



**THE RIGHT TO EDUCATION: A COMPARATIVE STUDY  
OF ROMA CHILDREN IN PRIMARY EDUCATION IN SERBIA,  
MACEDONIA AND BULGARIA**

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## EXECUTIVE SUMMARY

The right to education creates the opportunity for individuals to develop their unique intellectual capacities as well as facilitates their participation in broader political and public life. The right to education is particularly important for the underrepresented as it enables impoverished individuals to rise above their economic handicap, increases the likelihood of members of a socially excluded group integrating into their greater community, and ultimately prepares individuals to participate and compete in the labor market. This study reviews the importance of the universal right to education and analyzes how the denial of this right has adversely impacted children of the Roma—one of the most vulnerable ethnic groups in Europe.

In spite of the fact that the right to education in most major countries is recognized as important, and that many legal instruments are already in place to secure this right for all, it is still the case that some children, especially those belonging to vulnerable ethnic groups, are deprived of, or face obstacles in accessing, this basic human right. In Europe, this is the situation with Roma children—especially those living in Central and Eastern Europe. These children, although living in nations which ostensibly ensure this right, exist in communities with discrimination, segregation, social exclusion and poverty which leads to this right being denied from them.

The purpose of this study is to explore and analyze the situation of Roma children regarding their enjoyment of the right to education in three Eastern European countries: Bulgaria, Macedonia and Serbia. Moreover, this study uncovers the reasons for this unequal access to education and lays out concrete policy recommendations for each government regarding issues specific to Roma children.

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## INTRODUCTION

“Education is the special manifestation of man;  
Education is the treasure which can be preserved without the fear of loss;  
Education secures material pleasure, happiness and fame;  
Education is the teacher of the teacher;  
Education is the God incarnate;  
Education secures honour at the hands of State, not money;  
A man without education is equal to animal.”  
(*Neethishatakam*’ by Bhartruhari – First Century B.C.)<sup>1</sup>

Education to everyone on an equal basis is the responsibility of the each and every state if one follows the principle of education as fundamental right. However, the fact that millions of children worldwide are excluded from education, receive a substandard quality of education, experience that is qualitatively different from other children within their same country, reveals that some States fail to provide equal educational opportunities for all children. The Roma children in Europe are just such a group of children denied this right.

For centuries, Roma people have been the most disadvantaged ethnic group in Europe. Subjected to racial discrimination, social exclusion and extreme poverty, the Roma have traditionally been blocked from the right to education, housing, health care and employment. The social position of the Roma remains the same in contemporary Europe; they are still subjected to discrimination and are still deprived from the enjoyment of basic rights.

The many obstacles facing Roma children in their access to education include socio-economic and administrative barriers to entering the mainstream education as well as discrimination and segregation once within educational institutions. These phenomena are especially evident in the countries located within Central and Eastern Europe where the majority of Roma live. The denial of Roma children from the enjoyment of the right to

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<sup>1</sup> ‘Neethishatakam’ by Bhartruhari – First Century B.C. cited by Law Commission of India, One hundred sixty fifth report on free and compulsory education for children,5-6 (1998) available at <http://lawcommissionofindia.nic.in/101-169/Report165.pdf> ( last visited December 25, 2008).

education has significant impact to their intellectual and professional development as well as the enjoyment of other human rights.

The purpose of this thesis is to explore the reasons for the unequal access of the Roma children to primary education and to discover to what extent the factors that lead to the denial of the right to education have an impact on Roma children's further education. An analysis of this issue is important for two reasons: first, because the problem of unequal access, especially where education is segregated—as is the situation of most Roma children in much of Central and Eastern Europe—is a pressing issue requiring urgent action; and second, because no comprehensive legal research on this issue exists at present.

In this study I will analyze the various factors contributing to the lack of access to the right to education of Roma children in Serbia, Bulgaria and Macedonia. These three neighboring countries share a similar history: all three countries were under the control of communist political systems that established inequalities in education between their Roma and non-Roma citizens.

To support my thesis, I have researched existing literature from the three different countries,<sup>2</sup> and included primary research, i.e., information gleaned from personally conducted interviews with Romani activists from Bulgaria, Macedonia and Serbia. For legal analysis, I cite existing regional, national and international regulations.

My thesis will consist of an introduction, main part, conclusion and recommendations. In the first chapter, I will give a theoretical explanation about the importance of the right to education. Specifically, I will explore the main arguments for and against recognition of the

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<sup>2</sup> See Roma Education Fund, Country Assessment and Roma education Funds strategic direction, at: <http://romaeducationfund.hu/> (last visited December 25, 2008). See also, Open Society Institute, Equal Access to quality of education for Roma, Monitoring report, 2008 (1,2) available at [http://www.soros.org/initiatives/roma/articles\\_publications/publications/equal\\_20070329](http://www.soros.org/initiatives/roma/articles_publications/publications/equal_20070329) (last visited December 25, 2008).

right to education as a fundamental human right. Further, after explaining that the right to education is important, I will explain the significance of this right.

In the second chapter, I will analyze the national and international legal instruments that protect and promote the right to education, elaborating on the conditions that states are required to fulfill in order to ensure this right. Also in this chapter, I will examine the Serbian, Bulgarian and Macedonian legal frameworks that ensure the right to education to their citizens in general and compare these laws and their policies regarding the education of Roma, specifically. At the end of the second chapter, I will examine the effectiveness of the implementation of these existing laws and policies.

In the third chapter I will explore the current situation of Roma children in primary education in Serbia, Macedonia and Bulgaria. I will analyze the major similarities and differences, revealing the main reasons for unequal access in each of these three countries.

Finally in the last chapter I will provide concrete policy recommendations to the Serbian, Macedonian and Bulgarian governments on how to remove the existing barriers that prevent Roma children from equal access to education and ensure their enjoyment of the right to education on an equal footing with their non-Roma peers.

## CHAPTER I – DEBATE ABOUT THE RECOGNITION OF EDUCATION AS A FUNDAMENTAL RIGHT

In this chapter I examine the academic arguments, for and against recognizing education as a fundamental right. I also analyze the scholarly views regarding the evolution of human rights and determine the point in this evolution wherein the right to education appears.

The right to education is considered by several scholars<sup>3</sup> and international organizations<sup>4</sup> as one of the fundamental human rights as education is perceived as critical for an individual's development and for the exercising of other human rights. The roots of education as a fundamental right can be found in article 26(2) of the Universal Declaration of Human Rights that says: "...education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms ..."<sup>5</sup>. Since the Declaration this principle has been restated and reinforced in numerous succeeding international human rights treaties, including the Covenant on Economic, Social and Cultural Rights,<sup>6</sup> the Convention on the Rights of the Child<sup>7</sup> and the Convention against Discrimination in Education.<sup>8</sup>

However the importance of the right to education and its place in the hierarchy of human rights is disputed and there is an ongoing debate among different scholars about its importance.

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<sup>3</sup> See Klaus Dieter Beiter, *the Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Right*, Martinus Nijhoff Publishers, 2005; See also Fons Coomans, *In search of the core content of the right to education in Core Obligations: Building a Framework for Economic, Social and Cultural Rights* by Audrey R. Chapman, Sage Russell, American Association for the Advancement of Science, HURIDOCS, Intersentia nv, 2002.

<sup>4</sup> See also United Nation's Educational Scientific and Cultural Organization (UNESCO), *Right to education*, available at [http://portal.unesco.org/education/en/ev.php-URL\\_ID=18845&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=18845&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last visited in December 24, 2008).

<sup>5</sup> Universal Declaration of Human Rights, Dec. 10, 1948, art.26.

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights, Dec.16, 1966, art.13.

<sup>7</sup> Convention on the Rights of the Child, Nov.20, 1989, art. 29.

<sup>8</sup> Convention against Discrimination in Education, Dec 14, 1960, art. 5. See also Katerina Tomasevski, *Removing obstacles in the way of the right to education: Right to education*, 9 (2001), available at [http://www.right-to-education.org/content/primers/rte\\_01.pdf](http://www.right-to-education.org/content/primers/rte_01.pdf) (last visited December 25, 2008).

## **1.2. Arguments opposing the acknowledgement of education as a fundamental right**

Some scholars, such as noted writer Maurice Cranston,<sup>9</sup> argue that education should not be recognized as a fundamental human right. Cranston differentiates between the fundamental nature of Economic and Social Rights (ESR) and Civil and Political Rights (CPR). In his book “What are Human Rights?”,<sup>10</sup> Cranston emphasizes that only CPR, rights he considers traditional, have an absolute character and a fundamental nature because these rights are inherent to human beings. According to this author, ESR—such as the right to education—do not have the same values as traditional rights because they are not real rights but, rather, “hypothetical rights”<sup>11</sup> or “rights of another kind”<sup>12</sup>—which were not acknowledged by natural rights theorists like Locke.<sup>13</sup>

Cranston argues that a right is fundamental if the following four requirements hold true: legislation alone is enough to secure it; it is judicially enforceable; it is universally accepted; and it is of paramount importance. In addition, Cranston emphasizes that the four requirements can be only fulfilled by the CPR.<sup>14</sup>

Cranston justifies his theory with many arguments. Firstly, he states that the CPR are judicially enforceable and that instruments that embody these types of rights foresee mechanism for their protection. He underlines that this is not the case with the ESR by giving an example of the Covenant on Economic, Social and Cultural Rights that enshrines ESR. The author points out that this Covenant instead of proposing establishment of mechanisms for the enforcement of ESR only imposes the duty on the states to submit periodic reports. Thus,

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<sup>9</sup>See Maurice Cranston, *What are Human Rights?*, Basic books, Inc., publisher, 1962, 1-103. In this book Maurice states that traditionally known Natural rights or rights of a Man in the XX century were renamed and now are known as Human rights.

<sup>10</sup>*Id.*, 9.

<sup>11</sup>*Id.*, 9 at 37.

<sup>12</sup>*Id.*, 9 at 33.

<sup>13</sup>*Id.*, 9 at 34.

<sup>14</sup>*Id.*, 9 at 34-39.

Cranston does not perceive the Covenant as an instrument that imposes binding duty upon the states to implement these rights.<sup>15</sup>

Furthermore, this author argues that the European Convention on Human Rights (ECHR) foresees the establishment of the mechanism for the enforcement of all rights stipulated in this convention among which is the right to education that belongs to social rights. However, he states that countries that signed the Convention decided to safeguard rights that belong to the CPR category but that some states made reservation on Protocol one article two that enshrines the right to education.<sup>16</sup> In this way he intends to prove that also states themselves perceive CPR as more valuable rights and to undermine the importance of the right to education and ESR in general.

Secondly, Cranston argues that legislation alone can protect in a very easy way only CPR and that the government is only required to refrain from interference into the individual's freedoms. This author emphasizes that economic and social rights cannot be easily implemented and that in the case of these rights it is not enough that the government creates legislation, but also it should create conditions for the realization of these rights. In his view, the poverty that most of the states worldwide experience is a major barrier that states face in securing financial resources needed for creating conditions that will secure realization of the ESR.<sup>17</sup> This would mean that governments should create conditions if they can for the social rights realization, but that they are not obliged to do so.

Thirdly, Cranston points out that CPR are the only rights that are universal and moral because the individual can enjoy only these rights anywhere and in any time, and that the deprivation of these rights would mean a serious offense to justice. However he argues that this is not the case with ESR.<sup>18</sup>

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<sup>15</sup> *Id.*, 9 at 53-56.

<sup>16</sup> *Id.*, 9 at 77.

<sup>17</sup> *Id.*, 9 at 35-38.

<sup>18</sup> *Id.*, 9 at 35-38.

Finally, Cranston stresses that “paramount importance”<sup>19</sup> for a right to be CPR. He states that there are freedoms such as freedom of movement that everyone is entitled to and that denial of this right would mean infringement of a basic principle of justice. Furthermore he argues that there are some activities and freedoms that are sacred and of such paramount importance that they “should never be invaded.”<sup>20</sup> According to Cranston, social rights—such as a periodic holiday-with-pay—cannot be classified as sacred or of utmost significance.<sup>21</sup>

From the arguments reviewed, it can be concluded that Cranston prioritizes traditional rights over new rights, considers CSR as fundamental and of paramount importance, and has decided that ESR are second-rate human rights of less legal stature.

Cranston believes that ESR are not judicially enforceable; however this scholar fails to take into consideration the fact that the right to education is guaranteed by a number of international, regional and domestic instruments that not only ensure the protection of the right to education but also foresee mechanisms that will enforce these rights.

Furthermore, when Cranston argues that legislation is enough to secure the CPR and that the state has to abstain from intervention, he fails to observe that there are some CPR rights, such as freedom from torture, that sometimes require state action in order to protect its citizens from the state. In relation to this, Jack Donnelly argues that in order to ensure that invasion of freedom from torture prevent does not take place the state is bound to ensure the legal guarantee of this freedom as well as undertake some proactive measures such as trainings and monitoring of the police.<sup>22</sup>

In addition, Cranston does not take into consideration that state signatories of International treaties such as International Covenant on Economic, Social and Cultural Rights (ICESCR) undertook the responsibility to create conditions for the realization of these rights

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<sup>19</sup> *Id.*, 9 at 39.

<sup>20</sup> *Id.*, 9 at 40.

<sup>21</sup> *Id.*, 9 at 40-42.

<sup>22</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, 1993, 32-33.

and they have an obligation under the international law to secure their enjoyment. No justification, such as poverty, can be invoked. For example, states that ratified the ICESCR have a duty to ensure that education is not only available but also they have an obligation to secure that it is accessible to everyone on an equal basis.<sup>23</sup>

Furthermore Cranston is in the opinion that economic and social rights can be recognized as rights of supreme importance; however, if we take into consideration that denial of a social right such as education means deprivation from the personal development and enjoyment of other rights than it can be argued that social rights are also of enormous importance. In fact, it can be seen of as having equal importance to, for example, freedom of speech, in the securing of the individual's ability to live a dignified life.

