

Ensuring the Right to Education for Roma Children: An Anglo-Swedish Perspective

Neville Harris,* David Ryffé,** Lisa Scullion,[§] Sara Stendahl^{§§}

1. Introduction

The population of people in Europe broadly classified as Roma (although in fact comprising a range of distinct groups: below) has been estimated by the European Commission at 10-12 million, constituting 'Europe's largest minority' (European Commission, 2012: 5). Despite much debate around accurately defining Roma ethnicity and membership (Matras 2013; Kovats 2001), the group is taken to include those identifying themselves as Roma, Sinti and Kale, whose ancestors for the most part originate from northern India, but also indigenous populations, including Gypsies and Travellers (Council of Europe 2011a; 2012).¹ Collectively this is one of the most marginalised and disadvantaged communities across contemporary Europe (Amnesty International 2011; Bartlett et al. 2011). Endemic poverty (Ringold et al., 2005), low quality – and often segregated – housing (Phillips 2010), and poor employment (Hyde, 2006), education (below) and health outcomes (Vivian and Dundes, 2004), are defining features of the lives of many Roma populations. Roma children are perceived as a particularly disadvantaged group (Farkas, 2007).

Education participation rates among Roma children are low across Europe (UNICEF, 2011). Poor school attendance has contributed to high illiteracy rates among Roma children (Council of Europe, 2011b). Furthermore, educational segregation is systemic in many EU Member States (Farkas, 2007; O'Nions 2010; Ryder et al., 2014; Cashman, 2016). The European Roma Rights Centre (ERRC) identifies three specific types of segregation: (1)

* Professor of Law, University of Manchester, UK (also Visiting Professor of Welfare Law, Gothenburg University, Sweden) neville.harris@manchester.ac.uk; ** Doctoral candidate, Gothenburg University david.ryffe@law.gu.se; [§] Reader in Social Policy, Salford University l.scullion@salford.ac.uk; ^{§§} Senior Lecturer in Law, Gothenburg University sara.stendahl@law.gu.se. The authors express their gratitude to the journal's anonymous referees for their helpful suggestions.

NOTES

¹ For the purposes of this article, we use the Council of Europe's definition of Roma: 'The term "Roma" used at the Council of Europe refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and Eastern groups (Dom and Lom), and covers the wide diversity of groups concerned, including persons who identify themselves as "Gypsies": Council of Europe (2012), n.7. However, we refer to these groups individually in places in the article, particularly when referring to the UK (on which, see n.96 below).

placement in 'special' schools for children with developmental disabilities; (2) segregated provision *within* mainstream schools; and (3) concentration in 'ghetto schools' (ERRC, 2004: 10). The issue was highlighted by a ruling of the Grand Chamber of the Court of Human Rights in 2007 holding that the Czech Republic unjustifiably discriminated by placing a disproportionate number of Roma children in remedial special schools.² Ghettoisation and overrepresentation within special education also impact on participation in further education (Friedman et al., 2009: 8). Furthermore, educational disadvantage may 'lock Roma children into disadvantage into adulthood' (Farkas, 2005: 6). There is a complex interplay of cultural and structural issues impacting on engagement with education; for example, the value Roma parents place on education as a means of facilitating 'success in life' (Cozma et al., 2000), but also the pervasive impact of poverty, particularly when securing their day-to-day livelihood remains the main priority for many Roma families (European Dialogue, 2009; Scullion and Brown, 2013).

Precise calculations of Roma numbers are very difficult (Clark, 1998; Brown, Martin and Scullion, 2014; Penfold, 2015) and often expert estimates alone are available (Minister for Human Rights, 2009). Mobility and fear that disclosing Roma identity will result in discrimination and social exclusion are key factors (Scullion and Brown, 2013). Within the UK, estimates of the migrant Roma population have ranged from 50,000 (European Dialogue, 2009) to 500,000 (Equality, 2011) or even one million (Craig, 2011), while the European Commission's (2014b) estimate is 80,000-300,000. The 2011 UK Census, including a 'Gypsy or Irish Traveller' category for the first time, estimated numbers at 58,000. This was probably a significant undercount, attributable to factors such as the sub-average levels of literacy among this group and the statistical agency's insufficient engagement with these communities. Indeed, migrant Roma numbers in the UK have increased since the collapse of the Soviet Union and the EU accession of various central and eastern states (Morris, 2016: 6). In Sweden, enumeration is even more problematic since ethnic monitoring is prohibited in official data (Anon, 2009). However, there is an oft-cited figure of 50,000 Roma living in Sweden (European Commission, 2014a; Alexiadou and Norberg, 2015), including both indigenous and migrant Roma, although some estimates are of up to 100,000 (Alexiadou and Norberg, 2015). The disaggregation of data in relation to Roma children is even more

