to target vulnerable groups, in many Western countries integration policies are designed to meet immigrants' more often than historical minorities' needs. But specific forms of inclusion policies have been designed for African Americans in the United States. The key difference between the African Americans and the immigrants is, according to Kymlicka, the type of discrimination the two groups have been exposed to: while immigrants were accepted into the larger society and unjustly kept in subordinate status, the African Americans were from the beginning excluded from the society and forced to develop their own separate society. This is why alone, an integration policy, even a multicultural one would not be able to completely address the complex deeply rooted segregation that African American faces.

This kind of reasoning also applies to Roma. Roma, like the immigrants, did not express intention to organise in self-government territories or institutions and are willing to learn the language, if not already the mother tongue. Roma expects to integrate in the larger society, distinguish to little extent on religion or beliefs and some also seems willing to be partially assimilated, as long as the society and the state structure provide opportunities adapted to specific needs and fair terms, including the chance to self-esteem and human dignity, both presuming a general and official recognition of the intrinsic value of the Roma cultural identity.

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<sup>71</sup> Amartya Sen, *Identity and Violence*, Allen Lane, 2006.

<sup>72</sup> Joelle Sambuc Bloise, 2008, point 787.



But unlike immigrants, and similar<sup>73</sup> to African Americans, Roma are in the same time historical minorities and socially vulnerable communities: have been historically forced outside of the mainstream suffered historical, institutionalised discrimination, slavery and are still subject to systemic discrimination and forced to create a more-or-less parallel society and clustered communities. Both are «visible minorities» still subject to prejudices and stereotypes but nevertheless willing to integrate under certain terms and<sup>74</sup>.

That is why Roma situation in the Romania or in other Eastern European countries has been compared to the African Americans and the US experience in integrating the African Americans had been used to inspire national Roma inclusion policies.

These similarities have motivated Eastern European countries, like Romania<sup>75</sup>, to introduce preferential treatment measures for Roma, partially similar to US affirmative actions for the African Americans to compensate historical injustice and reduce the development gap between Roma and the other cultural communities living in Romania<sup>76</sup>. The Roma special measures complement the general Romanian minority protection policy schema<sup>77</sup> and thus create an asymmetrical minority policy design<sup>78</sup>. Not surprisingly, the Romanian Roma preferential treatment in education has the same shortcomings as the US African American affirmative actions: only help a comparative small number of persons and only the ones who were able to make it to that school level. If preferential treatment seems unable to properly address the needs of families under the poverty threshold and

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<sup>73</sup> «The Gypsies issue have similarities mainly with the exclusion of Americans of African descent and has to be treated only from a socio-economic angle» (my translation) See Joelle Sambuc Bloise, 2008, point 518 citing Tove H Malloy, *National Minorities Rights in Europe*, Oxford, 2005, p 24–25.

<sup>74</sup> On the danger to avoid non-cooperation patterns – see Two Reports by Dr Yaron Matras, December 1996 and August 1998, MG-S-ROM (2000) 5, *Problems arising in connection with the international mobility of the Roma in Europe and the recent emigration of Roma from the Czech Republic and the Slovak Republic*.

<sup>75</sup> The content and the causes of Roma social exclusion in Romania have been highlighted by previous studies, thus I will mention the forms and causes of Roma exclusion here only in the reasoning of the expressed opinions. See the Romanian Institute for Studying the National Minorities Issues ([www.ispmn.gov.ro](http://www.ispmn.gov.ro)) work in the area, mainly Foszto Laszlo, *Colectie de studii despre romii din Romania*, Editura ISPMN, Cluj-Napoca, 2009, Gergely, Dezideriu, *Interpretarea pe cale jurisprudentială a standardelor ce derivă din Directiva rasială*, în *Noua Revistă de Drepturile Omului* nr.2/2011, vol. 7, p. 27–48, Ionescu, Mariea, Cace, Sorin, *Politici publice pentru Romi. Evoluții și perspective*, Expert Publishing House, 2006, Durst, Judit, «Cred că sunt țigani ... cu atâția copii...» *Etnicitate și reproducere*, în *Spectrum. Cercetări sociale despre romi*, editată de Toma Stefania și Foszto Laszlo, Editura ISPMN, Cluj-Napoca, 2011, p. 91–126, Ana Maria Preoteasa, Sorin Cace, Gelu Duminica (coord.), *Strategia nationala de imbunatatire a situatiei romilor: vocea comunitatilor*, Ed. Expert, 2006.

<sup>76</sup> The Romania's population is formed mostly of Romanian citizens who pertain to 20 officially recognized national minorities. From the ethnic point of view, the Romanians form 88,6%, Hungarians – 6,5% and Roma 3,2 %  
[http://www.recensamantromania.ro/wp-content/uploads/2012/02/Comunicat\\_DATE\\_PROVIZORII\\_RPL\\_2011\\_.pdf](http://www.recensamantromania.ro/wp-content/uploads/2012/02/Comunicat_DATE_PROVIZORII_RPL_2011_.pdf), last viewed on 10 may 2013).

<sup>77</sup> Which includes parliamentary and local representation, central executive consultative role, education, justice and administrative as well as mass-media language rights.

<sup>78</sup> Well, in practice, the juridical homogenous minority regime strongly differentiate the Hungarian minority from the others because the measures – most of them adopted through negotiations with the Hungarian minority representatives who participated in executive coalitions – fit territorially concentrated minorities adding, for example, special rights of participation in education management structures for those minorities who are able to use not only native language classes, but also schools. See the new *Law of National Education*, 1/2011 published in the Official Journal no. 18/2011.



with more than three children<sup>79</sup> it is not to underestimate its symbolic value or potential to encourage majority to responsibility, solidarity and inclusive thinking.

Now I see two differences between African Americans and Romanian Roma situations. First of all, the contexts in which the two public policies may act differ: United States is a highly developed immigration country engaged in becoming a post-ethnic nation, while Romania is a developing nation-state. The organisational capacity and the resources of the two countries differ as well as the collective beliefs about the fundament and identity of the state. Secondly, the African Americans tend to create a parallel whole society, with representative at all the levels and fields of the society: lawyers, professors, journalists, local and national leaders etc. This way, the more fortunate ones are somehow involved in supporting the ones in need. By contrast, Roma seemed to remain always at the basis of the social ladder because those who manage to level up also tend to become invisible<sup>80</sup> – even when have themselves profited by ethnically motivated preferential treatment – and to nourish this way the stereotype of Roma ethnicity being implacable linked with an unsuccessful social development. Many of the Roma who have reached a satisfying social position may be reluctant to openly express their ethnicity or deliberately hide it for fear of stigmatisation or even losing the means of existence. This seems to be a common trend in many European countries.

This is why, I think a different, more complex accommodation policy may be needed also for Roma because they combine interest and needs characteristic for, immigrants as vulnerable group and national minorities as communities of citizens with different cultural identity. Integration policies worth to be evaluated as possible source of inspiration for improving the existent Romanian Roma inclusion policy as long as the imported ideas are themselves integrated in a coherent policy which goes beyond one devised for immigrant integration purposes, include Roma to its design, implementation and assessment and is culturally aware.

Additionally, while official and social recognition of original Roma identity may foster self-esteem and consequently integration, the kind of visibility this policy implies may be another issue of concern. Stressing for the need of Roma inclusion it may also consolidate stereotypes of Roma as unfit to the mainstream, or in a vulnerable position which does not really helps Roma integration on equal footing. It may be argued that this is an unwanted collateral effect which would end as soon as the policy accomplishes its goal. In this case, concerns may be raised as i). it is generally acknowledged that the integration process is multi-generational, ii). measuring the progress of the inclusion policies could prove challenging as the current number of Roma in need for an inclusive policy is controversial in most of the European countries, and most of European Roma have a multiple, sub-group or divided identity and iii). while the outcomes of the inclusion policies are uncertain, the highlight on the Roma vulnerabilities is certain and also may impact on the envisaged outcome. But as not any distinction is discrimination, not any targeted policy is discriminatory. That is why, on my opinion, it worth considering refining the public message the Roma inclusion policy is spreading across Europe meanwhile the strategy is reaching to its goal.

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<sup>79</sup> There are now in place successful NGO pilot-programmes designed especially to this category which mix and condition social assistance for parents of kinder-garden attendance for their children. Special inclusive and anti-discriminatory instruction skills were provided for the teachers. At this moment, solutions are searched to develop these pilot-programmes into public policies.

<sup>80</sup> See Gabriela Mirescu, *The other Roma journey: from visible to invisible*, Tangram 30/2012, p. 47–48.