Finally, the right to education can also be observed as a universal right because each individual should be entitled to enjoyment of this right regardless of the race, color, religion, gender, sex, ethnicity or language. The right to primary education is, first of all, a child's right and taking into consideration that this right is of extreme importance for a child's personal development, than we it can be argued that all children worldwide should be able to enjoy this right.

### ***1.2. Arguments supporting the acknowledgement of education as a fundamental right***

Proponents<sup>24</sup> of the recognition of the right to education as a fundamental right invoke several justifications as to why this right should be acknowledged as a fundamental human right. The first argument is a social utilitarian one according to which the right to education is an important right for the proper functioning of the society.<sup>25</sup> This can be interpreted in the

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<sup>23</sup> See *supra* note 6.

<sup>24</sup> See Klaus Dieter Beiter, *supra* note 3.

<sup>25</sup> See Klaus Dieter Beiter, *supra* note 3 at 28 at 26.

light that properly educated citizens can ensure progress in the society and enable its appropriate functioning.

The social-utilitarian argument was recognized by the United States Supreme Court case “Brown v. Board of Education”.<sup>26</sup> In this landmark case, the right to education is ruled not only important for the public responsibility performance but also for appropriate exercising of the citizens’ rights.<sup>27</sup> This can be interpreted in the light that an individual would need to have a minimum level of education in order to be able to exercise his or her rights as a citizen, as well as to be able to participate in political life in a proper way.

A second argument rests upon a claim that education is a precondition for person development. This argument emphasizes that full development of the individual and full realization of his or her potential is not possible.<sup>28</sup> This dimension of the right to education is acknowledged in many international instruments such as Convention of the Rights of the Child that in article 29(1) states that “... the education of the child shall be directed to: the development of the child’s personality, talents and mental and physical abilities to their fullest potential...”<sup>29</sup> The opposite must also be admitted: that if an individual is deprived of education, he or she will suffer major and permanent disability.

A third argument is the individual welfare angle stating that an individual should receive education from the community because it is perceived as a “welfare necessity” which the individual cannot secure alone,<sup>30</sup> but should be offered by the community. This would mean that individual who is denied from enjoyment of the right to education would face permanent disability. According to this approach, the individual should receive support to acquire such education that will guarantee him efficient performance in the society and enable

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<sup>26</sup> *Brown v. Board of education*, 347 U.S. 483 (1954).

<sup>27</sup> See Klaus Dieter Beiter, *supra* note 3, at 26.

<sup>28</sup> See Klaus Dieter Beiter, *supra* note 28, at 26.

<sup>29</sup> See Art.28, Art. 29 and 23 of the Convention on the Rights of the Child, *supra* note 7.

<sup>30</sup> See Klaus Dieter Beiter, *supra* note 3, at 27.

him to obtain employment that will ensure him to meet his basic needs.<sup>31</sup> This would mean that if the society fails to ensure to an individual enjoyment of this right than he will be deprived from the opportunity to live decent life.

All three arguments—the social-utilitarian, the individual-potential, and the individual welfare—provide sufficient and important evidence for the recognition of education as a fundamental right.

Beiter also observes the right to education as crucial means for the realization of many other rights such as the right to work and the right to an adequate standard of living as well as the right to health.<sup>32</sup> Similarly to Beiter, Tomasevski highlights that persons who are deprived from education are also deprived from other rights for the reason that "the right to education is the pass key for unlocking the other human rights".<sup>33</sup> For instance, she argues that without education, the individual's access to employment can be hampered, because person without education can be left out from the labor market that can lead to his or her less financial compensation. Moreover, she states that lack of education can also create a barrier for the political involvement. This would mean that if the individual is illiterate than his or her chance to participate in the political life are significantly lower. Tomasevski support her argument by stating that in some countries illiterate person have no right to vote or they are not allowed to candidate for the election.<sup>34</sup>

In addition, Beiter points out that education also make possible social-economic integration.<sup>35</sup> In other words this would mean that person who is denied from the right to education can be easily excluded from taking part in economic activities and be excluded from the rest of the society.

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<sup>31</sup> See Klaus Dieter Beiter, *supra* note 3, at 27.

<sup>32</sup> See Klaus Dieter Beiter, *supra* note 3, at 29.

<sup>33</sup> See Katerina Tomasevski, *supra* note 8, at 9.

<sup>34</sup> See Katerina Tomasevski, *supra* note 8, at 9.

<sup>35</sup> See Klaus Dieter Beiter, *supra* note, 28, at 29.

Moreover, he emphasizes that courtiers worldwide should use education as a tool to combat poverty and to secure economic growth and social stability.<sup>36</sup> This would mean that if socially disadvantage individuals get an opportunity to educate themselves than their chance to get employed and secure permanent income that will improve their economic and social position is much higher.

Furthermore, Beiter states that linguistic and ethnic minorities can safeguard their cultural uniqueness if they get opportunity to educate themselves.<sup>37</sup> This can be interpreted in a way that the right to education enables this group of people by offering them integrated education and education in their own language to successfully integrate in the society and preserve their own culture by cultivating their language.

The above arguments enumerated for the acknowledgment of education as a fundamental right illustrate that this right is crucial for the individual's development and that the person who is deprived of education cannot function efficiently and with dignity within the society. In addition without education a person cannot exercise other rights and his opportunity to economically and socially integrate is significantly hampered.

### **1.3. Generations of human rights**

In this subchapter I analyze what are the existing generations of human rights and where the right to education should be placed.

According to Luis Maria Diez-Picazo and Marie-Claire Ponthoreau<sup>38</sup> there are three generations of rights. The first generation of rights is civil and political rights that were are intend to preserve the basics of liberalism and democracy. This category of rights is observed

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<sup>36</sup> See Klaus Dieter Beiter, supra note 28, at 29.

<sup>37</sup> See Klaus Dieter Beiter, supra note 28, at 29-30.

<sup>38</sup> Luis Maria Diez-Picazo & Marie-Claire Ponthoreau, The Constitutional protection of Social rights: some comparative remarks, European University Institute- department of law, 1991, 1-33.

as an individual right that can be perceived as negative rights (freedom rights) because they oblige the state to refrain from unjustified interference in personal freedom.<sup>39</sup>

The second generations are social rights that were developed after the First World War. They are considered by these two authors as rights of individuals to acquire services from community so that they can improve “material and spiritual conditions of their life”.<sup>40</sup> Social, economic and cultural rights are perceived as positive rights because they require the states action that will enable the individual to enjoy these rights. From comparative analysis of the four constitutions<sup>41</sup> these authors observed that the common feature of these constitutions is that they recognize social rights as programmatic rights, which means that these rights are not directly enforceable because they require that state to adopt some programs i.e. positive measures.<sup>42</sup>

The third generation is solidarity rights such as artistic, patrimony, and environmental rights. Allan Rosas and Martin Scheinin state that from the new generations right there only few rights, such as right to food, that are recognized by two Covenants adopted in 1966.<sup>43</sup> Some of the new generation rights such as the right to development and the right to peace are enshrined in legally binding instruments such as the case with the African Charter of Human Rights and People Rights<sup>44</sup>; however this is not the case with other existing instruments.

All authors i.e. Luis Maria Diez-Picazo, Marie-Claire Ponthoreau, Allan Rosas and Martin Scheinin are in opinion that division among the generations of rights should not be

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<sup>39</sup> *Id.*, at 5-6. See also Allan Rosas & Martin Scheinin, Categories and Beneficiaries of Human rights, in : R. Hanski, M. Suksi: *An introduction to the international protection of Human rights*, Institute of Human Rights, Abo Academy University, 2004, 49-62.

<sup>40</sup> *Id.*, at 5-7.

<sup>41</sup> Luis Maria Diez-Picazo and Marie-Claire Ponthoreau analyze the constitutions of the following four countries : Italy, France, Spain and Germany.

<sup>42</sup> See Luis Maria Diez-Picazo and Marie-Claire Ponthoreau, *supra* note 38, at 1-33.

<sup>43</sup> When Allan Rosas & Martin Scheinin speak about the two covenants they think about the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and political Rights. See Allan Rosas & Martin Scheinin, *supra* note 39, at 55-56.

<sup>44</sup> African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. art 22 and 24 guarantee the right to Development, while Article 23 guarantee the right to peace.

strict<sup>45</sup> and in the next subchapter I will analyze the right to education and where it should be placed and why the division in generations can be somewhat misleading.

#### **1.4. Right to education and its placement within the generations of human rights**

In this subchapter I demonstrate that that division of human rights in different generations is disputed and through the example of education and some other rights, I show that we cannot draw a clear line among different categories of rights.

The right to education is placed by some of the authors<sup>46</sup> within the second generations of rights; however, while there are some authors who argue that there is a clear division among the generations of the rights<sup>47</sup> and that the second generations of rights are not even human rights, there are some authors<sup>48</sup> who state that the line among the generations of human rights is not that strict and that for instance the right to education possesses attributes of the first and second generation of rights.

Luis Maria Diez-Picazo and Marie-Clarie Ponthoreau place the right to education in the second generation of rights; however, they also state that the right to education and some other social rights have “collateral aspects”<sup>49</sup> such as the right to choose a type of religious education.<sup>50</sup> Hence, this would actually mean that without education other rights can not be fulfilled. They also point out that there are some CPR rights that cannot be fully implemented if there is a lack of certain services. They state that, for instance, economic barriers can prevent an individual from enjoyment his right to access to justice.<sup>51</sup> This would mean that

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<sup>45</sup> See Luis Maria Diez-Picazo & Marie-Claire Ponthoreau *supra* note 38. See also Allan Rosas & Martin Scheinin, *supra* note 39.

<sup>46</sup> See Maurice Cranston, *supra* note 9. See also Luis Maria Diez-Picazo and Marie-Clarie Ponthoreau, *supra* note 38. See also Allan Rosas and Martin Scheinin, *supra* note 39.

<sup>47</sup> See Maurice Cranston, *supra* note 9.

<sup>48</sup> See Luis Maria Diez-Picazo, Marie-Clarie Ponthoreau, *supra* note 38. See also Allan Rosas and Martin Scheinin, *supra* note 39.

<sup>49</sup> See Luis Maria Diez-Picazo, Marie-Clarie Ponthoreau, *supra* note 38 at 7.

<sup>50</sup> See Luis Maria Diez-Picazo, Marie-Clarie Ponthoreau, *supra* note 38 at 6-7. We also observed that Jack Donnelly has a similar observation about the CPR rights, see Jack Donnelly *supra* note 22 at 32-33.

<sup>51</sup> See Luis Maria Diez-Picazo, Marie-Clarie Ponthoreau, *supra* note 38 at 6-7.

the state should also undertake some positive measures in order to secure the enjoyment of some political rights.

Similar observation about the right to education was made by Coomans.<sup>52</sup> He points out that the right to education belongs to both generations of rights i.e. to economic, social and cultural rights as well as to civil and political for the reason that the state on the one hand has a duty to undertake certain steps in order to enable individuals to enjoy this right, but on the other hand the right the education has a freedom dimension such as the freedom of the parents to choose the type of education for their children. He highlights that states have a duty to provide education on an equal basis to all, regardless of their race, religion, nationality, and social and cultural origin. In other words, the states have a duty to create conditions in which all pupils will have the same opportunity and chance to enjoy the right to education and they have to refrain from any kind of discrimination against the pupils. In this sense the right to education can be considered as a civil and political right.<sup>53</sup>

Both aspects of the right to education are covered by a number of the international instruments such as the Universal Declaration of Human Rights<sup>54</sup> and International Covenant of Economic and Social Rights.<sup>55</sup>

Allan Rosas and Marin Scheinin, point out that human rights cannot be simply divided into several categories. They argue that although the two existing covenants<sup>56</sup> make a clear division among the generations of human rights, they state that this example was not followed by other human rights instruments such as the International Convention for Elimination of all Forms of Racial Discrimination which embodies both generations of rights. Another

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<sup>52</sup> See Fons Coomans, *supra* note 3.

<sup>53</sup> See Fons Coomans, *supra* note 3, at 217-222.

<sup>54</sup> It states that everyone had the right to education; this means that the state has positive duty to establish schools, but also states that parents have the right to choose school for their children i.e. which kind of education their children will receive, which means that the state has no right to interfere in this freedom aspect. See Universal Declaration of Human Rights, *supra* note 5.

<sup>55</sup> It sets similar duties in article 13: positive and negative. See International Covenant of Economic and Social Rights, *supra* note 6.

<sup>56</sup> See Allan Rosas and Marin Scheinin, *supra* note 39.

argument that they invoke against clear division of human rights is that there are certain rights, such as the right to property, which is difficult to classify.<sup>57</sup>

From the above enumerated arguments we can observe that the right to education poses both positive and negative dimensions, since in some aspects it requires state action and in some aspects it requires states to refrain from interference in the personal sphere.

The debate presented in the above chapter about the generations of human rights and about the fundamental character of the right to education raises the question whether we can really set up a hierarchy of human rights in the situation when all the rights are universal and interconnected among each other and the enjoyment or violation of one right has an impact on other rights. It is certain that the division of the rights into different generations only marks how the human rights were developing through the time and does not establish supremacy of one right over other rights. The states authorities should ensure and create conditions for everyone to enjoy all the rights guaranteed by the international and domestic legislation.

Furthermore, the right to education should be considered as a fundamental right because it enables the individual development and the progress of the whole society. In particular the denial from the right to education of one person can cause his/her exclusion from the society and prevent that person from real participation in the public and political life. Exclusion from education means exclusion from participation in the labor market, exclusion from the labor market means social exclusions which means emergency of poverty which leads to exclusion from many public services such as education, health care, and housing. The fact that some individuals are denied the enjoyment of the right to education on equal footing hampers not only the personal development and future of those individuals but also the development and future of the society as a whole. Therefore, states should undertake all necessary measures to ensure enjoyment of this right to each individual.