² See *DH v Czech Republic*, discussed in part 2 below.

problematic, and there are no reliable data for Sweden, but in the UK the School Census data from January 2016 show 20,664 children identified as 'Gypsy' or 'Roma' within state schools, predominantly within the primary school category, or in alternative provision (ONS, 2016; but see Penfold, 2015: 4). There is an upward trend, at least in some areas: for example, in Sheffield, Roma school pupil numbers increased from about 100 in 2009 to 2,100 in 2014.³

Over the last decade and more the EU has implemented a number of targeted initiatives to address the social exclusion of Roma (Bartlett et al., 2011). They have included the *EU Framework for National Roma Integration Strategies up to 2020*, calling upon all Member States to address Roma inequality and lack of integration across key policy areas, including education (European Commission, 2011b: 4). Furthermore, other international policy and legal frameworks aiming to safeguard and advance children's and minorities' rights are also highly relevant to Roma children. However, individual states' autonomy over policy and resource allocation means there is always likely to be international variation in responding to social needs and ensuring socio-economic rights. Modern-day UK and Sweden are socially liberal countries with advanced welfare states and well developed systems of social support. Neither state is among those where Roma have experienced the greatest discrimination and institutional segregation in recent times, yet Roma children remain the most educationally disadvantaged of any ethnic or social group within their populations. This article therefore aims to explain, compare and assess the success of these states' response to the education needs of Roma children, set in the context of international and national legal frameworks aimed at protecting and advancing equal rights to education. It will be seen that there is a significant disparity between the records of these two national states in supporting the right to education for these children, a reflection both of legal and constitutional differences and in the level of policy commitments, and illustrating well the uneven progress towards realisation of the internationally-promoted integration goals.

2. Protection of the right to education for Roma children: international frameworks

³ Ofsted figures cited in Morris (2016: 6).

For the Roma people, given their history of disadvantage and persecution, the international human rights framework is of considerable importance. For Roma children, protection of their right to education represents a critical underpinning to equality and inclusion. This right is located within a range of instruments including the UN Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR). Both the UK and Sweden are signatories to these Conventions. Although, as discussed below, there are other applicable international measures, the CRC and the ECHR are arguably the most significant in this context because of their focus on children (in the case of the CRC) and the degree of legal enforceability (in the case of the ECHR). At the same time, specific European initiatives have aimed to tackle Roma children's educational disadvantage, mostly within wider measures for reducing inequality and promoting inclusion. The Council of Europe has been particularly active in this regard: Roma are a recognised minority for the purposes of its Framework Convention for the Protection of Minorities;⁴ its Committee of Ministers adopted a recommendation on Roma children's education;⁵ its Commission against Racism and Intolerance made recommendations for combating 'anti-Gypsism in the field of education' (ECRI, 2007 and 2011: 5-6); and Roma children were identified as in need of protection against segregation and discrimination in education under its *Strategy for the Rights of the Child (2012-2015)* (Committee of Ministers, 2012).⁶ Equally, important EU initiatives have highlighted the problems experienced by Roma children⁷ and exerted pressure for their amelioration by national governments. These EU measures will be considered first.

A. EU ROMA INITIATIVES

In 1994 the European Parliament's Resolution on the situation of Gypsies called on Member States to introduce legal, administrative and social measures and do 'all in their power' to improve this group's position. EU expansion prompted further action and in 1999 the EU adopted 'Guiding Principles for improving the situation of Roma in countries wishing to join

⁴ Council of Europe Framework Convention for the Protection of National Minorities, which entered into force in 1998.