## 4. The Swiss Roma and immigrants' integration policy

The Swiss policy does not specifically address Roma. But because of the multicultural experience in efficiently accommodate a wide range of diverse interests, needs and cultural identities, studying the Swiss integration policy may be beneficial for the design of the Romanian Roma inclusion policy. It involves the immigrants, the public authorities and the whole society as partners in the global and transversal integration process in which the diverse federal, cantonal and communal institutions progressively develop a network to enhance communication and cooperation.

### a) The Swiss Roma policy

Switzerland does not gather official data on ethnic Roma, be they national or foreigners, sedentary or nomadic, nor does it implement a Roma specific integration policy. The estimates<sup>81</sup> show around 30.000 Roma, Sinti, Manouches and Yeniche Swiss citizens all together from which around 3000 are Travellers.

Even if the internal Swiss law does not use the concepts of national or ethnic minorities, Switzerland has internationally recognised six national minorities for the purpose of applying the Framework Convention for the Protection of National Minorities (FCNM)<sup>82</sup>. Those are the four national cultural communities, German, French, Italian and Romansh, in the cantons or communes where they are numerically non-dominant, the Jewish and the Travellers.

The Travellers as official national minority are those Yeniche, Roma, Sinti etc. which have a nomadic life style as part of their specific culture. That is to say that Roma *per se* are not recognised as national or ethnic minority. Even if there are no official data gathered about Roma<sup>83</sup>, allegedly, most of Roma, as well as the Yeniche, may be sedentary and by this, are not subject to official protection as national minority. On this issue, the 3<sup>rd</sup> Country report on the FCNM application specifies that FCNM applies not only to the Swiss who had maintained an itinerant way of life but to all the Swiss who have had to renounce that way of life but who would like to travel. This way the FCNM potentially protect most of the 30.000 persons mentioned in the original 1998 Declaration of ratification of the FCNM. As Joelle Sambuc Bloise points out, this perspective is still too narrow because it does exclude from protection and promotion the interests and identity of those Roma who does not intend or wish to become nomads<sup>84</sup>. Additionally, in 2006, the Federal Council recognized Roma but only as «minority *per se*»<sup>85</sup> and not explicitly as ethnic minority as the International Convention for the Elimination of Racial Discrimination ratification would have implied<sup>86</sup>. For these raisons, she concludes that Swiss Roma are subject to human and minority rights law notwithstanding their nomadic

<sup>81</sup> Liegeois, Jean-Pierre, *Roma in Europe*, Council of Europe Publishing 2007, p. 29.

<sup>82</sup> See The 3<sup>rd</sup> FCNM Report submitted by Switzerland pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, received on 26 January 2012, available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_Switzerland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Switzerland_en.pdf), last viewed May, 10, 2013.

<sup>83</sup> There is an estimate number of Roma in Switzerland which takes into account 30.000 persons which is 0,40% of the Swiss population.

<sup>84</sup> J.Sambuc Bloise, 2008, p. 186, point 652.

<sup>85</sup> *Minorite en soi* – in French in original. See J.Sambuc Bloise, 2008, p. 182, point 630.

<sup>86</sup> See J.Sambuc Bloise, 2008, p. 182, point 630.

or sedentary way of life. The foreign Roma travelling in Switzerland falls under the protection of the international national minorities' protection ensured by the Article 27 of the International Covenant on Civil and Political Rights (ICCPR) as interpreted by the United Nation Human Rights Committee (HRC)<sup>87</sup>.

On the behaviours which would qualify for an *itinerant way of life* Yaron Matras distinguish the economic migrants from itinerants arguing that «while (...) Romani migration westwards, compared with that of other groups, does indeed show distinct features, one must not confuse «migration" with «nomadism». On the whole, the extraordinary feature of Romani migration is that so many (sic!) Roma are prepared to take the risks of migrating despite their lack of nomadic traditions»<sup>88</sup>. This opinion was embraced by the Council of Europe Commission on Migration.

Immigrant Roma ethnics may exercise along with their human and minority rights<sup>89</sup>, the rights as citizens of their country of origin, the Romanian ones being EU New Member State nationals, for example and subject to the Swiss Immigration Law as well as to the Swiss immigrants' integration policy.

As the 2012 3<sup>rd</sup> Country Report on the FCNM application shows, the Swiss cultural minority policy targets only that part of the Roma who need special accommodation for preserving a nomadic way of life. «It is not a matter of political correctness or of lumping together different communities whose distinctive characteristics are well recognised. This is the terminology («Travellers») that corresponds to the intentions of the Swiss authorities at the time of ratifying the Framework Convention»<sup>90</sup>. The 3<sup>rd</sup> Opinion on Switzerland<sup>91</sup> adopted by the FCNM Advisory Committee in 15 November 2013 contain no mention to the Roma.

By targeting needs and not people this policy avoids controversial appreciations on numbers or method of ethnic identification as well as the legitimization of an ethnically targeted policy. The same can be said about the foreigners Roma which are subject to the immigrants' integration policy. This could nevertheless have assimilationist effect and circumvent the protection of ethnic groups. Both Liegeois and Sambuc Bloise highlight this aspect: «many countries have removed from their administrative documents all terms indicative of ethnic identity, replacing them with metaphors that are largely the product of assimilation policies. Census-taking in certain countries has been concentrated not with an ethnic group deemed to be in decline or threatened with disappearance, but rather with a

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<sup>87</sup> See the HRC General Comment No. 23: The rights of minorities (Art. 27) 04/08/1994.

<sup>88</sup> See Two Reports by Dr Yaron Matras, December 1996 and August 1998, MG-S-ROM (2000) 5, *Problems arising in connection with the international mobility of the Roma in Europe and the recent emigration of Roma from the Czech Republic and the Slovak Republic*.

<sup>89</sup> With regard to the enjoyment of minority rights of immigrant Roma, See Joelle Sambuc Bloise, 2008, point 444.

<sup>90</sup> See The 3<sup>rd</sup> FCNM Report submitted by Switzerland pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, point 37, received on 26 January 2012, available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_Switzerland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Switzerland_en.pdf), last viewed May, 10, 2013.

<sup>91</sup> Available at <http://www.coe.int/en/web/minorities/country-specific-monitoring#Switzerland>, last viewed on January, 29, 2015.

social group experiencing problems and in need of an integration programme – with the result that only part of the Roma population has been officially counted»<sup>92</sup>.

**b) May the Swiss policy on cultural diversity integration be an inspiring example?**

Switzerland is traditionally known as an inspiring source for direct democracy and federalist arrangements<sup>93</sup> around the world. The way it managed to create a sustainable developed country with one of the best living standards out of four distinct cultural groups<sup>94</sup>, to avoid assimilation, valuing the difference and the dialog makes this choice not surprising.

Does Switzerland have models to offer in terms of integration policies? One out of four Swiss inhabitants is immigrant while one of three is born in another country; the country is successfully filling the demographic gap and the occupational niches while preserving the social peace and cohesion<sup>95</sup> as well as most of the Swiss social culture, notwithstanding the vagueness of the term. This is not to say that the Swiss immigration experience would be less challenging than in other Western European or North American countries. I don't see why we should presume that immigrants in general or Romanian Roma, for what concerns this work, would escape the stereotypes they would meet in other European country including their own<sup>96</sup>. How Switzerland does ensures its constant adaptation to present needs and the preparation for the future ones combined in a unitary vision of the public interest? How the integration policy is forged and implemented in order to constructively include different needs, options and goals: the personal one of the immigrant, the municipal, cantonal and federal, for example, and to avoid conflicts?

Another motive for presuming that an analysis of the Swiss integration policy may be helpful is precisely the multicultural environment in which such a policy evolves. This allows me to understand if and how the way a state was formed and it is legitimised to its inhabitants reflects on its capacity to include the non-dominant others. I intend to make use of the Swiss experience in national minorities' accommodation as well as in the immigrants' integration, keeping into mind the particularities of the Roma minority of being in the same time a national minority and a socially vulnerable group.

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<sup>92</sup> Jean Pierre Liegeois, *Roma in Europe*, Council of Europe Publishing, 2007, p. 27 and Joelle Sambuc Bloise, 2008, point 39.

<sup>93</sup> See the Swiss Constitution, Article 2, on cultural diversity, Articles 18 on the freedom of languages and 70 on the official languages, 15 on the religious freedom, 72 on religious dialogue and social peace, and 121 on the situation of foreigners.

<sup>94</sup> The cultural groups which languages are also official languages in Switzerland are the German-speaking, the French-speaking, the Italian-speaking and the Romansh. Also recognised as national minority are the travellers, as mentioned before.

<sup>95</sup> The Swiss state is the warrant of the social peace. See Articles 54 and 62 of the Law on Foreigners and Joelle Sambuc Bloise, 2008, points. 779, 781.

<sup>96</sup> With regard to Romanian Roma.