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<sup>57</sup> See Allan Rosas and Marin Scheinin, *supra* note 39 at 51-52.

## CHAPTER II – INTERNATIONAL AND DOMESTIC INSTRUMENTS FOR THE PROTECTION OF THE RIGHT TO EDUCATION

### *2.1. International legal instruments for the protection of the right to education*

In this chapter I analyze the existing international and regional instruments that protect the right to education and I look at the conditions that states should fulfill in order to secure enjoyment of this right. In addition, I explore the existing domestic regulations and existing policies and programs in the three countries (Bulgaria, Serbia and Macedonia) aiming to improve the situation of the Roma children in education.

The right to education is recognized by all major international human rights documents. For the first time the right to education was stipulated in the Universal Declaration of Human Rights (UDHR) in 1948 that was adopted by the General Assembly of the United Nation<sup>58</sup>. Although the UDHR by its legal nature is a non-binding document and it only imposes moral obligation on the state parties for its implementation, still the UDHR has significant importance for the development of the international human rights law that impacts also the domestic legal framework. According to the Article 26<sup>59</sup> of the UDHR everyone should have opportunity to enjoy the right to education and in that regards this article guarantees at least the access to free and compulsory elementary education on an equal basis to everyone. Moreover parents are given the right to choose the type of education for their children. From this provision we can observe that the right to education is not only significant for the personal development of the individual, but it is also crucial for the enhancing of the

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<sup>58</sup> Universal Declaration of Human Rights, Dec. 10, 1948.

<sup>59</sup> *Id.*, Art. 26.

respect of human rights and mutual understanding and tolerance among different nations and groups.<sup>60</sup>

In order to strengthen the protection of the right to education, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1960 adopted the Convention against Discrimination in Education (CDE), which reinforces the right to education and the principle of non-discrimination guaranteed by the UDHR.<sup>61</sup> In particular, the CDE strengthens the right to education by prohibiting discrimination in education based “on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth...”<sup>62</sup> In addition, the CDE imposes a duty on the state parties to undertake measures for combating and eliminating discrimination in education.<sup>63</sup> Although the CDE by its legal nature is binding document, it does not establish any kind of body to monitor its implementation.

In 1966 the General Assembly of the UN adopted two very important human rights treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>64</sup> and the International Covenant on Civil and Political Rights (ICCPR)<sup>65</sup> that reinforce the rights stipulated in the UDHR. These legal documents are considered as the first human rights documents that imposed a legal obligation on the state parties to implement these covenants in their domestic legislation.<sup>66</sup> The importance of these human rights treaties also derives from the establishment of the human rights bodies (i.e. the Committee on Economic, Social and Cultural Rights and the Human Rights Committee) that are entitled to monitor their implementation. In this way the state parties are obliged not only to implement these

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<sup>60</sup> *Id.*, Art 26.

<sup>61</sup> Convention Against Discrimination in Education, Dec 14, 1960.

<sup>62</sup> *Id.*, Art. 1.

<sup>63</sup> *Id.*, Art. 3.

<sup>64</sup> International Covenant on Economic, Social and Cultural Rights, Dec.16, 1966.

<sup>65</sup> International Covenant on Civil and Political Rights, Dec.16, 1966.

<sup>66</sup> About the legal nature of ICESCR *see* CESCR General comment 3., The nature of States parties obligations (Art. 2, par.1) : . 14/12/90, The office of the High Commissioner for Human Rights, available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument) (last visited December 26, 2008).

covenants but also to provide these monitoring bodies with information about the implementation progress.<sup>67</sup>

The ICESCR similarly to UDHR in articles thirteen stipulates that everyone should have the right to education on an equal basis directed towards personal development of the individuals and that the states are obliged to ensure free and compulsory primary education. The ICESCR is going more in details and highlights that state parties not only should guarantee the free and compulsory primary education, but also they have obligation to ensure that different types of secondary education are available and accessible for everyone and to ensure the equal access to higher education for everyone. In addition, the article 14 of the ICESCR impose obligation to the state parties, which have not adopted detailed strategy for implementation of the compulsory and free of charge education for everyone. to adopt this type of strategy within two years from the date of ratification.<sup>68</sup>

The ICCPR in the article 18 (4) asserts that parents can choose the type of education for their children, which is consistent with their own beliefs. Although this reference to the right to education is indirect, still it shows that the right to education is closely related to the enjoyment of the civil and political rights.<sup>69</sup> Luis Maria Diez-Picazo and Marie-Claire Ponthoreau define this relation between the right to education and the freedom of beliefs as a collateral aspect of the social rights.<sup>70</sup>

Among the most important human rights treaties that protect the right to education are also the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention of the Rights of the Child (CRC).

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<sup>67</sup> See Art.17 of the International Covenant on Economic, Social and Cultural Rights, *supra* note 64. See also Art. 28 of International Covenant on Civil and Political Rights, *supra* note 65.

<sup>68</sup> See Art. 13 and Article 14 of International Covenant on Economic, Social and Cultural Rights, *supra* note 64.

<sup>69</sup> See Art.18 (4) of International Covenant on Civil and Political Rights, *supra* note 65.

<sup>70</sup> See Luis Maria Diez-Picazo and Marie-Claire Ponthoreau, *supra* note 38. On this issue I elaborated more in subchapter 1.4 Right to education and its placement within generations of Human rights.

In particular, the ICERD is a human rights treaty that prohibits racial discrimination and requires the states parties to undertake and implement measures that will prohibit and eliminate racial discrimination in all its forms.<sup>71</sup> Furthermore, the ICERD ensures the enjoyment of a number of rights among which is also the right to education. Specifically Article 7 of the ICERD obliges the state parties to urgently undertake measures in order to combat prejudice in the field of education that cause racial discrimination.<sup>72</sup> Similarly to the ICESCR and ICCPR, the ICERD also establishes a human rights body, the Committee on the Elimination of the Racial Discrimination that monitors its implementation.<sup>73</sup>

The CEDAW aims to combat and eliminate discrimination against women and it requires the state parties to undertake measures, which will combat discrimination against women and promote equality between women and men.<sup>74</sup> Similarly to the ICERD, the CEDAW in Article 10 also highlights the importance of the right to education for achieving equality between women and men. Specifically, article 10 obliges the state parties to undertake all necessarily measures that will ensure equality in access of women to all levels of education and vocational training.<sup>75</sup> Moreover, the CEDAW establishes the Committee on the Elimination of Discrimination against Women that monitors its implementation.<sup>76</sup>

The importance of the right to education is especially emphasized in the CRC, since it plays a crucial role in development of the child. According to the Article 28 of CRC the state parties have an obligation to ensure the enjoyment of the right to education on an equal basis for every child. In particular the states are required to ensure free and compulsory primary education, to organize different types of secondary education accessible for all children, to provide financial support for the children whose parents do not have the necessary means to

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<sup>71</sup> See International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, Preamble

<sup>72</sup> *Id.*, Art.7.

<sup>73</sup> *Id.*, Art. 5.

<sup>74</sup> Convention on the Elimination of all Forms of Discrimination against Women, Dec. 18, 1979, Art 2. and Art. 3.

<sup>75</sup> *Id.*, Art.10.

<sup>76</sup> *Id.*, Art 17.

send their children to school and to organize other forms of educational activities which will enable the child development. In addition, the states are obliged to create policies that will ensure school attendance and combat the drop-out-rates. Furthermore, article 29 stipulates that there should be international cooperation in order to ensure the enjoyment of the right to education and eliminate illiteracy rate worldwide.<sup>77</sup>

## **2.2. Regional legal instruments for the protection of the right to education**

In addition to the above mentioned international safeguards of the right to education, this right is also recognized and protected by the number of regional instruments. In this subchapter I examine the existing regional instruments in African, American and European continent.

### **2.2.1. Africa**

In Africa, the right to education is protected by several legal instruments such as the African Charter on Human and People's Rights that guarantees to everyone the right to education.<sup>78</sup> Similarly, the African Charter on the Right and Welfare of the Child emphasizes that a child shall have the right to education and that education shall be directed to the development of the child's personality and that the states should ensure free and compulsory elementary education.<sup>79</sup>

Protection of the right to education is also secured by the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa that stipulates that

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<sup>77</sup> See Art. 28 and Art. 29 of the Convention on the Rights of the Child, *supra* note 7.

<sup>78</sup> See Art. 17 of the African Charter on Human and people's rights, *supra* note 44.

<sup>79</sup> African Charter on the Right and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999 art.10.

everyone should have the right to education and training and it emphasizes that the state should promote education and training for women.<sup>80</sup>

### **2.2.2. American continent**

In the American continent among the treaties that protect the right to education is the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights. This treaty in its Article 13 spells out that everyone has the right to education and that education shall be directed toward full development of the individual and it shall enable individuals to participate effectively in the democratic society.<sup>81</sup>

### **2.2.3. Europe**

In Europe the right to education is protected by a number of treaties of the Council of Europe and the instruments of the European Union. Among the Council of Europe's instruments are the following:

Article 2 of Protocol One of The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states that no one shall be denied the right to education and it is also stipulated that the states shall respect the right of parents to ensure education in conformity with their own religious and philosophical convictions.<sup>82</sup> The case of D.H. and others v. the Czech Republic is one of the most recent cases in which the Grand Chamber of the European Court of Human Rights reaffirmed the paramount importance of the right to education guaranteed by the ECHR.<sup>83</sup> Specifically, in this case the Court found that the Czech Republic's educational system has a discriminatory effect on Roma children which cannot be reasonable justified, since this system tolerated establishment of practice that resulted with

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<sup>80</sup> Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 art.12.

<sup>81</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Nov. 17, 1978, art.13.

<sup>82</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, November 4,1950, article 2 of protocol 1.

<sup>83</sup> Case of D.H. and others v. the Czech Republic, application no. 57325/00,13 November 2007.

disproportionately high number of Roma children to be placed in special schools for children with disabilities.<sup>84</sup>

For these reasons the Court in this case ruled that the Czech Republic by placing Roma children in special schools deprived them from the right to access education on an equal basis as their non-Roma peers and that this practice constitutes form of unlawful discrimination against Roma children. In addition, the Court highlights that the placement of the Roma children in special schools forced these children to follow more basic curriculum than children in mainstream schools, which have long-lasting consequents for the Roma children in their further educational development.<sup>85</sup> The Court ruling reaffirms the principle stated in many international and regional instruments that everyone should have the right to education and access to schooling on an equal basis.

The Revised European Social Charter (RESC) guarantees the right to education to individuals through several provisions. Article 7 paragraphs 1 and 3 ensure that children effectively exercise and benefit fully from the right to education. Article 15 of the RESC guarantees the right of disabled children to social integration and independence and it obliges states to take measures to provide them with the education that will integrate them in the society i.e. to provide them with the education within mainstream educational institutions. Article 17 obliges states to ensure that children effectively exercise the right to education by ensuring that children “grow up in the environment which ensures the full development of their personality”. In addition, Article 30 of the RESC protects individuals against poverty and exclusion by obliging states to undertake measures and promote effective access of person living in the situation of social exclusion and poverty, to, in particular .... education

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<sup>84</sup> *Id.*, at 60-75

<sup>85</sup> *Id.* at 60-75

<sup>86</sup> Revised European Social Charter, May 3, 1996.

The Framework Convention for the Protection of National Minorities compels states to promote equal opportunities for access to education at all levels for the individuals belonging to the national minorities. In addition, Article 14 guarantees to the members of national minorities the right to be taught in their mother tongue.<sup>87</sup>

Besides the legal instruments of the CoE in Europe there are also instruments adopted by the European Union (EU) that guarantee the right to education. The Treaty of the European Union is one of these legal documents that requires from the state members to guarantee the access to education and obliges them to develop mutual cooperation, which will ensure exchange of knowledge and information.<sup>88</sup>

The Council Race Directive 2000/43/EC<sup>89</sup> is another very important legal document adopted at the EU level, which aims to implement the principle of equal treatment between individuals irrespective of racial and ethnic origin. This directive is part of the legislative measures, which had been undertaken at the EU level in order to implement article 13 of Treaty establishing the European Community, which was introduced by the Treaty of Amsterdam.<sup>90</sup>

The purpose of this Directive is to combat discrimination in areas such as education, employment and health care. This directive gives a strong foundation for the establishment of effective anti-discrimination law, which will combat discrimination on the grounds of racial and ethnic origin and is applicable in both the public and private sectors.<sup>91</sup> It defines direct and indirect discrimination and it incorporates the concept of harassment and victimization.<sup>92</sup> In addition, it requires from the states to establish “judicial and/or administrative

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<sup>87</sup> Framework Convention for the Protection of National Minorities, February 1, 1995, art. 12.

<sup>88</sup> The Treaty on European Union and of the Treaty establishing the European Community (consolidated version), December 26, 2006, preamble, art. 136 and art. 149.

<sup>89</sup> Council Directive 2000/43/EC of 29 June 2000.

<sup>90</sup> The Treaty of Amsterdam, Amending the Treaty on European Union, The Treaties establishing the European Communities, 2 October 1997, art. 6a.

<sup>91</sup> See Art. 3 of the Council Directive 2000/43/EC, *supra* note 89.

<sup>92</sup> See Art. 2 and Art. 9 Council Directive 2000/43/EC, *supra* note 89.

procedures<sup>93</sup>, which will be effective and easily accessible for the victims of discrimination. This directive also gives recommendation to the states for adoption of positive actions in order to achieve real equality. Another important feature of this directive is shifting the burden of proof in the administrative and civil cases from the complaint to the respondent.<sup>94</sup>

Another important EU legal instrument that guarantees the right to education is the Charter of Fundamental Right of the EU. In particular, article 14 of the Charter stipulates that everyone should be entitled to enjoy the right to education, which includes free and compulsory education for everyone and right of parents to choose the type of education for their children.<sup>95</sup>

From all the legal instruments mentioned above it is apparent that the right to education is protected by a number of international and regional instruments and that this protection varies in terms of specification, but the common feature of all of these safeguards is that they guarantee the right to education to everyone and most of these treaties observe this right as an essential right for personal development. Thus we can conclude that all these instruments support at least one of the three arguments made in favor of recognizing education as a fundamental human right.