⁵ *Recommendation No. R (2000)4 on the education of Roma/Gypsy children in Europe*.

⁶ See in particular its 'Strategic objective 3 – Guaranteeing the rights of children in vulnerable situations'. The Council states that it will 'pay particular attention to the rights of Roma girls': p.8.

⁷ And others with a travelling lifestyle such as circus and fairground people: see Resolution of the Council and the Ministers of Education Meeting Within the Council of 22 May 1989 on School Provision for Children of Occupational Travellers (89/C 153/01). See also COM(96) 494 final.

the EU'. There was a concern about the position of Roma 'within new Member States... given the evidence of racism and discrimination in employment, education and health care provision' as well as violence against them (European Commission, 2004: ch.3 para.23). Some states, prior to accession, were considered not fully compliant with membership criteria on respecting human rights and protecting minorities; and the situation of Roma needed to be addressed (ibid). Accession states were bound by the EU's Race Equality Directive⁸ prohibiting direct and indirect discrimination on the grounds of racial or ethnic origin and including education within its scope.⁹ Although under-utilised in this context the Directive offers potential protection for Roma against school segregation (Arabadjieva, 2016)¹⁰ or curriculum content insensitive to their culture (Stalford, 2012). Funds for Roma integration projects were released to accession and membership candidate states under the EU's PHARE programme 2001-2003.¹¹ Despite totalling €77m they were considered insufficient to generate a long term impact and there was a lack of specific expertise and responsiveness to the complex and many-sided problems facing Roma (European Commission 2004, ch.3 paras 25-27).

The European Council's Lisbon commitment (2000) to modernise the European Social Model by addressing social exclusion and improving access to education, inter alia, resulted in various benchmarks for educational achievement and participation. But it did not identify or monitor specific impacts on Roma and other minority ethnic groups (European Commission, 2004 ch.4 para 3, citing Commission of the European Communities, 2004). Yet there was increasing evidence of segregated schooling of Roma children and their inappropriate placement in special education settings. Not confined to Eastern Europe, this problem was also in evidence (if less prevalent) in Western parts, including Germany and Spain (European Commission, 2004: ch.4 paras 4-16). In 2004 the European Commission reiterated that Roma exclusion from mainstream provision required both national and EU responses (ibid: para.17). National governments were recommended to focus on 'unhindered access',

⁸ Directive 2000/43/EC. "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" (29 June 2000).

⁹ Ibid, art.3(1)(g).

¹⁰ A complaint can be referred to the Court of Justice of the European Union (CJEU), but it has no power to impose positive obligations.

¹¹ The PHARE programme – 'Poland and Hungary Assistance for the Restructuring of the Economy' – was introduced under Council Regulation No. 3906/89 – to channel funds for assistance and support to accession states. The aim was 'to help these countries achieve market economies based on free enterprise and private initiative': European Parliament (1998).

increasing pre-school provision, removing barriers to regular school attendance, preventing racial segregation, providing proper support systems and enhancing education about Roma history, language and culture (ibid). The cause was taken up by the European Parliament, calling for European strategies on Roma integration with programmes of action in secondary and higher education and for greater equality (2008);¹² and to ensure the education of girls, an increased numbers of Roma teachers, and combating Roma over-representation among special school pupils (2011).¹³ Roma inclusion and access to education were also promoted at Council level.¹⁴

Greater force to these good intentions was lent by the EU Framework for National Roma Integration Strategies (NRIS) up to 2020, approved in 2011.¹⁵ NRIS are intended to be linked to overall social inclusion policies within Member States to ensure mainstreaming of Roma inclusion. The EU Roma Integration Goals set out in the Framework cover four areas – education; employment; healthcare; and housing. On education, the recommendations¹⁶ refer to access to quality education without discrimination or segregation, guaranteeing (at a minimum) completion of primary education, strongly encouraging participation in secondary and tertiary education, widening access to early education and reducing early school leaving in line with the Europe 2020 strategy.¹⁷

There has, however, been criticism that the goals are insufficiently ambitious and universal primary education completion among all Roma children by 2020 would ‘still leave them five years behind the developing nations’ (Open Society, 2011: 4). Such criticism is reflective of a wider narrative emphasising the historical lack of success of Roma integration measures in delivering intended outcomes or more than short-term solutions (Goodwin, 2013; Brown,

¹² European Parliament Resolution on a European Strategy on the Roma (2008) at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P6-RC-2008-0050&language=EN> (last accessed 5 July 2016).