### c) The Swiss immigrants' integration policy<sup>97</sup>

This section analyse the Swiss immigrants' integration policy from its beginnings in the 2000's to now-a-days. The purpose is to check if and in what respects it can provide ideas to more efficiently approach Roma inclusion in Romania.

As it will be revealed by the narrative and observations bellow, the Swiss immigrants' integration policy begun from the assessment of needs and objectives simultaneously with the clarification of the concepts to be used by the administration. An on-going reciprocal learning process connected academia and public authorities on federal, cantonal and communal level transforming science into action and experience in knowledge. Simultaneously, efforts were put into clarification of tasks and responsibilities, coordination of actions and inclusion of the immigrants perspective into policy. The monitoring and assessment were continuously improved through multiplying and refining of indicators to measure integration's success.

As explained earlier, policies consisting in special measures and aiming to reach formal and material equality and non-discrimination for groups of persons facing different degrees of systematic or structural disadvantage are generically named integration or inclusion policies. Those policies are grounded on the principle of equality which derives from the values of justice and human dignity. They state everyone's right to have his/hers specificity and autonomy respected<sup>98</sup>.

The Swiss government have chosen to refer to integration when speaking about the relations between the immigrants and the Swiss society, but not only then. Nowadays, Switzerland is implementing special integration policies for three groups of peoples: women, disabled<sup>99</sup> and immigrants in the sense of either persons of foreign citizenship residing in Switzerland or naturalized Swiss persons born abroad.

If the first two categories are protected by special constitutional equality provisions<sup>100</sup>, the immigrants' integration is regulated by Federal Law on Foreigners ((LEtr) from 2005, «to smooth the coexistence of Swiss and foreign population on the basis of constitutional values as those of mutual respect and tolerance» and «to allow immigrants with legally and long lasting stay to participate to the Swiss economic, social and cultural life.»<sup>101</sup> (my translation). As in the case of women or disabled, the law on immigrants' integration reflects the preoccupation for equality stating the public authorities' task to create conditions for equality of chance when managing the immigrants' integration policy<sup>102</sup>.

Immigrants' integration seems to be understood at the level of Swiss parliament as «a social and individual process of insertion and reception based on reciprocity and requiring the participation of migrants, receiving society as well as of its members. Integration is also a long lasting process the

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<sup>97</sup> See art. 121 of the Swiss Constitution.

<sup>98</sup> Joelle Sambuc Bloise, 2008, point 315.

<sup>99</sup> Art. 8 para 3 and 4 of the Swiss Constitution.

<sup>100</sup> Art. 8 of the Swiss Constitution.

<sup>101</sup> Letr art. 4 al.I and II.

<sup>102</sup> Art. 53 of the Letr, the Ordinance on the integration of from 2007 art. 2.

success of which is rather difficult to assess in a few years period<sup>103</sup>. Immigrants' integration is also defined as a transversal<sup>104</sup> task shared by a variety of actors and consisting in adapting the way their primary tasks are accomplished in order to fit the needs of immigrants. This subject will be developed latter.

The Swiss integration policy allows for self-organization of immigrants and tends to encourage it in order to include a common immigrant perspective in the Swiss vision of immigrant integration. So it would presumably go on to the multiculturalist path aligning more to prof. Young idea of «differentiated solidarity» and to the second of the immigration inclusion policies prof. Soysal proposes, as mentioned in the second section of this report. This is why, the Swiss immigrants' integration seems a rather inclusive than assimilative policy.

The reasons and the role of the immigrants' integration in the Swiss policy are highlighted in federal policy documents<sup>105</sup>. First of all, there is the commitment to consolidate the practice of the constitutional principle of equality, understood as encompassing also positive measures for structurally discriminated groups. Secondly, proactive migration and integration policy<sup>106</sup> springs from the need of a Swiss sustainable development which must anticipate the demographic evolution over the next 10–15 years. Thirdly, identifying social and cultural tensions and consolidating the common values aims to promote the pluralistic society and to reduce anxiety related to the mentioned demographic changes. The goal is to transmit identity, trust and cohesion to the next generation in a growing heterogeneous context and mixed feelings about immigration.

The federal legislator identifies two categories of immigrants the integration of which are to be managed differently. The persons were presumably forced to leave their own countries and admitted on the Swiss territory for humanitarian reasons as asylum seekers, refugees or temporarily admitted persons are regulated by the Asylum law (LAsi). LAsi empowers the federal authorities to finance and decide on those aspects of integration depending on public authorities. The immigrants reaching Switzerland voluntarily, as for economic, education or family reasons, are regulated by the LEtr which was previously mentioned. The task of their integration is a shared responsibility of national, cantonal and communal authorities.

According to the Swiss Constitution, the federal law regulates the entry, stay and settlement of foreigners on the Swiss soil<sup>107</sup>. In doing so, the national legislator power of discretion is limited, as it will be seen latter, by previous Swiss international commitments as those i) in the area of human rights and non-discrimination, ii) the 1951 Geneva Convention on the Status of refugees as the non-refoulement principle and iii) the free movement agreements made with the European Union (EU) and European Free Trade Association (EFTA).

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<sup>103</sup> In the 2011 Explanatory Report on the consultative procedure for the amendment of the federal law on foreigners on the issue of integration. The Federal Office of Statistics has created in the last years a system of indicators to assess integration level.

<sup>104</sup> The OMD Reports on the encouragement of integration for 2011 and 2013.

<sup>105</sup> See The Message of the Federal Council on the programme of the 2011–2015 legislation, from the 25<sup>th</sup> of January 2012.

<sup>106</sup> The integration policy for immigrants is linked with policies to foster development in the countries of origin, especially for illegal immigrants.

<sup>107</sup> See art. 121 of the Swiss Constitution.

In Switzerland, the immigrants' integration as public policy has been initiated at the cantonal level because most of the measures to be taken were of communal or cantonal competence<sup>108</sup>. At the federal level, the foreigners' integration was regulated for the first time in 2005 by the LEtr and its ordinance of application from 2007<sup>109</sup>. The 2008–2011 federal program begun to harmonize the cantonal different policies around three main objectives.

In 2012–2013 the Swiss immigrants' integration policy was being strategically upgraded. This period, a phase of federal warranty, was one of conceptual and institutional adjustment from the former policy built on three strong points to the one devised around the principle «support and require» on three differently conceived pillars. Beginning, as mentioned, from 2014, the cantons are responsible for the immigrants' integration. Simultaneously, the inter-cantonal coordination process deepened through common goals for all cantons and multiannual Cantonal Integration Plans (PIC) designed conjointly by cantons and the federal authorities.

The new integration framework was built commonly by the Federal Council and the General Assembly of the Conference of Cantonal Governments in 2011 upon the 5<sup>th</sup> of March 2010 Federal Council Report on the integration policy evolution. The latter fructifies, at its turn, The July 2009 Recommendations of the Tripartite Conference on Agglomerations. All this effort stands on the 2007 Catalog of 46 Integration Actions adopted by federal authorities, applied and monitored until end 2010. Those steps show how the Swiss immigrants' integration policy developed in time.

The federal integration plan established four objectives: 1) to amend the federal law on foreigners in order to make the principle «support and require» more binding, 2) to register the task of integration in the special laws regulating the primary structures in order to improve the equality of chances, 3) to reinforce the specific support for integration and 4) to intensify the dialogue on integration with the state and non-state actors. It aims to harmonize from 2014 the objectives of the 26 existing cantonal integration policies. On the level of means, methods, instruments, the cantons will still be able to adapt to their own needs.

As a public policy, beginning with 2014, the immigrants' integration is more clearly driven by the idea of reciprocity: support and require<sup>110</sup>. The public and private structures' support for the integration is accompanied by the requirement to contribute with personal efforts to integrate from the part of the immigrant. This effort refers to the respect of the security and public order, the constitutional values, the acquirement of an official language and a formation as well as the will to participate in the economic life (Article 26 LEtr.) The support refers to the preparation of the society as a whole to welcome diversity in its everyday aspects and to the institutional adjustments to smooth integration, adapting offer to needs. It will also have a more binding legal basis through conventions of integration which apply mainly to Third Country Nationals, by difference to EU and EFTA which are covered by the freedom of movement agreements.

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<sup>108</sup> See article 121 of the Swiss Constitution.

<sup>109</sup> Ordinance for foreigners integration, adopted by the Federal Council in October, 24, 2007. See also the Report of the Public Health and Social Foresight Direction presented by the Executive-Council to the Grand Conseil on the Law on the Foreigners' Integration, Canton of Bern, Point 1.3.2.

<sup>110</sup> See the Explanatory Report on the Consultative procedure on the amendment of the Federal Law on Foreigners on the issue of integration, point 1.3.