### **2.3. Condition for the full realization of the right to education**

In this part of the chapter I examine the four crucial conditions structured by the Committee on Economic, Social and Cultural Rights (CESCR) that the states should fulfill in order to enable individuals to enjoy and fully benefit from the right to education.

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<sup>93</sup> See Art. 7.Council Directive 2000/43/EC, *supra* note 89.

<sup>94</sup> See Art. 5 and Art. 8 of the Council Directive 2000/43/EC, *supra* note 89.

<sup>95</sup> The Charter of Fundamental rights of the European Union (2000/C 364/01), Dec.18. 2000, art. 14.

The former UN special reporter Tomasevski notes, the right to education cannot be realized “without corresponding obligation for the government”.<sup>96</sup> These obligations are explicitly enumerated in the various treaties and according to the CESCR in its General Comment number 13 on Article 13 of the ICESCR, they can be structured as the following obligations: availability, accessibility, acceptability and adaptability.<sup>97</sup>

First of all the CESCR underlines that the state has an obligation to ensure the availability of educational institutions in an adequate number and that these institutions as well as the programs of these institutions should be functional.<sup>98</sup> From the statement above we can conclude that availability of the school institution is a prerequisite for the realization of the right to education. If the state fails to fulfill this obligation this would mean that some of the children would be denied the enjoyment of the right to education or would receive low quality education simply because of the lack of the sufficient number of schools. Moreover states are obliged to provide these school institutions with sufficient number of qualified teaching staff and teaching materials in order to ensure that these institutions are functional.

Furthermore, CESRC stipulates that the government should ensure that educational institutions are accessible to all children on the principles of non-discrimination and equality and that these institutions should be physically accessible, i.e. should be easily physically reached and useable for handicapped persons. These educational institutions should be also economically accessible so that they can be affordable for all.<sup>99</sup>

It is very important that school institutions are accessible to all children including the most vulnerable or socially disadvantaged groups for the reason that these individuals may not be able to pay transportation cost if the schools are far from the settlements where they live.

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<sup>96</sup> K, Tomasevski, Human Rights obligations making education: available, accessible, acceptable and adaptable, Right to education primers , 13 ( 2000) available at <http://right-to-education.org/sites/r2e.gn.apc.org/files/B6g%20Primer.pdf> (last visited December 23, 2008).

<sup>97</sup> See General Comment No. 13, *The right to education (Art. 13)* 15 November- 3 December 1999 para. 6

<sup>98</sup> *Id.*, para.6

<sup>99</sup> *Id.*, para.6

As a consequence of this situation it may happen that children many fail to attend school due to the lack of financial means for transportation.

Moreover, the state should make sure that curricula and teaching methods are acceptable by both children and their parents. The government should appreciate parents' wishes to educate their children in accordance with their religious and cultural beliefs and should ensure that children receive good quality education.<sup>100</sup> In other words states should take into consideration the diversity of the student body and to create conditions for preservation of the cultural identity of children and in the same time ensure good quality education.

Finally, the state should ensure adaptability of education by ensuring that there is flexibility in regards to what children will learn and how the process of learning will be organized in the school. The committee also underlines that these elements should be especially applicable to primary education. Moreover, the Committee underlines that the state should not only refrain from adopting measures that prevent the enjoyment of the right to education but that states undertake positive actions that will facilitate individuals enjoyment of the right to education.<sup>101</sup>

We observed that although the right to education is safeguarded as a fundamental human right by numerous international and regional instruments, still the precondition for the realization and enjoyment of this right is that the state creates conditions that will make possible the enjoyment of this right for every individual on equal basis. For instance, the state must ensure that there are institutions in sufficient number but find that the quality of education that children receive is insufficient. This may hamper children's opportunity to fully develop intellectual capacity and may lead to deprivation of further education. Thus we can conclude that states fulfill some of the required obligations but if the states fail to fulfill

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<sup>100</sup> *Id.*, para.6

<sup>101</sup> *Id.*, para.6

all of the requirements, the right to education cannot be realized and fully enjoyed unless all necessary requirements are fulfilled by the state.

#### **2.4. Existing legal instruments and policies in Bulgaria, Serbia and Macedonia**

In this subchapter I examine the existing legal regulation and policies that aim to enhance the enjoyment of the right to education for Roma in the countries, which are my research focus i.e. Bulgaria, Macedonia and Serbia. In addition I examine what are the legal mechanisms that those experiencing violations of their right to education can exercise.

The Bulgarian, Macedonian and Serbian governments have adopted and ratified all the important international and regional instruments that protect the right to education such as the International Covenant on Social, Economic and Cultural Rights,<sup>102</sup> the International Covenant on Civil and Political Rights,<sup>103</sup> the Convention of the Rights of the Child,<sup>104</sup> and the European Convention for the Protection of Human Rights.<sup>105</sup> Moreover, the Bulgarian government as a member state of the European Union (EU) also transposed the EU Race Equality Directive into domestic legislation by adopting an Antidiscrimination Law in 2003.<sup>106</sup>

In addition, to the common international regulations adopted by these states, all these counties are also members of the Decade of Roma Inclusion (2005-2015) process. This process was initiated by eight countries from Central-Eastern Europe in 2005 with the support of international organizations such as the World Bank and the Open Society Institute. The

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<sup>102</sup> UNHCHR, Status of ratifications of the principal international human rights treaties 2004, available at <http://www.unhchr.ch/pdf/report.pdf> (last visited December 28, 2008).

<sup>103</sup> *Id.*, at 102.

<sup>104</sup> *Id.*, at 102.

<sup>105</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.: 005.Treaty open for signature by the member states of the Council of Europe, status as of 24/12/ 2008. available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (last visited December 24, 2008).

<sup>106</sup> See European Roma Rights Center, Bulgaria Adopts Comprehensive Anti-Discrimination Law, available at <http://www.errc.org/cikk.php?cikk=314> (last visited December 25, 2008).

main objective of the Decade process is to improve the situation of Roma in the areas of employment, housing, health and education. In that regards, all of the countries participating in the Decade adopted four national action plans among which is one related to education aimed at closing the unacceptable existing gap in access to education between Roma and non-Roma.<sup>107</sup>

#### **2.4.1. Existing legal instruments in Bulgaria, Serbia and Macedonia**

The following subchapter attempts to give a comprehensive overview of the legislation of the three countries selected for comparison.

In Bulgaria, Serbia and Macedonia the right to education is enshrined in national Constitutions as well as in a number of domestic legal regulations. In particular, Article 53 of the Bulgarian Constitution<sup>108</sup> guarantees education to everyone and it imposes the obligation for school attendance to every person until age of 15 and it highlights that primary education in Bulgaria is free of charge for everyone. In addition, Article 36 of the Constitution states that the citizens whose mother tongue is other than Bulgarian “have the right to study and use their own language alongside the compulsory study of the Bulgarian language.”<sup>109</sup>

Similarly to the Bulgarian Constitution, the Serbian Constitution in its Article 71 stipulates that every individual has a right to education and it underlines that the primary education in Serbia is mandatory and free of charge. Moreover, Article 32 guarantees minorities the right to education in their tongue.<sup>110</sup>

The Macedonian Constitution in Article 44 offers similar guarantees to its citizens as the Serbian and Bulgarian Constitutions do. Particularly, this article highlights that everyone

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<sup>107</sup> Decade of Roma Inclusion (2005-2015), The decade of Roma inclusion, available at <http://www.romadecade.org/index.php?content=1> (last visited November 30, 2008).

<sup>108</sup> Constitution of the Republic of Bulgaria, Prom. SG 56/13 Jul 1991, amend. SG 85/26 Sep 2003, SG 18/25 Feb 2005, SG 27/31 Mar 2006, SG 78/26 Sep 2006 - Constitutional Court Judgment No.7/2006, SG 12/6 Feb 2007, art.53. Article 53 spells out that everyone shall have the right to education and that the state shall promote the education by opening and financing schools.

<sup>109</sup> Id., Art. 36.

<sup>110</sup> Constitution of Republic of Serbia, Official Gazette of the Republic of Serbia No.83, November 2006, art. 71. and art. 32.

has the right to education and equal access to education and that primary education should be compulsory and free of charge.<sup>111</sup> With the amendments to the Constitution, the members of ethnic communities in Macedonia including the Roma community were entitled to the right to establish their own educational, cultural, scientific and other institutions for the development of their identity. Moreover these amendments ensure the ethnic communities the right to study in their own language in primary and secondary school.<sup>112</sup>

A comparative analysis of the Constitutional provisions of the three countries selected for comparison illustrates that there is significant similarity among these provisions and that all of them guarantee the right to education to everyone on the principle of equality. Furthermore, all three constitutions stipulate that primary education should be free and compulsory and that minorities have the right to education in their mother tongue.

Apart from the Constitution, the right to education in these countries is also promoted and secured by a number of domestic regulation and acts on education.

In Bulgaria, the right to education under equal conditions for everyone is guaranteed by the Law on Public Education<sup>113</sup> that restates what was stipulated in the Constitution that everyone should have the right to education and that discrimination in education is prohibited and that education should be free and compulsory.<sup>114</sup> The Law for the Degree of Education stipulates that the Bulgarian education system should offer the opportunity to every individual for personal development and should ensure respect for children's rights and human rights in general.<sup>115</sup> The National Education Act also ensures the right to education and stipulates that

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<sup>111</sup> Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia No. 52 from November 22, 1991, art. 40.

<sup>112</sup> See amendment 8 of the Macedonian Constitution, Official Gazette of the Republic of Macedonia No. 91, from November 20, 2001.

<sup>113</sup> The Law on Public education, promulgated the State Gazette, № 86 of October 10<sup>th</sup>, 1991; amended, № 90 of October 24<sup>th</sup>, 1996; amended and supplemented, № 36 of March 31<sup>st</sup>, 1998; supplemented, № 124 of October 27<sup>th</sup>, 1998; amended, № 153 of December 23<sup>rd</sup>, 1998; in force since January 1<sup>st</sup>, 1999, art.4.

<sup>114</sup> Id., Art. 6 and 7.

<sup>115</sup> Law for the Degree of Education, the General Education Minimum, and the Education Plan, Promulgated - State Gazette (SG) No.67 from 27 July 1999, article 8.

discrimination in forbidden.<sup>116</sup> In addition, this law stipulates that non-Bulgarians have the right to educate themselves in their mother tongue and the type of education should be based on personal choice and to develop motivation for education.<sup>117</sup>

In Serbia the right to education is enshrined in the Law on Basis of Education System. This law stipulates that all Serbian citizens should enjoy the right to free and compulsory primary education on an equal basis “irrespective of their sex, race, nationality, religion and language, physical and mental constitution, social and cultural origin, material status, political orientation or other personal quality”.<sup>118</sup> Moreover, the Law on Basis of Education System in Article 2 underlines that the educational system should ensure accessibility of education, and the opportunity for education to everyone under equal conditions including people living in economically undeveloped regions, as well as for people living in socially and culturally less supportive environments. This article also stipulates that pupils should receive quality education and education that will motivate them to further their education as well as ensure their inclusion in the learning process.<sup>119</sup>

Furthermore, the Law on the Protection of the Rights and Freedoms of National Minorities guarantees the right to education in their mother tongue for the individuals belonging to national minorities living in Serbia among which is also recognized the Roma minority. Article 13 paragraph 2 obliges the state to create conditions for minorities to education in their mother tongue and this should include elements of their history and culture.<sup>120</sup>

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<sup>116</sup> National Education Act, Promulgated State Gazette No. 86/18.10.1991 Amended - SG No. 90/1996, 36/1998, 124/1998, 153/1998, 67/1999 and 68/1999, art.4.

<sup>117</sup> Id., Art.8. and Art. 9.

<sup>118</sup> Law on Basis of Education System, Official Gazette of the. Republic of **Serbia**, No. 58/04 and 62/04, 2004, art. 4.

<sup>119</sup> Id. 78.

<sup>120</sup> Law on the Protection of the Rights and Freedoms of National Minorities, Official Gazette of FRY No. 11 of 27 February 2002, article 13 paragraph 2.

In Macedonia, the right to elementary education is enshrined in the Law on Primary Education. This law, similarly to Bulgarian and Serbian legislation, in Article 2<sup>121</sup> guarantees the right to free elementary education to every child and it prohibits all forms of discrimination based on sex, race, color, nationality, religion and language, as well as social and cultural origin, political orientation and material status. In addition, Article 7 spells out that ethnic minorities have the right of to receive education in their mother tongue.<sup>122</sup>

From the above enumerated facts, we can observe that in all three countries there are numbers of laws that ensure the right to education and that these laws vary in terms of specification. The common feature for all enumerated laws is that they guarantee education to everyone on the equal basis and on the principle of non-discrimination. In addition all these laws stipulate that primary education should be free and compulsory and that children belonging to national minorities have the right to education in their mother tongue. Unlike Serbian and Macedonian Laws, Bulgarian laws also require that education should be directed toward the child's personal development and that the education system should ensure respect not only for children's rights but in general to human rights.

However, these laws are not sufficient to ensure equality and non-discrimination within schools and do not encourage school officials to undertake necessary actions to prevent the prejudices and the stereotypes about Roma. In addition these domestic instruments, do not foresee any financial support for the children who are coming from the most marginalized and socially excluded families. As a result the Roma parents are discouraged from sending their children to school, since they bear the responsibility for purchasing textbooks and other school materials. Moreover, these legal regulations do not stipulate who bears responsibility for the enrolment of the children residing in officially not recognized settlements, which is

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<sup>121</sup> Law on Primary Education, 2007, Article 2.  
Official Gazette of the Republic of Macedonia No. 103/08 from 19.08.2008

<sup>122</sup> Law on Primary Education, 2007, Article 7.  
Official Gazette of the Republic of Macedonia No. 103/08 from 19.08.2008

mostly the case with Roma children. Consequently these children are left out from the educational system.