¹³ European Parliament Resolution of 9 March 2011 on the EU Strategy on Roma Inclusion, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0092+0+DOC+XML+V0//EN> (last accessed 5 July 2016).

¹⁴ Conclusions on Roma Inclusion, Brussels, 28 May 2009, doc 10394/09. The Common Basic Principles, set out in an Annex to the Conclusions, were discussed at the first meeting of the ‘integrated European Platform for Roma inclusion’ in April 2009. A further draft was published in 2010: Brussels, 27 May 2010, doc 10058/10.

¹⁵ European Commission (2011a).

¹⁶ Ibid pp.5-6.

¹⁷ The Europe 2020 strategy was agreed in 2010: European Commission (2010). It is a strategy for growth which includes headline education targets of a reduction in the proportion of early school leavers to 10% from the then level of 15% and an increase in the proportion of 30-34 year olds in the population who have completed tertiary education from 31% to a minimum of 40%.

Dwyer et al., 2014 and Brown et al. 2015). Nonetheless, the problems surrounding education of Roma children were at least firmly recognised and an EU policy framework established to try to address them and realise the Charter of Fundamental Rights Art.14 right to education for all (but note the uncertainty surrounding the Charter's application in the UK: House of Commons Scrutiny Committee, 2014).¹⁸ Yet the necessary and appropriate action has not been wholly guaranteed and there is a concern that effective national policies are mostly lacking (Open Society, 2011: 4). The Framework itself was nonetheless reinforced by a 2013 Council Recommendation on realisation nationally of Roma integration goals.¹⁹ Integration of Roma and other marginalised communities was, moreover, among the investment priorities for European Social Fund allocations for 2014-2020,²⁰ with for example support for reorganisation of schooling in order to prevent segregation (European Commission, 2015: 10).

The EU's protection for the education rights of migrants in general also has relevance.²¹ Article 10 of Regulation (EU) No. 492/2011 (on freedom of movement of workers)²² guarantees equal access to education for children of migrant workers with nationals of the state of residence and requires Member States to 'encourage all efforts to enable such children to attend... courses under the best possible conditions.' *Baumbast* indicated that the child's right will continue, and they may remain in the country to take advantage of it, even after the parent's right to remain is threatened by a termination of work; indeed, the parent could remain if necessary to ensure that the child may exercise that right.²³ This

¹⁸ This is due to protocol 30 to the Lisbon treaty, which seeks to prevent the CJEU, or a Polish or UK court, from finding the national laws of the state inconsistent with the Charter rights, and to prevent those rights (in Title IV) from being justiciable in relation to Poland or the UK except in so far as the relevant state 'has provided for such rights in its national law' (Article 1). If a provision of the Charter 'refers to national laws and practices, it shall only apply to Poland or the [UK] to the extent that the rights or principles that it contains are recognised in the law or practices' of the relevant state (Article 2).

¹⁹ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States (2013/C 378/01).

²⁰ See Regulation (EU) No.1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470)

²¹ OJ 2010/C 3 137 E/01, European Parliament resolution of 2 April 2009 on educating the children of migrants (2008/2328(INI)). See also Commission of the European Communities (2008).

²² OJ Sp Ed 1968 p 475. This has replaced Article 12 of Regulation (EEC) No 1612/68. See also, in the wider international context, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 30; the UK has not ratified this Convention.