As mentioned earlier, the Swiss immigrants' integration is designed as a global process to be achieved by partnership between state and non-state actors, while the promotion of integration by public authorities has only a subsidiary role to the involvement and responsibility of private, economic and social actors. Integration involves all levels of administration and supposes horizontal, vertical and transversal collaboration between diverse administrative branches, but it is based on those administrative structures which come in direct and regular contact with the public: schools, hospitals, police etc. (ordinary structures).

Being a transversal task, a coherent encouragement of integration requires first of all the coordination of the efforts and measures taken at different levels of authority. For this goal, the existing federal, cantonal and municipal institutions enhanced existing links and created new ones in order to form a reliable network in which the information could flow following an adapted procedure. The Swiss long lasting participatory experience is, in my opinion, one ingredient which supports this recipe work. To the already existing conferences and inter-institutional councils some others<sup>111</sup> were added. The structure responsible for coordinating the integration policy on federal level is the former Federal Office for Migration (ODM), currently the State Secretariat for Migration (SEM) (from January 1st 2015), part of the Justice and Police Federal Department, one of the 7<sup>th</sup> departments of the Federal Council – the Swiss Executive<sup>112</sup>.

The implementation is entrusted to the each canton integration specific services and to the centers of competences integration and of communitarian interpretation, as it will be mentioned latter. The network of responsible persons was strengthened at the cantonal level by the creation, where not already existed, of special delegates for integration. The schema was applied to the communal level, where the respective authorities appreciated as necessary, according to their dimensions.

The 2008–2011 integration policy was conceived around three priorities: 1) encouraging the linguistic competences of foreigners, 2) organizing centers of competences on integration (A) and centers of communitarian interpretation (B), and 3) developing the support for integration by pilot projects<sup>113</sup>. The centers for competences on integration are regional entities and contact points financed from all three levels – federal, cantonal and communal –, interacting with authorities, immigrants and particulars as employers to prevent or mediate conflicts, organize dialogue, inform and counseling immigrants. The centers for communitarian interpretation are often organized as NGOs and offer services of interpretation in health, social services and education<sup>114</sup>.

The new Swiss strategy on immigrants' integration envisages a specific integration support standing on three pillars: 1) information and council, 2) language, formation and work and 3) comprehension and social integration.

The first pillar, information and council, consists in a) first information, b) counsel and c) protection against discrimination. While the first information and the protection against discrimination are in-

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<sup>111</sup> The National Conference on Immigration, The Swiss Conference of Cantonal and Municipal Delegates for the Integration of Foreigners, The Integration Inter-Departmental Committee, for example.

<sup>112</sup> It replaces in this task the Inter-Departmental Working Group for Migration Issues (GIM).

<sup>113</sup> The former pilot projects on preschool education and neighbourhood development have already turned into national interest projects.

<sup>114</sup> See [www.inter-pret.ch](http://www.inter-pret.ch).



cluded for the first time, the counsel is maintained from the former 2008–2011 integration policy and remains the task of the centers of competence integration (former strong point 2A).

The second pillar, language, formation and work, consists in a) language and formation, b) preschool support and c) employability in which the language and formation reiterates the former strong point 1 and the preschool support developed as a pilot project in the framework of the strong point 3.

The third, comprehension and social integration is composed by a) communitarian interpretation and b) social integration, the first representing the former strong point 2B.

The public part of the financing is ensured from federal and cantonal sources, in equal shares, with the exception of the lump sums provided for refugees and temporarily admitted persons which enter in federal responsibility<sup>115</sup>. 20% of the federal sums are allocated to the first pillar, 40% to the second one, the rest going to the third pillar<sup>116</sup>. In order to receive the federal subventions, cantons may close conventions with the Confederation (ODM) explaining the conception, goals and the indicators which would allow the project assessment (Article 11 para.2 of the Ordinance). The funds are to be used for the legal immigrants' integration (Article 12 of the Ordinance).

In the strong point program, the Confederation retained decisional power with respect to the centers of competences and communitarian interpretation as well as to the pilot projects, while the language and formation field was entrusted since 2009 to the cantons. In the new policy, the cantons will manage most of the fields, meaning the first information (which in the Canton of Bern will be forwarded to communes) and the counsel by the centers of competence Integration, both from the I-st pillar, the language and formation and the preschool support, from the II-nd pillar, and the communitarian interpretation of the III-rd pillar. As a transversal task, the protection against discrimination can only be a field of shared decision.

If the implementation of the integration policy would mainly rest on cantons, the Confederation retains a strategic and steering role consistent with the subsidiarity principle enshrined in the federal Constitution<sup>117</sup>. The monitoring of the integration aims success assessing and continuous adaptation to concrete situation. This is to be assumed by the Confederation which has the responsibility to develop norms and quality insurance instruments all together with the cantons, communes and other actors. The Confederation would also assume the selection of pilot projects aiming for further developments of future nation-wide measures.

On this common basis, every canton builds its own four years term integration programme until end of September 2013.

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<sup>115</sup> Art. 43 a of the Swiss Constitution establish federal competence and responsibility. Art. 46 of the Constitution express the relation between federal and cantonal norms and competences.

<sup>116</sup> See the Explanatory Report on the Consultative procedure on the amendment of the Federal Law on Foreigners on the issue of integration, p. 20, and the Report of the Public Health and Social Foresight Direction presented by the Executive-Council to the Grand Conseil on the Law on the Foreigners' Integration, Canton of Bern, Points 1.3.3 and 1.3.4.

<sup>117</sup> Art. 43 a of the Swiss Constitution. See the Explanatory Report on the Consultative procedure on the amendment of the Federal Law on Foreigners on the issue of integration, point 1.3, p. 19.

Apart, there were and still are individualized plans (case management) for the integration of refugees and temporary admitted persons which are federally financed by lump sum/person for limited periods between 5 to 7 years.

The specific encouragement for the integration is subsidiary to the primary structures task for the integration encouragement and seeks to fill its gaps and to coordinate their efforts, on a cooperative basis between federation, cantons and municipalities starting from the assumption that integration is primarily a cantonal competence. The federal law on foreigners is itself adopted through a participatory process aiming to include both cantonal and federal perspectives and interests. The municipal interests are to be dealt mainly at the cantonal level, which is not to say that communes had no saying at the design of the main framework through the Tripartite Conference on Agglomerations, a working entity designed to allow for periodical negotiations between federation, cantons and the main urban areas.

To encourage immigrants' individual efforts for integration, LEtr and the subsequent ordinance suggest closing a Convention of Integration between the canton and the immigrant. If, in the view of its international commitments, Switzerland may require such agreement only from Third Countries Nationals, and not from the European Union (EU) or European Free Trade Association (EFTA) Countries Nationals, for the latter, recommendations may be addressed and conventions may be closed with their informed consent. Closing of such a convention would allow cantons to condition further legal admittance on its territory of the accomplishment of the requirements established in the LEtr (Article 26). Since 2008, mainly German language cantons have used this instrument, by difference to French speaking ones<sup>118</sup>.

In the bilingual French and German speaking Canton of Fribourg<sup>119</sup>, for example, cantonal normative basis is provided by the Cantonal Law on migrants' integration and racism prevention from 2011<sup>120</sup>, while the Cantonal integration four years plan was adopted by the end of 2013 on the basis offered by the research of the *Haute école fribourgeoise de travail social (HEF-TS)*<sup>121</sup>. The decision here was not to make use of the convention of integration instrument considering that the same goals may be achieved by already existing mechanisms adapting the existing resources to the cantonal needs.

The Migrants Integration and Racism Prevention Bureau is accomplishing the Immigrants' integration and the Anti-Discrimination tasks, in the integration policy framework functioning as cantonal center for Integration competence<sup>122</sup>. The Bureau is ensuring the secretariat services for the consul-

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<sup>118</sup> See the Federal Office for Migration 2011 and 2013 Yearly Report *Encouragement de l'intégration de la Confédération et ses effets dans les cantons*.

<sup>119</sup> Fribourg is a bilingual, French-German speaking canton with a 1670,7 km<sup>2</sup> surface and almost 300.000 inhabitants.

<sup>120</sup> See the Law on migrants' integration and racism prevention as well as the No. 224 Message of the State Council to the Fribourg Parliament (Grand Conseil) on the law project on the migrants' integration and racism prevention from the 16<sup>th</sup> of November 2010.

<sup>121</sup> See <http://www.hef-ts.ch/fr/prestations/actualites/dsas>, last viewed on the 29<sup>th</sup> of April 2013. The *Haute école fribourgeoise de travail social (HEF-TS)* is collaboration with the *Bureau de l'intégration des migrant-e-s et de la prévention du racisme (IMR)* and with the *Service de l'action sociale (SASoc)*.