#### **2.4.2. Existing policy documents in Bulgaria, Serbia and Macedonia**

As members of Decade of Roma Inclusion process, Bulgaria, Serbia and Macedonia, have adopted four National Action plans, among which are Action Plans for education.<sup>123</sup> The aim of these Action Plans is to improve the position of Roma in education and ensure their inclusion into educational process.

Although these policy documents provide effective solutions for some of the issues that Roma children face in education, still these documents are not implemented because the respective governments have not provided sufficient funding for their implementation, thus the implementation of the action plans mostly depend on the sporadic funding provided by the international donors. Similar observations regarding these action plans' implementation were made also by the Decade Watch report which is the only monitoring mechanism for the implementation of the Decade Action Plans.<sup>124</sup>

In addition to this common action plans that were adopted as a part of the regional initiatives, Bulgarian and Serbian governments have also adopted another additional policy documents that serve to facilitate Roma integration including their integration in the education system.

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<sup>123</sup> More about Bulgarian, Serbian and Macedonian action plans on education see Decade of Roma inclusion web page, available at <http://romadecade.org/index.php?content=70> (last visited November 28, 2008).

<sup>124</sup> Decade Watch Report, Roma Activists Assess the Progress of the Decade of Roma Inclusion 23-42 (2007) Update, 2007. available at: [http://demo.itent.hu/roma/portal/downloads/DecadeWatch/DecadeWatch%202007%20Update%20-%20Final%20\(30-07-08\).pdf](http://demo.itent.hu/roma/portal/downloads/DecadeWatch/DecadeWatch%202007%20Update%20-%20Final%20(30-07-08).pdf) (last visited December 28, 2008).

For instance, In Bulgaria there is a Framework Program for Equal Integration of Roma. The main objective of this program is to integrate Roma into the mainstream society, by eliminating unequal treatment and discrimination that Roma face in the society.<sup>125</sup>

In Serbia, the government has developed a Strategy for the Improvement of Roma position in Serbia which addresses issues that Roma face in different areas such as employment, housing education and it also provides solutions for the existing problems that Roma living in Serbia face.<sup>126</sup>

Unlike the above mentioned countries, in Macedonia there are no additional policy documents which aim to improve Roma position in education. However in Macedonia there is a National Program for Development of Education (2005-2015) that is the most important policy document regarding education in this country and that provides the basic guidelines for the Macedonian education system.<sup>127</sup> Although this document prioritizes the inclusion of all children in the educational system, still it does not make special reference to the Roma children and the problems that these children face in accessing education.

From the above enumerated facts we can observe that the three respective governments have recognized the dire situation of Roma in the field of education as well as in other field and in relation to that they have developed policy documents which consist of effective solutions to the problems that Roma from these countries face. However in order to move from the policy to action and to change the current situation of Roma in regards to education it is necessary that this governments allocate sufficient financial resources for the implementation of the adopted policy documents.

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<sup>125</sup> Framework Program for Equal Integration of Roma in Bulgarian Society. available at <http://www.ncedi.government.bg/en/RPRIRBGO-English.htm> (last visited December 28, 2008).

<sup>126</sup> This strategy is no published yet.

<sup>127</sup> Republic of Macedonia Ministry of Education and Science, National Program for the development of education in the Republic of Macedonia 2005-2015 with accompanying programme documents, 1- 45 (2005) available at <http://www.npro.edu.mk/dokumenti/strategija-en.pdf> (last visited November 20, 2008).

### 2.4.3. Mechanisms for the protection of the right to education in Bulgaria, Serbia and Macedonia

The Constitutions of the three countries selected for comparison guarantee that their citizens should enjoy the rights granted under the Constitution on an equal basis regardless of race, color, or ethnicity. Specifically the Bulgarian Constitution this right is enshrined under Article 6<sup>128</sup>, in Serbia under Article 21<sup>129</sup>, while in the Constitution of Republic of Macedonia this right is guaranteed under Article 9.<sup>130</sup> Furthermore, the Bulgarian Constitution in Article 117 stipulates that citizen's right should be protected by the courts.<sup>131</sup> Also, the Serbian Constitution spells out that everyone has the right to a judicial remedy in case his or her rights guaranteed under the Constitution are violated.<sup>132</sup> Similarly to Serbian and Bulgarian Constitution is also the Macedonian Constitution which guarantees to everyone the right to seek remedies in front of the Constitutional court and ordinary courts.<sup>133</sup>

There are also legal instruments in these countries that foresee sanctions in case of the violation of the right to education. For instance, Bulgaria as an EU member state has adopted an antidiscrimination act. This act, called Protection against Discrimination Act (PADA) prohibits direct and indirect discrimination on the grounds of race, sex, ethnicity, age, and sexual orientation as well as racial segregation. In that regard, PADA imposes an obligation on the Ministry of Education and local governmental bodies to undertake all necessary measures that will combat segregation and discrimination in educational institutions.<sup>134</sup>

The PADA establishes a special procedure through which the victims of discrimination can initiate administrative proceedings in front of the Commission for

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<sup>128</sup> See Art. 6, *supra* note 108.

<sup>129</sup> See Art. 21, *supra* note 110.

<sup>130</sup> See Art. 9, *supra* note 111.

<sup>131</sup> See Art. 117, *supra* note 108.

<sup>132</sup> See Art. 22, *supra* note 110.

<sup>133</sup> See Art.50, *supra* note 111.

<sup>134</sup> European Roma Rights Center, The impact of legislation and policies on school segregation of Romani Children, A study of Antidiscrimination Law and Government measures to eliminate segregation in Education in Bulgaria, Hungary, Romania and Slovakia, European Roma Right Centre, 17 (2007).

Protection against Discrimination.<sup>135</sup> Since the establishment of the Commission in 2006, it has not received any complaints against discrimination in education. There are two reasons for this situation. The first reason is that the Commission is in operation since 2006 and second reason is that Roma are not usually aware about the protection that the Commission provides, especially about the fact that the proceedings are free of charge.<sup>136</sup> Therefore we can say that lack of public awareness is among the reason why these mechanisms are rarely used by those who are victims of discrimination.

In Serbia, the Law on Basis of Education System prohibits all forms of discrimination in education and foresees sanctions for those who are liable for the discrimination. Sanctions can be the dismissal of a staff member if there is a serious violation or a fine for the institution. Decisions about the sanctions are brought by an inspection which can be conducted on a municipal or national level.<sup>137</sup>

In Macedonia, the Law on Primary education foresees fine for the school institutions that discriminated against student body.<sup>138</sup> Unlike in Serbian, the Macedonian legislation does not predict sanctions for both the perpetrator and the school institutions, but only for the latter.

However, discrimination in education in Serbia and Macedonia is not very often reported by Roma either because they are not familiar with their rights and/or the instruments which can provide protection of their right are not effective. Additional reasons are fear of the possible consequences in the case of failed complaints or there is a lack of trust among Roma that an official institution has the will and capability to resolve these issues.<sup>139</sup>

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<sup>135</sup> This Commission was established by the PADA and it is an “independent specialised quasi-judicial collegiate equality body” whose duty is the prevention of acts of discrimination by making findings of discrimination legally binding and imposing sanction on the responsible parties. *See* Open Society Institute, *Equal Access to Quality of Education for Roma* (volume 1) Monitoring Reports on Bulgaria, Hungary, Romania and Serbia, at 79-80

<sup>136</sup> *Id.*, at 79-80.

<sup>137</sup> Law on the Basis of Education System, *supra* note 118.

<sup>138</sup> *See* Art. 171, *supra* note 121.

<sup>139</sup> *See* Open Society Institute, *Equal Access to Quality of Education for Roma* (volume 1) Monitoring Reports on Bulgaria, Hungary, Romania and Serbia Open Society Institute, 79-80 (2007). *See also* *See* Open Society

In addition, neither Serbia nor Macedonia have adopted specific antidiscrimination law that will cover all forms of discrimination such as direct and indirect and that will foresee establishment of a special antidiscrimination body that will offer a remedy as is the case in Bulgaria.

Facts enumerated above show that in all three countries there are a number of norms, both international and domestic, which ensure the right to education and prohibit discrimination in this area. However, we also observed that these instruments are not very efficient because they are not implemented in practice or because the victims of discrimination are usually not aware that the mechanism for the protection from discrimination exists in their countries. For instance, we observed that in Bulgaria, there exists a special antidiscrimination law and antidiscrimination body in charge of receiving complaints against discrimination; however, we also noticed that this body since its establishment received very few complaints, which demonstrate that this body is not effective in providing remedies to the victims of discrimination.

In addition, we observe that Macedonia and Serbia still do not have a special antidiscrimination law and antidiscrimination body that will rule on the complaints against discrimination in education. The lack of these mechanisms deprives Roma from the possibility to access an effective remedy against the discrimination that they experience in everyday life.

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Institute, Equal Access to Quality of Education for Roma (volume 1) Monitoring Reports on Croatia, Macedonia, Montenegro and Slovakia, Open Society Institute, 170-175 (2007).

# **CHAPTER III – THE SITUATION OF ROMA CHILDREN IN BULGARIA, SERBIA AND MACEDONIA AND THE REASONS FOR UNEQUAL ACCESS TO EDUCATION FOR ROMA**

## ***3.1. Roma children in Europe***

Roma as the most marginalized ethnic group experience high level of exclusion with the most detrimental outcome in the area of education.<sup>140</sup> The situation of those Roma living in Central and Eastern Europe (CEE) is especially dire because of the existence of the communist's regime that was implementing assimilation policies in the schools. Romanes speaking children were not allowed to be educated in their mother tongue. In addition, during this period in some of the countries in this region Roma children were usually placed in the schools that offered low quality education.<sup>141</sup> Consequently, these policies that emerged during the socialist era created inequalities in access to education for Roma children. In this chapter I analyze the situation of Roma children in Bulgaria, Serbia and Macedonia and I demonstrate that even nowadays Roma children face a multiple barriers in accessing primary education.

## ***3.2. General situation of Roma children in primary education in Bulgaria, Serbia and Macedonia***

In this study I focus only on primary education because I consider it as the most fundamental for the development of each child and as a tool for ensuring a better future especially for the children from disadvantaged ethnic groups such as Roma.

### **3.2.1. Roma population living in Bulgaria, Serbia and Macedonia**

In this subchapter I analyze how many Roma live in the three countries and I explore the reason for the lack of consistent data in this regard.

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<sup>140</sup> OSCE High Commissioner on National minorities, Report on the situation of Roma in the OSCE area, 7 (2000) available at [http://www.osce.org/documents/hcnm/2000/03/24\\_en.pdf](http://www.osce.org/documents/hcnm/2000/03/24_en.pdf) (last visited November 20, 2008).

<sup>141</sup> *Id.*

In Bulgaria, there is no reliable official data regarding the number of Roma living in this country and especially Roma school children. According to the last census from 2001 the total number of Roma population is around 371 000 Roma<sup>142</sup> which is five percent of the total population,<sup>143</sup> however non-official data show that the number of Roma residents is between 600 000 and 800 000.<sup>144</sup> The reason for the high discrepancy between the above mentioned official and non-official data is because Roma avoid declaring themselves as Roma due to existing social stigma about this ethnic group.<sup>145</sup>

In Serbia, according to official data around 108 thousand<sup>146</sup> Roma inhabitants or less than two percent live there. However, like in Bulgaria non-official data reveal that the number of Roma living in Serbia is much higher and it is around 500 000. There is also a lack of reliable data regarding the number of Roma children in the education system. Grounds for such situation are similar to that one we observed in Bulgaria and it is related to the general reluctance of Roma to disclose their ethnicity because of the fear of being discriminated by non-Roma. Additional reasons observed in this country are that of the personal documentations and registration of Roma.<sup>147</sup>

As in the two countries analyzed above, the data regarding the Roma that live in Macedonia and those that are within the educational system are unreliable.<sup>148</sup> Official data reveals that around 54 000 Roma people<sup>149</sup> or a bit more than two percent from the total

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<sup>142</sup> National statistical institute, Censuses 2001 available at [http://www.nsi.bg/Census\\_e/Census\\_e.htm](http://www.nsi.bg/Census_e/Census_e.htm) (last visited December 28, 2008).

<sup>143</sup> Id., According to the Census from 2001 in Bulgaria live 7 928 901.

<sup>144</sup> Alexey Pamporov, Roma/Gypsy population in Bulgaria as a challenge for the policy relevance, Institute of Sociology at the Bulgarian Academy of Sciences Sociology of Religions and Everyday Life Department, available at <http://epc2006.princeton.edu/download.aspx?submissionId=60261> (last visited December 28, 2008).

<sup>145</sup> See Open Society Institute, Equal Access to Quality of Education for Roma Monitoring Reports on Bulgaria, Hungary, Romania and Serbia (volume 1) , 25-29 (2007).

<sup>146</sup> In Serbia live around 8 million people, See Serbian Statistical Office census 2001, <http://webzrzs.stat.gov.rs/axd/popis.htm> (last visited December 28, 2008).

<sup>147</sup> See Open Society Institute, *supra* note 145, at 496.

<sup>148</sup> Open Society Institute, Equal access to quality education for Roma, Monitoring Reports on Croatia, Macedonia, Montenegro and Slovakia, Open Society Institute(volume 2), 176-189 (2007).

<sup>149</sup> State Statistical office, available at [http://www.stat.gov.mk/pdf/kniga\\_13.pdf](http://www.stat.gov.mk/pdf/kniga_13.pdf) (accessed December 30, 2008).

number of citizens living in Macedonia;<sup>150</sup> however, unofficial data show that in this country live around 150 000 Roma inhabitants.<sup>151</sup> The nature of the issue is the identical to those we observed in the two above mentioned countries.<sup>152</sup>

### **3.2.2. Educational system of Bulgaria, Serbia and Macedonia and enrolment and literacy rate among Roma children from these countries**

In this subchapter, I investigate how the educational system is structured in the three countries and I explore whether Roma children from these countries share common features such as levels of enrolment and literacy.