²³ Case C 413/99, Opinion of Advocate General (Geelhoed); see also the judgment of the ECJ, 17 September 2002, 2002/C274/03.

derived right of residence, underlined by the CJEU in *Ibrahim*²⁴ and *Teixeira*,²⁵ was re-emphasised by *Zambrano*²⁶ and confirmed recently in *CS*.²⁷ In *Zambrano* a non-EU migrant was held to hold a right to reside and to work in the EU Member State which was derived from his children's rights as EU nationals under Article 20 TFEU, including the right as EU citizens to reside freely in a Member State's territory.²⁸ As Stalford (2012: 154) explains, the CJEU in effect 'acknowledged that such is the importance of achieving continuity in children's education that it can effectively "anchor" the family's residence in the host state for the duration of his or her studies'. Under the Citizenship Directive (2004/83) (which codified *Baumbast*) the child of an EU citizen has a right, if enrolled in an educational establishment for study, to reside in the host state until the completion of studies even after the citizen's death or departure from the EU.²⁹

The differences between states' educational provision, including curricula and qualifications, can be problematic for migrants, to some extent compromising the benefits of the Art.10 right.³⁰ Migrants often also lack knowledge or the wherewithal to ensure admission to a good school or mid-way through the school year (Stalford, 2012: 156-158). There are also cultural and linguistic barriers to educational access for migrant Roma in many parts of Europe (Barbas Homem, 1996). Directive 77/486³¹ has promoted teaching to migrants of the official language of the host state as well as their own mother tongue and culture,³² yet it has been applied in a 'half-hearted fashion' and national provision tends to be focused rather more on non-EU nationals, perceived to have greater linguistic needs due to their generally less affluent background (Ackers and Stalford, 2004: 260-261). The Directive, which 'does not give directly effective rights to individuals' (Arzoz, 2010: 114-115), and the

²⁴ (C-310/08) [2010] E.C.R. I-1065

²⁵ (C-480/08) [2010] E.C.R. I-1107.

²⁶ *Garardo Ruiz Zambrano v Office national de l'emploi (ONEm)* (Case C-34/09) (8 March 2011).

²⁷ *Secretary of State for the Home Department v CS* (Case C-304/14) (13 September 2016), although the CJEU held here that expulsion of the non-EU national parent (thus in effect depriving her child of residence) could occur notwithstanding Art.20 TFEU where her personal conduct constitutes, inter alia: 'a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of that Member State' (at [50]).

²⁸ A recent example of the acknowledgement of a derived right of residence by virtue of Article 12/10 in the UK occurred in *Alarape and Anr* [2011] UKUT 00413(AAC).

²⁹ Article 12(3).

³⁰ Ackers and Stalford (2004: 217) found this was especially the case at primary and secondary school levels.

³¹ Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers. See Thomson (1983).

³² On the link between education and culture, especially in the EU context, see Wallace and Shaw (2003).

Commission has been reluctant to enforce (Cullen, 1996: 535), is also considered too narrow in focus. The European Economic and Social Committee (2009: para.3.5.4) has concluded that while language is a 'key issue', there is a need for a broader focus addressing children's 'integration into education systems in a more comprehensive and consistent manner'.

B. INTERNATIONAL HUMAN RIGHTS LAW

The core international human rights instruments incorporating a right to education and proscribing discrimination have particular relevance to Roma as a minority disadvantaged group.

The UN Convention on the Rights of the Child (CRC)

The CRC provides for the child's right to education and for access to various forms of education, including free and compulsory primary education, while also requiring education to be directed towards, inter alia: the development of the child's personality, talents and mental and physical abilities to the maximum potential and respect for both the child's cultural identity and for the national values of the host country.³³ Additionally, some of the Convention's requirements of general application are particularly relevant to education: that in decisions affecting children the child's best interests must be a primary consideration,³⁴ and in relation to all matters affecting the child his or her views are to be given due weight having regard to the child's age and understanding.³⁵ The rights are to be enjoyed without discrimination on grounds including ethnic or social origin,³⁶ and States Parties must, to the 'maximum extent of their available resources', undertake the necessary legal and other measures to implement them.³⁷ Monitoring of implementation via the Committee on the Rights of the Child's reporting system has frequently highlighted the situation of Roma children among those of a minority ethnic background – concern about the education of children from minorities is, indeed, 'disproportionately represented' in the

³³ CRC Articles 28 and 29.