<sup>122</sup> See [http://www.kofi-cosi.ch/dynamic/page\\_karte.asp?seiid=71](http://www.kofi-cosi.ch/dynamic/page_karte.asp?seiid=71), last viewed on the 19<sup>th</sup> of April 2013.

tative Commission on the Migrant Integration and Racism Prevention. For the Communitarian Interpretation<sup>123</sup> the cantonal authorities collaborate with specialized NGO's as the Caritas Suisse<sup>124</sup>.

In the neighbor Canton of Bern<sup>125</sup> (mainly German speaking) the Law on the Integration of the foreign population was adopted in March, 25, 2013 while the Bern four years cantonal integration plan issued in November, 6, 2013. The main cantonal institution responsible for the immigrants' integration is the Integration Division in the Public Health and Social Welfare which ensures the vertical (Confederation-canton-commune) and horizontal (between different cantonal organs) coordination. The integration centers function as public authorities or NGO's<sup>126</sup> while the communitarian interpretation is devolved to the Caritas Bern NGO. The Canton of Bern has used the Convention of Integration tool in the framework of a pilot-programme and intends to use it in the future for some categories of immigrants, mainly Third Country Nationals, as mentioned before, on the basis of the findings of the assessment report of the mentioned pilot-programme<sup>127</sup> and of the cantonal law project. The same project expressly mention the immigrant potential and resources as one of the aspect to consider when applying the special integration measures (Article 4, para.2). For the exchange of information and perspectives, a cantonal conference on immigrants' integration is established to meet two times a year gathering cantonal and communal authorities, NGOs and immigrants' representatives.

The Swiss integration programme is connected, as mentioned, with the anti-discrimination plan, based on their common purpose: ensuring equality and fighting discrimination from a structural (the integration policy) or an individual (the anti-discrimination measures) perspective. First I will the Swiss integration policy, then the anti-discrimination measures to conclude on the plan to expand its' achievements to the Swiss nationals.

As mentioned in the beginning of this section, at both the cantonal and the federal one, the integration policy is coordinated with the anti-discrimination measures, namely the fight against racism and sexism. To tackle structural and individual discrimination the Office for Migration (ODM) and the consultative Federal Commission for Migration Issues (CFM) work in horizontal coordination with the Service for Fighting Racism (SLR) (within the Internal Affairs Federal Department) and the consultative Federal Commission against Racism (CFR). The federal anti-racial discrimination vertically cooperate with the cantonal specialized public authorities.

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<sup>123</sup> See also <http://www.caritas.ch/fr/nos-actions/en-suisse/integration/service-dinterpretariat/>, <http://www.interpret.ch/fr/linterpretariat-communautaire/les-services-dinterpretariat-regionaux.html>, last viewed on the 19th of April 2013.

<sup>124</sup> See also <http://www.caritas.ch/fr/nos-actions/en-suisse/integration/service-dinterpretariat/>, <http://www.interpret.ch/fr/linterpretariat-communautaire/les-services-dinterpretariat-regionaux.html>, last viewed on the 19th of April 2013. Also, «Programme d'intégration cantonal pour les années 2014 à 2017» adopted by the Fribourg Canton in June, 28, 2013, point 5.3.1.4.a, p. 38.

<sup>125</sup> Bern is a bilingual, German-French speaking canton with a 5,959.44 km<sup>2</sup> surface and almost 1.000.000 inhabitants.

<sup>126</sup> <http://www.kkf-oca.ch/kkf/upload/pdfF/pdfSOZIAL/Services-integration.pdf>, last viewed on the 19th of April 2013.

<sup>127</sup> See *Integrationsvereinbarungen* d'Ostermundigen: Silvia Schönenberger, Forum suisse pour l'étude des migrations et de la population, Christin Achermann, Zentrum für Migrationsrecht en collaboration avec Bülent Kaya, Forum suisse pour l'étude des migrations et de la population, Neuchâtel, at <http://www.migration-population.ch/files/content/sites/sfm/files/nouvelles%20publications/Schlussbericht%20InteV%20def2.pdf>, last viewed on the 19th of April 2013.

The federal legal basis to fight racial discrimination in Switzerland consists mainly in the Constitution (Article 8, mainly para.2), the Article 261 of the Penal Code and the general rules of Swiss Civil Code and of the Code of Obligations. All are to be interpreted in the framework of the Swiss international commitments<sup>128</sup>, including the Swiss-EU treaties, considering their content as understood by the international bodies entrusted with the application or monitoring. Cantonal anti-discrimination legislation in cantonal constitutions or cantonal integration regulations is adding to the ones already mentioned.

The enforceable scope and the meaning of the federal Constitution and laws is the one established by the Federal tribunal. That is why, the Swiss constitutional norm prohibiting discrimination is self-enforceable only with regard to the public authorities actions, and did not apply directly to relations between particulars. The Article 261bis of the Penal Code incriminates only the public discriminatory acts, in the meaning recognized by the federal tribunal. For discrimination in relation between private persons, the general civil dispositions apply, but those are considered not a real option for numerous victims because their unpredictable results while a consistent guiding jurisprudence is missing<sup>129</sup>. While several NGOs, international bodies, and the CFR itself support the adoption of a general anti-discrimination legislation or a reinforced protection for victims of alleged discrimination, this project does not unite at the moment sufficient political backing<sup>130</sup>. But sanctioning discrimination in individual cases may not suffice in order to build a social environment where everyone enjoys material equality, as Joelle Sambuc Bloise argues<sup>131</sup>. Integration coordinated measures to end systemic disadvantage are already in place. In the same time, to emphasize the link between individual and structural discrimination the Human Right Committee's Opinion on the case *Länsman and all v. Finland*<sup>132</sup> may be helpful, taking into consideration that group discrimination may, in some cases, amount to structural discrimination. Concerning the effect of the logging activities on the Sammi's right to enjoy their specific culture, including way of life, the Committee pointed out that «if logging plans were to be approved on a scale larger than that already agreed to for future years in the area in question or if it could be shown that the effects of logging already planned were more serious than can be foreseen at present, then it may have to be considered whether it would constitute a violation of the authors' right to enjoy their own culture within the meaning of article 27 (of ICCPR). (...) the State party must bear in mind when taking steps affecting the rights under article 27, that *though different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.*» (emphasis added)

The Explanatory Report on the Consultative procedure on the amendment of the Federal Law on Foreigners on the issue of integration revealed two related challenges of the 2014 integration policy: 1) to improve steering and coordination, reducing coordination councils number and simplifying the

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<sup>128</sup> Mainly, the Universal Declaration of Human Rights (UDHR), International Covenant for Civil and Political Rights (ICCPR), The International Convention for the Elimination of racial Discrimination (ICERD), the European Convention of Human Rights (ECHR), the Framework Convention for the Protection of National Minorities (FCNM).

<sup>129</sup> See the 2012 Report of the Service for Fighting Racism (SLR) *Tour d'horizon et champ d'action* available at <http://www.edi.admin.ch/frb/02015/index.html?lang=fr>, last viewed at the 19<sup>th</sup> of April 2013.

<sup>130</sup> Idem, p.14.

<sup>131</sup> See Joelle Sambuc Bloise, 2008, p. 203–208.

<sup>132</sup> HRC Communication No 1023/2001 *Länsman v. Finland* CCPR/C/83/D/1023/2001.

communication procedures and 2) to develop targeted monitoring and quality insurance procedures and instruments. On this issue, the Federal Office for Statistics has developed a system of 67 integration indicators<sup>133</sup> to compare the situation of immigrants or Swiss citizens born as foreigners with the one of Swiss born citizens in 10 fields as political participation, feeling of security, family organization, formation, health, housing, living conditions. The indicators are also related to the Common basic principles for immigrant integration in the European Union of 19<sup>th</sup> of November 2004<sup>134</sup>.

An important new trend in the Swiss integration policy seems to be the interest in enlarging the targeted group so that the measures of protection against discrimination «could profit to every group of people with problems of integration and not only foreigners»<sup>135</sup>. Noting that only the anti-discrimination measures are currently under discussion, maybe whole integration policy would not worth scrutinized from the point of view of its use for a more fair social inclusion of the vulnerable Swiss citizens. Taking into consideration the previous terminology discussion, it seems, for the reasons mentioned in the second section of this report, *inclusion* to be a more appropriate notion for a justice policy targeting citizens.

Concluding, the evolution of the Swiss immigrants' integration policy from its beginnings in the 2000's up to now-a-days highlights the efforts to simultaneously clarify the concepts, the tasks and responsibilities of the public and private social actors involved and to include their different perspectives and interests in the process. Lately, emphasis was placed on coordinating efforts and improve monitoring and assessment procedures through identification of objective indicators to evaluate integration. By including universities and academics into the design and assessment of the Swiss immigrants' integration policy the existing knowledge spread into the government and administration simultaneously with the transformation of accumulated experience into new knowledge through research.