In Bulgaria, Serbia and Macedonia there are four levels of education: preprimary, primary, secondary and tertiary level. While in Serbia and Macedonia the preprimary education lasts six months, in Bulgaria the duration of this educational level is one year. In all three countries the primary education lasts eight years and in all the countries both, preprimary and primary, education are obligatory. Similarity between these three countries can be also observed regarding the secondary and tertiary educations which are non-compulsory. Secondary education in all three countries lasts 4 years. Whereas tertiary undergraduate education in Bulgarian lasts three years and in Macedonia and Serbia the duration of university education is a one year longer.<sup>153</sup>

In Bulgaria, existing data reveals that the Roma literacy rate is some 15-20 percent lower than the literacy rate of the non-Roma and that the general educational status of Roma is lower than that one of non-Roma.<sup>154</sup> The UNDP survey shows that the enrolment rate of

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<sup>150</sup> In Macedonia live 2 022 547

<sup>151</sup> See Roma Education Fund, Advance education of Roma in Macedonia, country assessment and the Roma education fund's strategic direction, 23-27, 2007.

<sup>152</sup> See Open Society Institute(vol. 2), *supra* note 148 at 178-185.

<sup>153</sup> See Roma Education Fund, Advance education of Roma in Bulgaria, country assessment and the Roma education fund's strategic direction, 2007, 24-28. See also Roma Education Fund, Advance education of Roma in Serbia, country assessment and the Roma education fund's strategic direction, Roma Education Fund, 23-27,2007. See also Roma Education Fund, Advance education of Roma in Macedonia *supra* note 151 at 23-27. 2007

<sup>154</sup> See Roma Education Fund, Advance education of Roma in Bulgaria, *supra* note 153 at 28-39.

Roma children is also poorer and it is 77 percent in comparison to 96 percent of the non-Roma population.<sup>155</sup>

The dire situation of Roma children in terms of enrolment and literacy rate can be observed in Serbia as well. The UNDP report reveals that in this country the enrolment rate of Roma children in primary education is around 78 percent in comparison to 97 percent of non-Roma and that 64 percent of Roma manage to enroll in the fifth grade in comparison to the 93 percent of non-Roma.<sup>156</sup> Even for those children that stay within the educational system the majority remain functionally illiterate for the reason that they do not acquire basic reading and writing skills and the percentage of these individuals is around 80 percent.<sup>157</sup>

In Macedonia, the situation in terms of enrolment and literacy rates of Roma children does not differ from those observed in Bulgaria and Serbia. The UNDP report reveals that the enrolment rate for Roma children is 78 percent in comparison to 98 percent of the non-Roma population.<sup>158</sup> Moreover, the UNDP survey shows that the illiteracy rate among Roma is higher than among non-Roma.<sup>159</sup>

### **3.2.3. Dropout rates and overall educational achievement of Roma children from Bulgaria, Serbia and Macedonia**

In this subchapter I observe whether there are similarities in the three compared countries regarding the dropout rates and educational performance of Roma children.

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<sup>155</sup> UNDP, Face of poverty face of hope, vulnerability profiles of Roma population in Decade of Roma inclusion countries, Report for Bulgaria 14-15 (2005), available at <http://vulnerability.undp.sk/> (last visited December 28, 2008).

<sup>156</sup> UNDP, Face of poverty face of hope, vulnerability profile of Roma population in Decade of Roma inclusion countries, Report for Serbia and Montenegro, 63 (2005) available at <http://vulnerability.undp.sk/> (last visited December 30, 2008).

<sup>157</sup> Aleksandar Baucal, Development of Mathematical and Language literacy among Roma students, Department of Psychology, University of Belgrade, *Psihologija*, 2006, Vol. 39 (2), 2004 207-227

<sup>158</sup> UNDP, Face of poverty face of hope, vulnerability profile of Roma population in Decade of Roma inclusion countries, Report for Macedonia, 45-48 (2005) available at <http://vulnerability.undp.sk/> (last visited December 28, 2008).

<sup>159</sup> *Id.*, 45-48. For instance in the municipality Shuto Orizari the illiteracy rate among Roma is around 5% while among Roma women is around 20%.

Open Society Institute's report reveals that the dropouts rate of Roma children from school are very high in Bulgaria. According to non-governmental sociological research, the percentage of dropout rates among Roma is 12.8 percent in comparison to two percent of Bulgarian children.<sup>160</sup> Furthermore, regarding the overall performance of Roma children in Bulgaria, both official and non-official data reveal that there is a large gap between education achievement of Roma and that of non-Roma. For instance, test results in the fourth grade in mathematics and Bulgarian language showed that there is a high discrepancy in knowledge between Roma and non-Roma children.<sup>161</sup>

In Serbia, like in Bulgaria there is a high dropout rate among Roma children. The Roma National Council states that from those enrolled Roma children a large number drop out from the school in the second and third grade or between fourth and fifth grade. Thus, more than 60 percent of the Roma children do not complete primary education.<sup>162</sup> A similar observation was made by my interviewee Milica Simic. For instance, she states that in primary school Ilija Bircanin in Zemun from 190 Roma children enrolled at the first grade only 8 managed to finish primary education and that there are similar situations also in other cities which implies that the dropout rate among Roma children is extremely high. Moreover, Simic pointed out that there is significant number of Roma children who have never entered the school system.<sup>163</sup>

Furthermore, in this country it is also common that school performance of Roma children is poorer than that of their non-Roma classmates and that there is high discrepancy between Roma and non-Roma children in achievement in Mathematics and Serbian language. For example, test results for the third grade children show that Roma lag some 130 points

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<sup>160</sup> See Open Society Institute (vol.1), *supra* note 145, at 31-37.

<sup>161</sup> See Open Society Institute (vol.1), *supra* note 145, at 18-42.

<sup>162</sup> See Open Society Institute (vol.1), *supra* note 145, at 485-505.

<sup>163</sup> Interview with Milica Simic, Director of the NGO- Roma Children Center, Belgrade, Interview conducted on October 23, 2008.

behind of the average achievements of their non-Roma peers.<sup>164</sup> According to Rakocevic, the reason why Roma children's knowledge is generally lower compared to their non-Roma peers is because they usually enroll in the first grade without attending preschool education.<sup>165</sup>

The high dropout rate is also an issue that Roma children from Macedonia face. The Committee of the CSESR reveals that high dropout rate among Roma children is especially high in primary education.<sup>166</sup> Moreover, the OSI report reveals that the dropout rate among Roma children in Macedonia varies from 8 to 49 percent and that critical grade is from fifth until eighth when most of the dropouts occur. This report also highlight that that level of education of Roma in this country is lower than that of majority population.<sup>167</sup>

### **3.3. Reasons for unequal access of Roma children to primary education in Bulgaria, Serbia and Macedonia**

In this part of the chapter I attempt to give a comprehensive overview of obstacles that Roma from Bulgaria, Serbia and Macedonia face in accessing primary education. Roma children from all three countries that I have chosen for comparison face multiple barriers in exercising their right and they can be classified as the following: legal and administrative barriers, segregation, discrimination, language barrier and poverty.

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<sup>164</sup> See Aleksandar Baucal, *supra* note 157.

<sup>165</sup> Interview with Natasha Kocic-Rakocevic, country facilitator for Serbia of the Roma Education Fund . Interview conducted on October 15, 2008. She states that Roma children do not have access to kindergartens due to the number of administrative barriers such as requirement that at least one parent is employed and the requirement to pay participation fee which most of Roma parents due to the high unemployment and poverty cannot fulfill. She also states that the majority of Roma children do not attend even compulsory preschool education. As a result of this situation the Roma child who did not attend preschool-education has significantly lower knowledge in comparison to his non-Roma peers who had an opportunity to attend kindergartens and preschool education.

<sup>166</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observation of the CESCR –The Former Yugoslav Republic of Macedonia, 2006, p.4 available at: <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.MKD.CO.1.pdf> (last visited November, 30 2008)

<sup>167</sup> See Open Society Institute (vol. 2) *supra* note 148, at 170-184.

### 3.3.1. Legal and administrative barriers

In Bulgaria, since 2003 Roma children are not obliged to attend the school institution within the district in which they live,<sup>168</sup> however, given that there is no coordination among the district schools to make sure that all children are enrolled, many Roma children are left out from the school system.<sup>169</sup> An additional barrier that may appear is that enrolment to the school depends on the child readiness.<sup>170</sup>

Supplementary requirements for the enrolment into school are a medical and birth certificate which sometimes can hinder child enrolment in a school.<sup>171</sup> The barrier appears if Roma cannot afford to pay the issuance of the medical certificate or if their children lack birthday certificates. Moreover, a legal requirement for enrolment not later than age of seven<sup>172</sup> may appear as an additional hurdle since Roma parents sometimes fail to enroll their children at school on time.

Like in Bulgaria, administrative and legal requirements for accessing primary education are among the obstacles that Roma children from Serbia face. Since the enrolment in primary education is based on residence permit, many Roma children fail to enroll in school because they live in illegal settlements and school managements are not obliged to register them. This problem of residence permit as well as the problem of a lacking birth certificates is especially applicable for the Roma internally displaced from Kosovo.<sup>173</sup>

An additional problem is that a precondition for enrolment in primary school is a medical check-up which is the responsibility of the family and assessment of school readiness which is the responsibility of the school. Taking into consideration that Roma usually have

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<sup>168</sup> See Open Society Institute (vol. 1) *supra* note 145, at 86.

<sup>169</sup> Dena Ringold et. all, Roma in an Expanding Europe; Breaking the poverty cycle, The World Bank, 2005, 44.

<sup>170</sup> See European Roma Right Center, The impact of legislation on school segregation of Roma children, a study of antidiscrimination law and government measures to eliminate segregation in education in Bulgaria, Czech Republic, Hungary, Romania and Slovakia, ERRC, 2006, 41. See more details about this issue in the subchapter on segregation in special schools.

<sup>171</sup> See Open Society Institute (vol.1 ), *supra* note 145, at 83-86.

<sup>172</sup> See article 7 of the Law on Public education, *supra* note 113.

<sup>173</sup> See Roma Education Fund, Advanced education of Roma in Serbia, *supra* note 153, at 22-29.

difficulties in accessing the health care system then we can conclude that this issue is an additional barrier for Roma children's enrolment in the school. Also if we take into consideration that school assessment is not culturally sensitive and is biased, we find another obstacle.<sup>174</sup>

A further issue that is prevalent in this country is the age barrier that implies that children can be enrolled in the first grade until age of eight; however, they can only attend primary school until the age of 16 when they are sent to a remedial school for adults.<sup>175</sup>

The same type of obstacles that we observe in Bulgaria and Serbia also appear in Macedonia. The enrolment in primary education is based on the residence permit and since many Roma live in unofficially registered settlements than they are not registered in the school register and thus are excluded from primary education. Another obstacle that Roma children face is that a child's enrolment in primary school is based on an assessment of child children's readiness, which is culturally biased.<sup>176</sup> Lack of personal documentation such as birth and medical certificate is an additional administrative barrier that Roma children face in accessing school<sup>177</sup> which is also common for Bulgaria and Serbia.

Similarly to Roma children from Serbia, Roma children from Macedonia face an age barrier, because according to the law children cannot enroll in the primary school after age of seven, if they did not start on time; however, they cannot stay in this institution after age of 17.<sup>178</sup>

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<sup>174</sup> See Roma Education Fund, Advanced education of Roma in Serbia, *supra* note 153, at 22-29.

<sup>175</sup> See Roma Education Fund, Advanced education of Roma in Serbia, *supra* note 153, at 22-29.

<sup>176</sup> See Roma Education Fund, Advanced education of Roma in Macedonia, *supra* note 151, at 2- 42.

<sup>177</sup> See Open Society Institute (vol.2), *supra* note 153, at 221.

<sup>178</sup> See Roma Education Fund, Advanced education of Roma in Macedonia, *supra* note 151, at 34.

### 3.3.2. Segregation of Roma children in primary education

There are three types of segregated education<sup>179</sup> which is common for all three countries: segregated neighborhood schools, the so called “Roma Schools”, segregation within the classes in the mainstream schools and segregation in the special schools.

#### *a) Segregated neighborhood schools – “Roma schools” and segregated Roma classes*

In Bulgarian, segregated education has a long history. According to an OSCE report, the reason for the emergence of segregated schools is closely related to the segregated way of living of Roma people. In the period after the World War II the government started with the policy of building schools in the vicinity of the Roma settlements. Thus children who were living in Roma neighborhoods were attending segregated Roma schools because of the requirements that children attend school according to the district in which they live.<sup>180</sup>

However, due to the prejudice against Roma, and low level of Roma children’s knowledge of Bulgaria language, these schools began to decline in terms of the quality of education that they offered compared to non-Roma schools. During this period there was developed policy that aimed to prepare Roma children for manual work because it was thought that they cannot be successful in higher education. Thus, in this way this policy created a difference between mainstream schools and schools attended by Roma that had a special status.<sup>181</sup> In spite of the fact that this policy was eliminated after the communist period, the practice of segregated education sustained.<sup>182</sup>

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<sup>179</sup> As commonly understood, segregation is one form of discrimination. It means separation of people based on grounds such as race, color, religion, or social-economic status. See Oxford Advanced Learner’s Dictionary, Oxford, Oxford University Press, 2000, p. 1205. See also Kezdi Gabor, Segregation in Primary school System in Hungary, Causes and consequence, available at [http://www.personal.ceu.hu/staff/Gabor\\_Kezdi/WorkingPapers/Kertesi-Kezdi-2005-Segregation-translated.pdf](http://www.personal.ceu.hu/staff/Gabor_Kezdi/WorkingPapers/Kertesi-Kezdi-2005-Segregation-translated.pdf) (last visited December 28, 2008). According to Gabor Kezdi, school segregation is defined as an inequality of student composition across schools and it refers to the level to which children from different social-economic and ethnic background are educated in separate schools or in separate classes within the mainstream school.