³⁴ Ibid Article 3. Principally, the best interests of the child are to be a primary consideration in all actions taken in respect of children (art.3(1)) and appropriate legislative and other measures are to be taken to ensure to the child the protection and care necessary for his/her well-being (art.3(2)).

³⁵ Ibid Article 12.

³⁶ Ibid Art.2.

³⁷ Ibid Art.4.

monitoring reports concerning EU countries (Lundy 2012: 400, 405) – and often advocated further state action to ensure better and more equal access to education.³⁸

The CRC has not been constitutionalised³⁹ nor generally legally incorporated in the UK and consequently there is judicial caution against seeing it ‘as a source of domestic legal rights’.⁴⁰ Nevertheless, it may aid construction of domestic law;⁴¹ there is a view that UK legislation ‘is normally to be interpreted in conformity with international law including the treaty obligations of the UK’.⁴² Moreover, the CRC is influential: its provisions have been relied upon by judges ‘on numerous occasions... when dealing with matters which concern children’.⁴³ It has gained particular currency where ECHR provisions are under consideration⁴⁴ as well as in family law cases in general.⁴⁵ In a legal challenge to the legislative ban on corporal punishment in schools,⁴⁶ Baroness Hale referred to the child’s overriding right to protection and found the ban consistent with the international view of what the CRC required.⁴⁷ The ‘best interests’ principle⁴⁸ and a range of other CRC provisions⁴⁹ were considered as well as observations of the UN Committee on the Rights of the Child. The Committee has, however, expressed regret that the best interests principle ‘is still not reflected in all legislative and policy matters and judicial decisions affecting children’

³⁸ See for example the Committee’s observations on France and Hungary: Committee on the Rights of the Child 2016a: paras 71-72 and 2014: paras 52-53.

³⁹ ‘To constitutionalize commonly refers to the act of entrenching a commitment in constitutional text... committing to text what no constitutional government can oust’: Young 2012: 6.

⁴⁰ *R (MA and Others) v Secretary of State for Work and Pensions and Birmingham City Council* [2013] EWHC 2213 at [80] per Laws LJ.

⁴¹ *Ibid.*

⁴² *X Primary School v SENDIST* [2010] ELR 1, at [57] per Lloyd Jones J, in which the court considered Arts 23, 28 and 29 of the CRC in connection with a complaint of disability discrimination arising from a child’s exclusion from school.

⁴³ Per Nicol J in *Webster and Others v Governors of Ridgeway Foundation School* [2009] ELR 439 at [5(j)]. See further *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4.

⁴⁴ *R (SG and Others (Previously JS and Others)) v Secretary of State for Work and Pensions* [2015] UKSC 16, at [218], per Baroness Hale. The other case is *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47. But in *R (SG, K, YT & RG) v Secretary of State of the Home Office* [2016] EWHC 2639 (Admin) Flaux J refused (at [239]) to apply the stricter standard of justification needed for discrimination not to be unlawful, under the CRC (and EU law), to that applicable in ECHR Art.14 cases.

⁴⁵ In relation to family law, see e.g. *Re S (Abduction: Hearing the Child)* [2015] 2 FLR 588, at [16] per Ryder LJ. In relation to immigration and public law, see *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 and *R (MM and others) v Secretary of State for the Home Department* [2017] UKSC 10. On the status of Art.3 more generally in the UK legal context, see Taylor, 2016.

⁴⁶ *R (Williamson) v Secretary of State for Education and Employment* [2005] ELR 291.

⁴⁷ *Ibid* at [81]-[86].

⁴⁸ See note 34 above.

⁴⁹ Art 19(1) (right to be protected from violence or maltreatment), 28(2) (state’s duty to ensure school discipline is administered in a way consistent with the child’s human dignity) and 37 (no child is to be subjected to torture or other cruel, inhuman or degrading treatment).