## 5. Analysis of the Romanian Roma Inclusion policy<sup>136</sup>

The first Romanian Roma inclusion policy dates from 2000 to 2010. In 2012 has been adopted the second one planned to apply until 2020. While the Roma situation has been studied in the framework of several uncoordinated projects, the gained knowledge did not yet resulted in an official coherent conception on the Romanian Roma inclusion policy. Nevertheless, advancements may be observed in the field of education, and health, and less in accommodation and employment. While the number and expertise of the Roma NGO grew, the official representative of Roma is vulnerable itself in

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<sup>133</sup> [http://www.bfs.admin.ch/bfs/portal/fr/index/news/01/nip\\_detail.html?gnplD=2011-577](http://www.bfs.admin.ch/bfs/portal/fr/index/news/01/nip_detail.html?gnplD=2011-577), last viewed on the 19<sup>th</sup> of April 2013.

<sup>134</sup> [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/jha/82745.pdf#zoom=100](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/82745.pdf#zoom=100), last viewed at the 19<sup>th</sup> of April 2013.

<sup>135</sup> Federal Council Rapport of 5 March 2011 on the «Evolution of the Confederation integration policy», p. 3 apud. «Rapport du service de lutte contre le racisme 2012. Tour d'horizon et champ d'action», p. 15, footnote 36 : «Inscrire l'integration dans les structures ordinaires permettra egalement de transposer le principe de non-discrimination dans un contexte specifique et de garantir que les mesures profitent a tous les groupes de population qui connaissent des problemes d'integration et non seulement a la seule population etrangere».

<sup>136</sup> A new Romanian Government Strategy for the inclusion of Roma of Romanian citizenship was adopted in January 2015. This report refers to the former, currently abrogated one.

terms of legitimacy. The lack of an official assessment report on the finalised decade questions the commitment for the current one.

Roma<sup>137</sup> have been recognised as national minority<sup>138</sup> in Romania since 1990. From the same moment, February 1990, their representative, aside other national minorities ones, have been included in the Provisory Council for National Unity<sup>139</sup>, as a first special measure of political inclusion of national minorities to public decision.

An often- cited Romanian study<sup>140</sup> describes the dynamic of the Romanian Roma inclusion policy highlighting the possibility to perceive three stages: the « **the period of non-systematized searches**» (1990 – 1995), characterized by policies and programmes of exploratory character, intended to the understanding of the mechanisms required by a consistent social intervention, « **the period of understanding the responsibilities**» (1996 – 2000) characterized by the preparation of some strategies and start of some concrete actions, by public institutions as well as by non-governmental organizations. *The first strategy for the improvement of the Roma status was substantiated in Romania during this period* and « **the period of assuming the responsibilities**» (from 2001 until now) characterized by the action of the competent authorities of assuming their responsibilities to offer responses to a situation becoming more and more hard, as well as to the great number of difficulties Roma population face<sup>141</sup>

As mentioned, the first national wide Roma inclusion policy instrument was the 2001 *Romanian Government Strategy for improving Roma situation*<sup>142</sup> – an inclusion plan covering the 2001–2010 period. Currently, its goals are continued through the *2012–2020 Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority*<sup>143</sup>.

Interestingly, the Roma inclusion policy has taken, in 2001 and in 2011, the form of a Government Decision<sup>144</sup>, normative act to be adopted «for the organisation of laws application» (Article 108 para. 2 of the Romanian Constitution), but without any mention about the specific laws which it was supposed to apply. As binding force, a Government decision is a normative act subordinate to the Constitution and to the laws, as well as to the Government ordinances. To these two more formal juridical concerns, another conceptual point may be raised. The correlation with the principles structuring Romania's organisation which would express the vision and prove the political will is hard to glimpse.

<sup>137</sup> The Roma minority counts for more than 600.000 members auto-declared at the 2011 census. See the preliminary results at <http://www.recensamantromania.ro/rezultate-2/> (last consulted on the 14<sup>th</sup> of February 2012).

<sup>138</sup> Now there are 20 officially recognized national minorities in the Romanian state. From studies which count on the number of parliamentary representative, there are only 19, one parliamentary representing two minorities.

<sup>139</sup> The CPUN was a 255 members organ working as the Romanian legislative and executive in the period 13 february – 18 June 1990. See Grosescu, Raluca, *Conversia elitelor comuniste din România în perioada de tranziție: 1989–2000*, Institutul de Investigare a Crimelor Comunismului.

<sup>140</sup> Sorin Căce, M. Ionescu, *Politici publice pentru romi, Evolutii si perspective*, Expert Publishing, 2006, available at [http://www.anr.gov.ro/docs/Publicatii/Politici\\_publice\\_pentru\\_romi.pdf](http://www.anr.gov.ro/docs/Publicatii/Politici_publice_pentru_romi.pdf), last viewed on 30 April 2013.

<sup>141</sup> See A. Ciuca and R. Prisacariu, *The Newest Challenges of the Oldest Minority. On Roma Inclusion*, Noua Revista de Drepturile Omului 1/2013, CHBeck Publishing, Bucuresti.

<sup>142</sup> See Government Decision no. 430/2001 for the approval of the Romanian Government Strategy for improving Roma situation published in Official Journal no. 252/2001.

<sup>143</sup> Published in Official Journal no. 6 bis/04.01.2012.

<sup>144</sup> In fact it was, both times, an Annex to the mentioned Government Decisions.



Coming more into details and although an official assessment report on the 2001–2010 Roma inclusion Romanian strategy is not yet available<sup>145</sup>, some of the results can be easily spotted. The creation of a semi-functional network of Roma counsellors and experts at central administration level and at national and local level, in autonomous and in de-concentrated administrative institutions is one of the results. The network of school and medical mediators<sup>146</sup>, although strongly affected by the 2008 world crisis is another one. The Romani language and the Romani culture and history teachers, the young Roma supported with scholarships and special places in schools, high schools and universities can be considered other proofs that the 2001 strategy was helpful. Indeed, it is my opinion, that the most important of the improvements can be detected in the field of education. Still, some of the national minorities education provisions, even if neutrally formulated, answer the needs of minorities which use the mother tongue also as language of teaching and not only language taught: only these minorities have the right to participate to school and education management. This way, Hungarian minority may be represented at the decision level, but not the Roma. To include Roma to education management, Roma needs have to be revealed and quantified, if exist, and legislative provisions may address the specificity of Roma education and of Romani language<sup>147</sup>.

It is not possible to speak about this decade (2000–2010) of Roma inclusion policy and to overpass the National Council for Combating Discrimination (CNCD) whose role in applying and theorizing the anti-discrimination law in general was essential and not less important with regard to discrimination against Roma<sup>148</sup>. As only old and scattered CNCD decisions seems available for the public, the transparency concerns limits, in my opinion CNCD potential as a pole of democratic change in Romania.

The shadow which still falls over these progresses is, in my view, the limited capacity of the authorities to defend the new arrived in the system of implementation of the Roma inclusion policy from being instrumentalized by political organizations. By consequence, the process of evaluation of the activity of Roma counsellors, experts and so on could be partially corrupted and the declared objectives pushed further. In fact, this weakness threatens, in my view, the implementation of the new, 2012–2020, Roma inclusion strategy<sup>149</sup>.

In the field of social and political participation, the growing number of NGO's, especially Roma ones, involved in social and human rights projects financed by international institutions, the quality

<sup>145</sup> There are, nevertheless, two reports available – one, *Raport privind progresele înregistrate în implementarea Strategiei Guvernului de Îmbunătățire a Situației Romilor* (Report on the progresses made in implementing the Government Strategy to ameliorate Roma situation) issued by the Ministry of Public Information, Bucharest, April 2003, available at [www.academos.ro](http://www.academos.ro) > [Groups](#) > [CAMAD](#) and one issued by the Agenția de Dezvoltare Comunitară «Împreună» *Strategia națională de îmbunătățire a situației romilor; vocea comunităților*, Ana Maria Preoteasa, Sorin Căce, Gelu Duminică – coordinators, Expert Publishing House, 2009, available at [www.agentiainpreuna.ro/files/publicatii/10-RAPORT\\_tipar-p-ro.pdf](http://www.agentiainpreuna.ro/files/publicatii/10-RAPORT_tipar-p-ro.pdf). There is also available a Romani Criss NGO working document, *Propuneri de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor Romani aparținând minorității romilor pentru perioada 2011–2020*, [www.romanicroiss.org/.../Comentarii\\_Strategie\\_ONG-uri\\_FINAL\(1\).pdf](http://www.romanicroiss.org/.../Comentarii_Strategie_ONG-uri_FINAL(1).pdf).