<sup>180</sup> See OSCE Report, *supra* note 140, at 73-78.

<sup>181</sup> See Open Society Institute (vol.1), *supra* note 145, at 73-77.

<sup>182</sup> See OSCE Report, *supra* note 140, at 60-70.

Today in Bulgaria segregated neighborhood schools are the most widespread type of educational schools that Roma children attend. The available data of the number of Roma children attending this kind of schools is between 50 and 70 percent.<sup>183</sup> My interviewee Rumyan Russinov, who is the deputy director of the Roma Education Fund in Budapest, stated that segregated schools in Bulgaria are usually located only in the so called Roma mahalas<sup>184</sup> and thus attended by only Roma children.<sup>185</sup>

The quality of education conditions in these schools is significantly inferior in comparison to those school in which non-Roma children study.<sup>186</sup> In relation to this, my interviewee Russinov emphasized that children attending these schools are not only receiving low quality education but they are also isolated and capsulated and thus deprived of the same educational chances which their non-Roma peers enjoy.<sup>187</sup> The phenomenon of segregated education is officially recognized by the government which has launched some desegregated programs with the aim to integrate Roma children into mainstream schools.<sup>188</sup>

In Serbia, the phenomenon of physically segregated schools is not as widespread as in Bulgaria. Currently there is only one segregated primary school in Nis and the school is situated in the vicinity of a Roma settlement.<sup>189</sup> However, the European Roma Right Centre (ERRC) in its report reveals that in Serbia there are segregated Roma classes within mainstream schools and that this is especially the case with primary schools in Subotica and Belgrade.<sup>190</sup> The ERRC report also highlights that the existent practice of segregating Roma

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<sup>183</sup> See Open Society Institute (vol.1) , *supra* note 145, at 18-40.

<sup>184</sup> Roma mahalas are settlements settled by Roma people. These settlements are usually separated from other settlements within towns or villages and they are usually disconnected from basic facilities such as water, electricity and sewage system.

<sup>185</sup> Interview with Rumyan Russinov Deputy Director of the Roma Educating Fund, Interview conducted on October 31, 2008. He also stated that in each town there is at least one school.

<sup>186</sup> European Roma Rights Centre Stigmata: Segregated Schooling of Roma in Central and Eastern Europe, a survey of patterns of segregated education of Roma in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia, European Roma Rights Center, 10 (2005).

<sup>187</sup> See Interview with Rumyan Russinov, *supra* note 185.

<sup>188</sup> For more information about this programs see Open Society Institute (vol.1) *supra* note 150.

<sup>189</sup> See Open Society Institute (vol.1), *supra* note 145, at 541-542.

<sup>190</sup> For instance, the European Roma Rights Center (ERRC) report reveals that Subotica Council adopted a decision for the establishment of separate classes in the local schools for internally displaced Roma children

children has numerous and long-term consequences for the Roma children's educational development.<sup>191</sup>

My interviewee Simic argued that if segregated classes are created due to the higher percentage of Roma children enrolled in the first grade than these classes should exist until fifth grade when these children should be included in mixed classes with other children in order to get opportunity to educate in multicultural environments. However, Simic is strongly against artificial creation of this kind of classes. In addition, she emphasized that although the phenomenon of segregated education is recognized by the government, so far no measures for combating this issue have been undertaken by the authorities.<sup>192</sup>

The Macedonian government still has not addressed the issue segregation education in any of its policy documents which aim to tackle the problems Roma face in education, although this issue is highlighted in a number of studies. For instance, the OSI report reveals that in Macedonia so called Roma schools exist and that they are usually placed near Roma settlements; however, the number of these schools is not that high. In addition, the report highlights that this type of education creates a serious obstacle to high quality of education for Roma children.<sup>193</sup> Moreover, the Committee of CESCR in its report emphasizes that Roma children are also placed in separate classes within the mainstream schools.<sup>194</sup> This fact

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from Kosovo, for the reason that these children had a poor knowledge of the Serbian language. ERRC also was informed that Roma from Kosovo first were 2001/2002 school year denied access to school denied access to Primary school Szechenyi Istvan, while the next year this school accepted from 38 only 19 students. These students were placed in the special classes. The remaining 19 students that were accepted by the primary school Djuro Salaj, were also placed in the separate classes. See European Roma Rights Center (ERRC), Segregated Education for Romani Children in Serbia and Montenegro, Roma Rights Quarterly 2003 (1,2) available at <http://www.errc.org/cikk.php?cikk=1395> (last visited December 25, 2008). See also Open Society Institute (vol.1) *supra* note 150. at 539-543. This report also reveals that there are segregated classes within mainstream school.

<sup>191</sup> See European Roma Rights Center, Roma rights Quarterly: Romani Pupils Face Verbal and Physical Assault at School in Serbia and Montenegro, available at <http://www.errc.org/cikk.php?cikk=1122&archiv=1> (last visited December 28, 2008).

<sup>192</sup> See Interview with Milica Simic, *supra* note 163.

<sup>193</sup> See Open Society Institute (vol.2), *supra* note 148, at 170-200.

<sup>194</sup> See UN Committee on Economic, Social and Cultural Rights, concluding observation of the CESCR –The Former Yugoslav Republic of Macedonia, *supra* note 166, at 7.

was also confirmed by my interviewee Idaver Memedov, who stated that this type of segregation of Roma children especially exists in towns Gostivar and Tetovo.<sup>195</sup>

### ***b) Segregation in special schools***

Another phenomenon which is present in the Bulgarian school system is the overrepresentation of Roma children in special schools.<sup>196</sup> Although there is no exact data on the number of Roma children attending these schools, it is estimated that more than 50 percent of those enrolled in the special schools are Roma. One of the main reasons why Roma children are sent to the special schools by their parents is the free school books, clothes and free meals that Roma parents usually cannot afford.<sup>197</sup> This was also confirmed by my interviewee Russinov who also noticed that usually Roma parents are not properly informed by the schools authorities about the advantages and opportunities within the mainstream education.<sup>198</sup>

Additionally, the placement of Roma children by the school authorities in these institutions is usually arbitrary because assessment of the child readiness is usually culturally biased. Moreover some of the special schools in Bulgaria are located in the Roma mahalas. Consequently all of these factors generate a pressure on Roma parents to enroll their children in these schools and this creates further obstacles for Roma children's integration into mainstream education.<sup>199</sup>

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<sup>195</sup> Interview with Idaver Memedov, International Advocacy Officer at the European Roma Rights Centre. Interview conducted on November 2, 2008. Similar information about the existence of the segregated classes in Macedonia can be found OSI monitoring report. See also Open Society Institute (vol.2), *supra* note 153, at 226-227.

<sup>196</sup> Special schools are defined as schools for mentally and physically disabled children. In Central-Eastern Europe these schools were established during the socialist period. The reason for the emergence of this type of schools is rooted in the socialist understanding of the term "defectology" which according to them implies that difference among the students appear not because of the environmental conditions but because of the disability. Therefore this disability should be addressed as a medical issue and there should be special institutions, isolated from the rest of community that will deal with this issue. This policy resulted in establishment parallel school system which offered lower quality of education to the children than mainstream primary schools. *See more* Dena Ringold et al, *supra* note 169 at 45.

<sup>196</sup> See Roma Education Fund, *Advanced education of Roma in Bulgaria*, *supra* note 153, at 41-42.

<sup>197</sup> See Roma Education Fund, *Advanced education of Roma in Bulgaria*, *supra* note 153, at 41-42.

<sup>198</sup> See Interview with Rumyan Russinov, *supra* note 185.

<sup>199</sup> See Open Society Institute (vol. 1), *supra* note 145, at 93-95.

In Serbia, like in Bulgaria, Roma children are usually assigned to a special school and it is estimated that between 50 and 80 percent of the special school population are Roma while in Belgrade the percentage is even higher (80-85 percent).<sup>200</sup> On the basis of psychologist's recommendation who conducts test in the primary educational institution, the referral is made to the medical commission. This commission usually considers that children who show problems of understanding and which in the case of Roma children happen because of the language barrier have a developmental disability.<sup>201</sup> According to Simic these schools would be closed down if Roma children are not sent there on the prejudice basis. She also states that sometimes poor Roma parents send their children to this type of school because they get there free meals and text books that usually Roma parents cannot afford to buy.<sup>202</sup>

The problem of overrepresentation of Roma children in special school exist not only in Bulgaria and Serbia but also in Macedonia. NGOs estimate that Roma children make up to 60-70 percent of the student body.<sup>203</sup> In this country like in Bulgaria and Serbia, Roma children have to undergo readiness test and this procedure is usually biased. Child is assigned to special school when school psychologists refer the child to the commission for the Mental Health institute that checks the child's educational special needs. Roma children are accepted in these schools even though they do not have any intellectual disability. The reasons for this situation are different, either language barrier or other reasons such as poverty.<sup>204</sup>

According to my interviewee Memedov, placement of Roma children in special school not only deprives children from their full intellectual development but also deprives them

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<sup>200</sup> See Christian Bodewig & Akshay Sethi, Poverty, Social Exclusion and Ethnicity in Serbia and Montenegro: The case of Roma, The World Bank, 2005, 24.

<sup>201</sup> See Open Society Institute (vol. 1), *supra* note 145, at 551-552.

<sup>202</sup> See Interview with Milica Simic, *supra* note 163.

<sup>203</sup> See Open Society Institute (vol.2), *supra* note 148, at 170-200.

<sup>204</sup> See Open Society Institute (vol.2), *supra* note 148, at 225-226.

from further educational development since the knowledge that get in these schools is very low and thus their chances for education at the secondary level are very much limited.<sup>205</sup>

According to the ERRC study, segregated education in general causes irremediable impairment to the generations of the Roma children in a way that they are denied from the equal educational opportunity and from the chance to learn in the multicultural environment. As a result of this Roma children grow up “with a stigma of inferiority”<sup>206</sup> which affects their whole life. In this respect Russinov stated that Roma children attending these schools are not only receiving low quality of education under extremely poor material conditions, but also they are automatically deprived from further career development.<sup>207</sup>

### 3.3.3. Discrimination in primary education

In this subchapter I examine how much discrimination against Roma children by their teacher and class mates hampers their enjoyment of the right to education.

Several surveys conducted in the period from 1992 until 2005 show that there is a high social distance between Bulgarians and Roma. In addition, these surveys show that the Bulgarian attitude toward integration of Roma children is negative.<sup>208</sup> In this regard my interviewee Russinov stated that teachers discriminate against Roma children by treating them as less intellectually gifted than their non-Roma peers and that teachers lack the motivation to work with Roma children.<sup>209</sup>

Discrimination that Roma children face from the teachers, classmates and non-Roma parents contributes to and has negatively influenced the attendance of Roma children as well as the quality of education that Roma children receive because of the teachers’ lower

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<sup>205</sup> See Interview with Idaver Memedov, *supra* note 195.

<sup>206</sup> See European Roma Right Centre, *supra* note 134, at 7-35.

<sup>207</sup> See Interview with Russinov, *supra* note 185.

<sup>208</sup> See Open Society Institute (vol.1), *supra* note 145, at 118-119.

<sup>209</sup> See Interview with Rumyan, *supra* note 185.

educational expectations from Roma children.<sup>210</sup> As a result of this practice many of the children graduate without acquiring reading and writing skills. There are also cases which demonstrate that Roma children are subject to physical abuse by their teachers.<sup>211</sup>

Like in Bulgaria, in Serbia discrimination against Roma children by their non-Roma classmates, teachers and non-Roma parents is also widespread. As OSI report highlights, Roma children are usually discriminated against by the teachers, classmates, school administrative staff and non-Roma children's parents. The discriminatory attitude toward Roma children by the teaching staff can be seen as one of the reasons why they have lower expectations from the Roma and why they offer to these children a lower quality of education.

In addition, teachers usually verbally express their prejudice toward Roma children<sup>212</sup> and they expose Roma children to physical harassment by non-Roma classmates.<sup>213</sup> In this regard, Simic emphasizes that discrimination that Roma children are exposed to within the school environment contributes to their dropping out from the schools.<sup>214</sup>

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<sup>210</sup> See Dena Ringold et al., *supra* note 169 at 47-49.

<sup>211</sup> In this report ERRC reveals that in the Bulgarian village Bukolvak, a 13-year-old boy was physically abused by his teacher. European Roma Rights Centre, European Roma Rights Quarterly Report, Roma pupil physically abused by the teacher in Bulgaria, 2003, available at: [http://www.errc.org/Archivum\\_index.php](http://www.errc.org/Archivum_index.php) (last visited September 15, 2008).

<sup>212</sup> See Open Society Institute (vol.1) , *supra* note 145, at 570-55.

<sup>213</sup> For instance a 8 year Kadria Idic from Bujanovac, a town in the southern part of Serbia , reported that she was physically harassed by her Serbian teacher, *See more* European Roma Rights Centre, Roma Rights Quarterly: Romani children harassed by classmates in Yugoslav schools, available at <http://www.errc.org/cikk.php?cikk=1196&archiv=1> (last visited, December 28, 2008).

<sup>214</sup> My interviewee Simic also confirmed that Roma children are exposed to the prejudice and discrimination by both the school staff and classmates.<sup>214</sup> According to Simic a hidden type of discrimination is seen when Roma children are sent to special schools by the commission which categorizes children, so called "white commission" because there are no Roma within the members of this commission, none can be present during the child examination and their reports are not available to anybody. She states that although there were some initiatives to include Roma assistants as commission members, this request was rejected because allegedly this is not allowed by law Interview with Milica Simic, *see supra* note 178.

In addition, Rakocevic states that among the reasons why Roma children drop out before finishing primary education is also that they did not get the opportunity to like the school. The reason for this is that from the first school day they feel inferior in terms of knowledge, nobody is asking questions of them i.e. teacher do not pay attention to them, and their non-Roma classmates avoid them and do not want to play with them. Thus in this kind of educational surrounding they do not feel welcome and they decide to drop out. In addition, Roma parents do not react when Roma children drop out from the school they just accept the fact without taking any initiatives to return their child back to school. Similarly the school institutions are also not undertaking any measures when they notice that Roma child drop out from the school. An additional reason for the dropouts is that Roma children are not motivated by teachers and parents to continue with the education. Also Roma children themselves have no ambition to continue with education and when you speak to them you see that they think

The situation regarding discrimination against Roma children from Macedonia does not differ from what we observed in Bulgaria and Serbia. They are also exposed to a high level of discrimination by their teachers and classmates. The ERRC written comments disclose that Roma children are discriminated against and exposed to different prejudices by the classmates and teachers. This experience is one of the reasons why Roma children drop out from the school. There are also cases when Roma children's classmates avoid communication with them or abuse them physically.<sup>215</sup>

My interviewee Memedov emphasized that teachers play a significant role in spreading prejudice and discriminating against Roma children for the reason that they do not have appropriate knowledge about Roma culture and issues that these children face. Since Roma children are perceived by their teachers as less intelligent they usually receive lower grades than their non-Roma peers. Memedov concluded that discriminatory practices significantly affect confidence and result in lack of motivation to continue their education.<sup>216</sup>

### 3.3.4. Language barriers

Another obstacle that Roma children face in access to education in Bulgaria is the language barrier. Since the vast majority of Roma live in segregated settlements where they speak only in Romanes, many Roma children in Bulgaria either speak very poor Bulgarian language or they do not speak the language at all.<sup>217</sup> Although there is no available data on how many Roma children are proficient in Bulgarian it is estimated that significant numbers of Roma children do not speak Bulgarian and they need additional education in this language. Since the vast majority of teachers do not speak Romanes they cannot respond to Roma

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more about how to survive i.e. how to contribute economically to the family and this is because of the specific way of Roma life. Rakocevic, *see supra* note 165.

<sup>215</sup> See Written Comments of the European Roma Rights Centre and the National Roma Centrum concerning the Former Yugoslav Republic of Macedonia for consideration by the UN Committee on Economic, Social and Cultural Rights at its 37<sup>TH</sup> session, 11 (2006), available at <http://www.errc.org/db/01/EE/m000001EE.pdf> (last visited December 25, 2008).

<sup>216</sup> See Interview with Idaver Memedov, *supra* note 195.

<sup>217</sup> See Open Society Institute (vol.1.), *supra* note 145, at 100-103.

children's specific educational needs. From this fact we can conclude that although the Constitution stipulates that minorities have the right to be taught in their mother tongue<sup>218</sup> still in practice this right is not implemented.

Like in Bulgaria, in Serbia also many Roma children face language barrier which is perceived as the main reason for the referring of these children to the special schools.<sup>219</sup> A further problem is that the language of instruction is Serbian which mostly affects those Roma who do not speak Serbian especially Roma children returnees from Germany or internally displaced children from Kosovo.<sup>220</sup> Therefore we can observe that in Serbia Roma children are denied the right to be taught in their mother tongue although the Constitution<sup>221</sup> guarantees this right to Roma children.

Like Roma children in Bulgaria and in Serbia, Roma children from Macedonia also face language barriers when entering the school. According to the European Center for Minority Issues (ECMI) Roma children usually enter the school with a poor knowledge of the language of instruction and this results in their school underachievement.<sup>222</sup> My interviewee Memedov stated that the language barrier is usually one of the reasons why Roma children are misdiagnosed and sent to special schools.<sup>223</sup> In spite of the fact the Macedonian Constitution<sup>224</sup> stipulates that the mother tongue can be the language of instruction, still in practice this provision for Roma children is not realized and Romanes is taught only in two primary schools, as an optional language.<sup>225</sup>

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<sup>218</sup> Article 36 of the Constitution states: "Citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language." *See supra* note 108.

<sup>219</sup> *See* Open Society Institute (vol. 1), *supra* note 145, at 552-553.

<sup>220</sup> *See* Roma Education Fund, *Advance education of Roma in Serbia*, *supra* note 153, at 1-48.

<sup>221</sup> *See* Serbian Constitution, *supra* note 110.

<sup>222</sup> European Center for Minority Issues, *Toward Regional Guideline for the Integration of Roms*, Narrative Report submitted to the Swedish International Development Cooperation Agency, 2004

<sup>223</sup> *See* Interview with Idaver Memedov, *supra* note 195.

<sup>224</sup> Article 48 of the Constitution states: "Members of the nationalities have the right to instruction in their language in primary and secondary education", *see supra* note 111.

<sup>225</sup> *See* Roma Education Fund, *Advance education of Roma in Macedonia*, *supra* note 151, at 26.

### 3.3.5. Socio-Economic barriers

A UNDP survey reveals that the poverty rate of Roma compared to Bulgarians is seven to eight times higher. It also shows that poverty has a negative impact on the Roma children's educational prospects.<sup>226</sup> In addition, the World Bank survey reveals that more than 80 percent of Roma are living in poverty without basic living conditions such as water, electricity, or a sewage system.<sup>227</sup> This is also confirmed by my interviewee Russinov who acknowledges that poverty is one of the main reasons that prevents Roma parents from sending their children to school for the reason that they cannot afford to pay their children's meals and other school materials.<sup>228</sup>

In Serbia also, like in Bulgaria, it is observed that poverty is one of the main constrain for the Roma children access and attendance of the school. For instance, the World Bank study acknowledges that although primary education is free of charge, still there is an insignificant expenditure for the text books and clothes that Roma parents due to poverty are not able to meet. Low economic income is enumerated as the main reason why Roma do not send their children to school.<sup>229</sup> Simic states that due to the poverty Roma children are sometimes forced to dropout from the school and to help their parents in economic activities.<sup>230</sup>

The situation does not differ in Macedonia either. It is estimated that 88 percent of Roma live below the poverty line and hence that Roma do not enjoy opportunity for education in their homes as non-Roma have.<sup>231</sup> According to my interviewee Memedov poverty prevents Roma parents to send their children to school because they cannot afford expenditures related to their children's education. He also states that because of poverty Roma

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<sup>226</sup> See UNDP report, *supra* note 155.

<sup>227</sup> The poverty level of Roma in Bulgaria is higher than in other countries and that 80 percent of Roma living in this country are poor. See *more et al.*, *supra* note 108, at 30.

<sup>228</sup> Interview with Rumyan Russinov, see *supra* note 190.

<sup>229</sup> See Christian Bodewig & Akshay Sethi, *supra* note 200, at 21-22.

<sup>230</sup> See Interview with Milica Simic, *supra* note 163.

<sup>231</sup> See Roma Education Fund, Advance education of Roma in Macedonia, *supra* note 151, at 14-19.

parents sometimes engage their children in economic activities so that they can contribute together with their parents to the family budget and that poverty is one of the reasons for Roma children's high dropout rates from schools.<sup>232</sup>

The comparison of the situation of the Roma children within the educational system and exploring the reason for their unequal access to the education discloses that all three countries share significant similarities in this regards. We observed that all three countries there is a high discrepancy between official and non-official data regarding Roma living in this country as well as those within the educational system. The explanation that lies behind this issue is social stigma about this ethnic group.

In addition, we also noticed that in all three countries enrolment, dropout and literacy rates of Roma children is much lower than that of majority and that they lag significantly behind their non-Roma peers in terms of overall school achievement and level of education. Reasons for this situation are multiple barriers that Roma children face in accessing the right to education. Moreover, we observed that in all three countries there is segregation of Roma children within the educational system that the phenomenon of segregated Roma schools especially exists in Bulgaria and is less observed in Serbia and Macedonia. However the issue common for these two countries is that Roma children are usually placed within separate classes.

We also noticed that while in Bulgaria there are some desegregated programs aiming to move Roma children from segregated to mainstream schools, we observed that in Serbia and Macedonia similar initiatives do not exist. Furthermore, the placement of Roma children in special school is a phenomenon that exists in all three countries Reasons for the placement of Roma children in these types of institutions in all three countries are identical, either because of the cultural and language insensitivity of the test assigned to these institutions or

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<sup>232</sup> See Interview with Idaver Memedov, *supra* note 195.

because Roma parents due to the poverty and to the extra facilities such as lunch that these schools offer, enroll their children in the schools. Discriminatory attitude and linguistic social-economic disadvantage create also conditions for Roma children's unequal access to education.

## CHAPTER IV – CONCLUSION AND RECOMMENDATIONS

### *4.1. Conclusion*

The research I have conducted reveals that education should be recognized as a fundamental right for the reason that the persons who are denied this right are also deprived from personal development, from employment opportunities, from elevating out of poverty, from active political participation and from enjoyment of other rights. The importance of this right is acknowledged by number of international, regional and domestic legal instruments, which guarantee the right to education on an equal basis. However the fact that in the contemporary world a significant number of children are excluded from the education system or receive low quality education, demonstrates that not all children enjoy the right to education on an equal basis.

Roma as the biggest ethnic minority and the most vulnerable group in Europe are frequently denied access to education on an equal basis. Specifically my research in three countries from Central and Eastern Europe (i.e. Bulgaria, Serbia and Macedonia) demonstrates that although these states have ratified all major international legal instruments that protect the right to education and that they have adopted similar provisions in their domestic legislation that enshrine the right to education, still they fail to ensure Roma children enjoyment of this right on an equal basis. Furthermore, the examination of the domestic legal mechanisms for the protection of the right to education in these countries shows that there is a lack of effective remedies, which Roma and other marginalized groups can use in the case when their right to education is violated.

In recent years Serbian, Macedonian and Bulgarian governments have recognized the gravity of the educational issues that Roma children face and consequently they adopted a

number of national action plans and programs with the aim to improve Roma position in this field. However, the analysis of these policy documents shows that these documents have not contributed to the improvement of the Roma position in education, either because they are not so effective or because there is a lack of political will among the governmental representatives to implement these documents. As a result the situation of Roma children regarding education in these countries is still dire.

Moreover, the research that I have conducted demonstrates that Roma children from Bulgaria, Serbia and Macedonia face that a number of obstacles that prevent them from exercising their right to education.

Therefore all three governments should immediately undertake concrete steps that will ensure the Roma children to exercise their right to education.

## **4.2. Recommendations**

The Bulgarian, Macedonian and Serbian governments should ensure that the ratified and adopted international, regional and national norms that protect the right to education are implemented.

The Serbian and Macedonian government should adopt the antidiscrimination law and ensure its transparency so that the public is aware about the existence of this law. The Bulgarian government should implement its existing antidiscrimination law. Since in all three countries there is not reliable data on the number of Roma who are within education system all three governments should undertake data collection in order to create a database on how many Roma children are in or out of the education system.

### **4.2.1. Overcoming administrative and language barriers**

Bulgaria, Serbia and Macedonia should ensure that the education system is adapted to the needs of Roma children; particularly the testing for the primary education should be adjusted to the Roma culture and values.

In Macedonia and Serbia where enrolment is based in the residence and where many Roma live in illegal settlements and do not possess personal documentation, the governments should oblige the district schools together with the local NGOs to create a database of all children in the district including those living in informal settlements and make sure that all children are registered in their school database and to ensure that they are enrolled in the school. In addition, the states should establish the body that will monitor whether the Roma children attend the school on a regular basis. In Bulgaria, since enrollment is not based on residence permits, school coordination should be established that will ensure that Roma children are not left out of the school system.

Furthermore, the governments should ensure that Roma children attend kindergarten and compulsory preschool education because in this way the Roma children will get opportunity by being educated in a diverse environment, to learn the language of the majority and to strengthen their readiness for school, which will ensure that they overcome the language barrier that vast majority face when entering the primary education. In addition

Moreover the governments should establish courses that will prepare teachers of Romanes. This will enable Roma children to education in their mother tongue.

#### **4.2.2. Overcoming segregation and discrimination**

Since discrimination and segregation as a form of discrimination are complex phenomenon, than this issue requires a number of measures that should be undertaken by the three respective governments.

First of all in order to combat discrimination in the education it is crucial that the three respective governments ensure that there is an effective remedies that provided protection in such cases. In relation to this, the Bulgarian government should ensure that the existing anti-discrimination law is effectively implemented by dissemination of information about the existence of the law and the legal procedure that can be initiated against the perpetrators in

front of the anti-discrimination body established by this law. On the other hand, the Serbian and Macedonian government should urgently start the procedure for the adoption of special anti-discrimination law and ensure its effective implementation.

Taking into consideration that segregation of Roma children affects their intellectual and personal development and has in general a detrimental influence on Roma children, the respective governments should develop educational desegregation policies and programs that will effectively combat segregation in education. In this way the Roma children will have the opportunity to acquire the same quality of education, which will increase their educational achievement and give them a greater chance for further educational development. In addition, the governments should establish an effective monitoring and reporting mechanism that will monitor the existence of segregated practices within the schools.

Furthermore, since very often the teacher staff is discriminating against Roma children due to their insensitivities about their culture and their needs, the government should provide teachers with training that will familiarize them with the Roma culture and make them more sensitive when dealing with Roma children. In addition, the governments should seek to revise the school curricula, which will include also Roma history and culture so that teachers and non-Roma students are sensitized about the Roma culture.

#### **4.2.3. Overcoming socio-economic barriers**

Since poverty is enumerated as one of the barrier that hamper Roma children's access to education and since Roma parents sometimes send their children to special schools only because these types of schools offer free textbooks, meals and clothes that usually Roma parents cannot afford for their children, the Ministries of Education from all three relevant countries should ensure that the same type of support is provided within the mainstream schools. In this way Roma parents will be able to send their children to the mainstream schools.

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