<sup>146</sup> See Improving the tools for social inclusion and non-discrimination of Roma in the EU (Report 2010), available at [www.errc.org/.../improving-the-tools-for-th...](http://www.errc.org/.../improving-the-tools-for-th...)

<sup>147</sup> See the new *Law of National Education*, 1/2011 published in the Official Journal no. 18/2011.

<sup>148</sup> For details, see Dezideriu Gergely, *Interpretarea pe cale jurisprudențială a standardelor ce derivă din Directiva rasială*, în *Noua Revistă de Drepturile Omului* nr. 2/2011, vol.7, p. 27–48.

<sup>149</sup> See *2012–2020 Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority*, published in Official Journal no. 6 bis/04.01.2012.

of the expertise they gained over the years represents, in my views, another effect of the combined Romanian and European Roma inclusion policy. Of course, there is, still, a lot to be done, while an important number of the auto-entitled Roma NGO's are created or run by non-Roma ethnics<sup>150</sup>. Of course, this raises questions about their representativity for the Roma community.

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

Again virtually, there were highlighted three possibilities for national minorities' members to gain seats in the Romanian Parliament: as independent candidate, as candidate of a mainstream political party or as candidate for the national minority's representative organization. As the first apparently have not given noticeable results until now<sup>151</sup>, the only practical solution remained, apart from the candidacy on mainstream parties behalf, the competition for the seats reserved to each national minority obtaining at least 10% of the votes necessary to elect a deputy<sup>152</sup>.

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

On the fairness of the political competition, the issue is the different standard required to participate in parliamentary elections for those organizations which are not represented in Parliament by difference with the ones which are already represented. While for those organizations represented in Parliament there are no supplementary conditions to enrol candidates in parliamentary election, there are some important limitations for the non-represented organizations<sup>153</sup>.

The 2004 decision to enforce stronger conditions for national minorities' organizations aiming to enter the Parliament can be explained by the constant growing number of seats assigned to national

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<sup>150</sup> Kiss Denes, *Sistemul instituțional al minorităților etnice din România, în Studii de atelier. Cercetarea Minorităților naționale din România nr. 34, Institutul pentru studierea problemelor minorităților naționale, Cluj-Napoca, 2010*, p. 15.

<sup>151</sup> In 2012 Damian Draghici, auto-identified as Roma ethnic, was elected senator as representative of the PSD (Social Democrat Party), member of the USL (Social-Liberal Union). He is now the third Roma ethnic (auto-identified) parliamentary, together with Madalin Voicu (deputy since 1996, also PSD representative since 2000) and with Nicolae Paun (Partida Romilor representative).

<sup>152</sup> See Articles 9 and 47 from the Law no. 35/2008 published in the Official Journal no. 196/2008.

<sup>153</sup> These requirements are to have been previously declared by the Government as «of public utility» and to have at least 20000 members (if the minority has more than 20000 members auto-identified through official census) located in at least 15 Romanian counties and the capital, with at least 300 persons in each county or the capital. For the exact conditions see Article 9 of the Law 35/2008 with ulterior amendments, the last being made by Government ordinance of Urgency no. 46/2012. By difference, the Local Elections Law 67/2004 with ulterior amendments asks for 25000 persons to be member of the candidate organization. (See Article 7 para.4 of the Law 67/2004).



minorities from 12 in 1990 to 18 in 2000<sup>154</sup>. While the international treaties Romania ratified do not allow public authorities to worsen the national minorities situation by withdrawing the rights previously granted, the idea to impose more difficult conditions for the minorities not yet represented has its reasons. This idea is even more substantiated if it is to consider that the number of members of some national minorities, as established by national census, is lower than the number of votes the representing organization received in general elections. Nevertheless, the solution to impose conditions on representing organizations rather than on the national minority itself<sup>155</sup> negatively affected the competition among organizations of the same minority and, by consequence, the legitimacy of the representing deputy.

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

The constitutional rule stating that each officially recognized national minority is represented by one deputy from only one minority's organization has, beside the positive consequences of being a symbolic act of democracy and political participation, including negotiation, the effect of strengthening the position of the representative organization in competition with other organizations representing the same minority. In fact, in the last five parliamentary elections which Romania had after communism collapsed, only 3 national minorities<sup>156</sup> were represented by different organizations. 16 of the 19 organizations which represent national minorities in the Romanian Parliament, the Roma representative included, have been doing so since the beginning of that minority's representation until today.

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

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

The priority areas of intervention stated by the 12 European governments initiating the Decade of Roma Inclusion (2005–2015), education, employment, health and housing, were proposed to be

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<sup>154</sup> Monica Caluser, *Reprezentarea minoritatilor nationale pe locurile rezervate in Parlament*, p. 167–178, in *Politici de integrare a minoritatilor nationale din România. Aspecte legale și instituționale într-o perspectivă comparată*, Editor Levente Salat, Ed. Fundației Centrul de Resurse pentru Diversitate Etnoculturală, Cluj-Napoca, 2008, [www.edrc.ro/docs/docs/politici/Intregul-volum.pdf](http://www.edrc.ro/docs/docs/politici/Intregul-volum.pdf) (last consulted on the 14<sup>th</sup> of February 2012).

<sup>155</sup> For example, by establishing a minimum number of members.

<sup>156</sup> The Italian, the Albanese and the Bulgarian national minorities have been represented by other organizations before the 2004 general elections.

extended and complemented in The February 2011 Report on an EU Strategy for Roma inclusion by three new domains: fundamental rights, culture and political and civil participation of Roma. The same fields can be detected more or less accurate in the Romanian Strategy, even if the EU Framework for National Roma Integration Strategies up to 2020 (the EU Framework) stipulates only the four «classical» areas.

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

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

First of all, the choice to fight firstly poverty and secondly discrimination is highly controversial: The roots of this approach are to be found in the first, 2001 Strategy and, deeper, in the Government's way of understanding and integrating the main cause of exclusion: discrimination. The strategy contains potentially offensive, discriminatory provisions as the one which states that «Roma culture remains underdeveloped» (point IV.5 of the Strategy). It may override the standards of a public policy and the EU principles for Roma inclusions as the Government seemed to have missed its own rules on the elaboration and initiation of normative decisions and public policies documents as well as the tenth of the EU principle for Roma inclusion – the participation of Roma. The 2012 Strategy was criticised for lacking of effective consultations with representatives of diverse Roma groups and communities – in accordance with the official acknowledged internal diversity of the Roma minority – from the earliest stages of initiation to the implementation and monitoring period. This questions the Government's capacity to adopt an inclusive decision-making procedure according to the philosophy of the Roma inclusion policy. As a procedural vice, the ineffective consultation is not only in itself a form of discrimination, but may have also contributed to it: The Roma representative stressed on the key role of this principle since 2000, in the first General Policy Recommendation of the Working Group of Roma Associations, in the second one of the Framework Convention of Roma (2001), as well as in other public documents issued by Roma representatives. On the need to develop the entire national strategy for Roma inclusion under the umbrella of the anti-discrimination principle there have been elaborated other studies, too, as well as the 2005 Joint Inclusion Memorandum adopted in view of Romania's accession to the EU.

As previously stressed, the participation of Roma in Roma inclusion projects is not only a UE requirement, but, more important, a condition for obtaining effective results. Consequently, the insertion of the Roma vision in shaping the national strategy for Roma inclusion is a key factor of success. In the vision of the Roma representative, as it is expressed in the documents listed above, the Roma themselves have to «articulate an auto-referential perspective», a «positively received cul-

tural and social identity» from which to build an «active partnership with the public administration» able to determine the replacement of the current «demo-liberal» theory of social integration with a «multicultural social cohesion» which can «actively include the underprivileged groups».

The Roma inclusion policy needs a larger scale projects. This is a *sine qua non* conditions for a successful strategy, as suggested in 2005 by Joint Inclusion Memorandum and emphasized in 2012 by Gabriel Andreescu . As anti-discrimination is a corollary of the substantial, effective equality principle, to conceive this public policy on anti-discrimination would imply to reinforce the equal legitimization of Roma persons as constitutive elements of the Romanian nation-state, on the same footing as other Romanian, Hungarian ethnics etc., and with the same entitlement to use the public resources to maintain and develop the specific Roma cultural identity.

As possible implication, in the general centralizing trend at the EU level, a tendency to move the Roma inclusion dossier from exclusive Member States to shared EU and MS domain became visible<sup>157</sup>. The Roma file could become a vehicle to transport power from the Member States to the EU, by the instrumentality of the subsidiarity, if the states will prove themselves unable to develop an effective Roma inclusion policy. This is why I am wondering if a more effective consultation with a wider range of Roma representative is needed for the Romanian Government to prove itself capable to assume the Roma inclusion policy. Foreseeing the political costs of changing the status quo in Romanian-Roma political elite collaboration, the alternative could prove itself even more expensive: the loss of European funds, of power of decision over the allocation of these funds and eventually over an important part of the Roma inclusion policy. All these could affect the coalition in power, indiscriminatory of ethnicity while affecting the EU Roma inclusion policy, too.

## **6. Instead of conclusions. What can be inspiring in the Swiss integration policy for the Romanian Roma inclusion policy?**

From a conceptual perspective, and keeping in mind the discussion in the first section, Relating to the understanding of inclusion vs. integration explained in the second section, the Romanian choice for *inclusion* rather than for *integration* may be appropriate. Not only it applies to a historic minority consisting in Romanian citizens, but also its goal is to provide social justice on the equality path as it aims to a fair repartition of social benefits to everyone.

Citizens and foreigners are to be treated equally, as the principle of equality implies. Equal public interest and effort may be invested in providing social justice to foreigners as to the citizens. But this is not to be said that a citizens' inclusion policy should be limited to the measures taken for immigrants integration, but, due to their additional bond with the state, would rather suggest that chances available for the inclusion of vulnerable groups of citizens should be at least similar to those targeting the non-citizens. On the same line of argument seems to go the Swiss government idea of making sure that the anti-discrimination procedures could profit to everyone and not only to immigrants. Applying the same to the Romania's reality, would result in appreciating that the opportunities Romania opens for immigrant's integration should be available for its citizens, too, Roma included. Extrapolating and comparing what Switzerland does for immigrants' integration to what Romania does for Roma inclusion – taking, of course, in account the particularities of both – it may be possi-

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<sup>157</sup> See A. Ciuca and R. Prisacariu, 2013, p. 45.

ble to infer that the Swiss example of immigrants' integration could only serve Romania as a minimum standard for its strategy on Roma inclusion.

What can be developed in the Romanian Roma inclusion policy using the Swiss integration policy as a starting point? Benefices may be found with regard to the conception, the vision, the coordination and the monitoring, including transparency, while the Roma participation flaws may find better inspiration from the Swiss participatory mechanisms put in play for national linguistic communities such as the German, French, Italian and Romansh. The determination of the number of Roma issue, including its implication in designing and assessing the progress of the policy may have found here only small advances.

First of all, and apart from the previous terminological comments, a clear statement of the foundation of the Roma inclusion policy in both the equality principle and the minority rights may be a plus. By equality principle I mean also substantial equality and non-discrimination, including preferential treatment<sup>158</sup>. Equality principle clearly results in everyone's right to have his/hers autonomy and specificity protected while the minority rights ensure the protection of the collective identity and culture, including way of life, beyond the individual effect of the human rights provisions. Thus, the minority rights perspective would be added to the anchorage in the equality principle, which can be found in the Swiss integration policy.

The future development of the general conception of the Roma inclusion policy may benefit from the Swiss experience on the integration issue. The tendency to consider individuals as passive to the public decisions may be adjusted by approaching the authorities' tasks as merely to assist persons in their own inclusion and to adapt institutions and society to act inclusively.

In the introduction of the Romanian Government Strategy for the Roma inclusion in 2012–2020 the social inclusion is defined as «a process that ensures that people at risk of poverty and exclusion gain the opportunities and resources necessary to fully participate in the economic, social, and cultural life and that they enjoy a standard of living and welfare considered to be normal in the society in which they live. Social inclusion ensures increased participation of these people in taking the decisions that affects their lives as well as their access to fundamental rights» (citing the Joint Report of the Commission and the Council on Social Inclusion, 2003). Maybe the applicability of the Roma inclusion policy would increase by mentioning the social actors involved – the public authorities, the whole society and the Roma person – and their respective roles in the process. Assuming the view that the first mission for integration goes to the primary structures and the specialised institution can only encourage and fill the gaps encountered at the first level may also strengthen applicability. As we may find, in other wording, mentions about the transversal and the global character of the inclusion policy, what can still be done is to further clarify these aspects.

But Romania may not stop to this view, in my opinion. As a historical minority of Romanian citizens, Roma perspective over its own inclusion may continue to be integrated and find more fair and efficient path of expression. For the Roma perspective to have a place in the Romanian policy, the place of Roma as of all national minorities in the XXI century Romanian nation may be properly acknowledged. As Romania is defined in the Constitution as a national state, there is still need to

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<sup>158</sup> See Mihaela Roxana Prisacariu, «Statutul juridic al minorităților naționale», ed. CH Beck, București, 2010, p. 41.

establish the kind of nation Romania is and who is entitled to legitimize as its fully-fledged member. Romania formed in a XIX-th century as a nation-state, under the nationalities principles, that is to say as a state of the Romanians or an ethnic nation, in today's wording. A systematic interpretation of the Constitution suggest that Romania is now a civic nation as, beside stating the Romania's national feature, the Constitution also establish the equality and non-discrimination of its citizens<sup>159</sup> and the minorities persons' right to identity<sup>160</sup>. Nevertheless, it is difficult to sustain the inclusive perspective is shared by the general public while both some Romanian and the Hungarian ethnics assume the Romanian ethnic nation perspective would better serve their goals. The proposal to acknowledge the Hungarian minority collectively as a constituent element of the Romanian state is funded mainly on the evaluation of the Romanian nation as an ethnic one, which exclude national minorities' members from fully exercising their equality rights.

The Swiss integration policy – «encourage and request» – may have limited application for the Roma inclusion because they are not only members of a vulnerable group, subject to structural discrimination as the immigrants, but enjoy citizenship and national minorities rights and, above all, suffered historical injustice in the 500 years of slavery which strengthens the systemic feature of discrimination and enhances Romanian state's responsibilities. This is not underestimate the Roma people's role, as a successful personal and group inclusion is difficult to conceive in the absence of a corresponding individual will and effort to personal achievement.

The political will and the official vision over the inclusion policy further reflect in the normative form the piece of legislation takes. Recognizing Roma inclusion as one of Romania's public interest would further support the adoption of the Roma inclusion strategy as a law, overcoming the juridical shortcomings of the current solution.

The coordination of the Roma inclusion policy with the other public policies and norms can be improved. The Swiss integration policy may suggest how to further develop the global and transversal features of the inclusion policy. The ideas 1) to introduce specific inclusion tasks for primary structures (in Swiss terminology) by amending the laws regulating those structures and 2) to enhance the communication and coordination procedures which would help putting these structures in network with the specialized organs may be beneficial. Also from a Swiss perspective, which comes in line with the Romanian official legislative techniques (Law 24/2000<sup>161</sup> and the Government Decision 1226/2007) a comprehensive scientific research of the possible alternative path and solutions should precede any decision.

One reiterated critiques of the Roma inclusion policy is the accountability issue. Gradual increase of transparency in relation to objectives, roles distribution, public activities and consistency of their monitoring should presumably improve accountability, a distinct topic of analysis.

On the transparency, there is an important potential for further improvement on the availability of substantial information on official sites about the network of the institutions involved and their respective competences in the inclusion policy, at the national and local level, of the annual and other

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<sup>159</sup> See Article 16 of the Romanian Constitution.

<sup>160</sup> See Article 6 of the Romanian Constitution.

<sup>161</sup> Law 24/2000 concerning the legislative technique for the adoption of normative acts and the Government decision no. 1226/2007 for the approval of the Regulation concerning the Government's procedures for elaborating, endorsing and presenting the legislative proposals as well as other proposals of public policies documents.

reports of activities of these institutions as well as the CNCD's jurisprudence. The previously mentioned aspects influence the monitoring, as well. Apparently, not only the ordinary annual institutional reports and the intermediate and final assessment reports are not always available, but sometimes they do not exist at all, as it is the case of an officially assumed report on the previous 2001–2010 Governmental Strategy for the improvement of Roma situation. As I had the occasion to point out, flaws in the implementation of the former strategy tend, when not properly tackled, to affect the new one as well.

Roma participation in the design, implementation and assessment of the specific inclusion policy is fundamental. As mentioned in the section 5, reasons for the limited representativeness and legitimization of the Roma actually involved in the policy formation are to be found in the Romanian normative framework and in the limited capacity of the Roma communities (as a result of their vulnerable social position) to make their auto-entitled representative accountable. Switzerland has a consolidated experience in the inclusion of its historical linguistic minorities to public decision but the Swiss policy for foreigners' integration has just lately tackled the issue of the immigrants' involvement in its design as the idea of including non-citizens in the conception of a public policy appeared only very recently on the political science' and the public agenda.

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