(Committee on the Rights of the Child, 2016b: para.26). This principle and the child's right to be heard have not been effectively incorporated into education legislation, policy and practice, although the situation is improving (particularly in Wales and Scotland) (Harris, 2009) and the CRC is broadly reflected in areas of UK education law, policy and practice, for example on the curriculum (ibid; Lundy 2012: 403-404) and special educational needs.⁵⁰

In Sweden, while the CRC is not formally incorporated into national law nor can formally be relied upon in court or before the Schools Board of Appeal, its aims are required to be followed. Moreover, parts of the CRC are reflected within the Constitution as well as in anti-discrimination law.⁵¹ Public institutions have a positive duty to 'promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded' and they must 'combat discrimination' on ethnic, national and a wide range of other grounds.⁵² The principle of equality is also reflected in the Swedish Education Act,⁵³ providing for all children to have equal access to education regardless of gender, resident status or social or economic circumstances, requiring educational provision on an equal basis and that account be taken of special needs, and prohibiting test scores as a condition for admission to a school or unit.⁵⁴ The Act also requires children to be given support in reaching their expected goals of attainment, arguably reflecting the developmental aspects of education under the CRC.⁵⁵ Children of compulsory school age have a right to 'a free basic education in the public education system'.⁵⁶ The CRC's reference to the development of respect for the cultural identity, language and values of the child and his/her family⁵⁷ is arguably addressed by another constitutional requirement that the 'opportunities of... ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted'.⁵⁸ Specific national laws in Sweden also embody CRC principles, including the best interests principle and the right to be heard (both found, for

⁵⁰ See the Children and Families Act 2014 Part 3 and particularly the principles in s.19 and the rights of young people (aged 16 or over) throughout this part.

⁵¹ Swedish Constitution, Instrument of Government, chapter 2 art.12.

⁵² Ibid, chapter 1 art.2.

⁵³ (2010: 800)

⁵⁴ See section 9 of the Act.

⁵⁵ Namely that education should be directed at 'the development of the child's personality, talents and mental and physical abilities to their fullest potential'

⁵⁶ Ibid chapter 2 art.18.

⁵⁷ CRC Art.29.1(c).

⁵⁸ Chapter 1 art.2.

example, in immigration and asylum law⁵⁹) (Lundy, 2013: 450; Ottoson and Lundberg, 2013: 267). Despite selective constitutional incorporation of the CRC, however, so poor is the Swedish courts' record in applying the ECHR (Nergelius, 2008: 149) that the formal change of legal status of the CRC may well have little or no impact in practice. Nevertheless, the Swedish Supreme Court at least accepted, in 2013,⁶⁰ that the best interests principle should be taken into account in all matters directly or indirectly related to children. However, this case concerned only the forced sale of an apartment to pay off debts to the state rather than education.

While incorporation of the CRC into national laws raises awareness and can 'infuse the decisions' of decision-makers (Lundy, 2013: 463), it is important to consider what happens on the ground: see parts 3 and 4 below.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Education rights are also enshrined in ICESCR.⁶¹ Art.13 recognises everyone's right to education. Education is to serve specified goals of developing the individual and instilling values of tolerance and respect for others while also providing for universal and free access to primary education and elements of individual choice.⁶² The General Comment on Article 13 identifies as 'essential' features of the right that, inter alia, education is to be 'accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds', 'acceptable (e.g. relevant, culturally appropriate and of good quality)' and able to 'respond to the needs of students within their diverse cultural and social settings' (CESCR, 1999: para 6). ICESCR also contains a general prohibition on discrimination.⁶³ Having regard also to the CRC's equivalent provision (above), the General Comment notes that 'non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status' (CESCR, 1999: para.34). In 2016, CESCR, commenting on the UK's sixth report, highlighted

⁵⁹ The legislation in question is the Swedish Aliens Act 2005.

⁶⁰ See case NJA 2013 s. 1241

⁶¹ In particular, Articles 13 and 14.

⁶² ICESCR Arts.13 and see also art.14.

⁶³ Art.2(2).

the inequalities and segregation in education based on national or social origin (CESCR, 2016b: para 64), and on Sweden's sixth report called for better access to basic services, including education, for Roma migrants, and more bilingual education (CESCR, 2016a: paras 19, 20 and 46).

ICESCR is regarded by the European Court of Human Rights as a persuasive authority⁶⁴ and by the UK courts to require consideration in appropriate cases.⁶⁵ Its importance has increased due to the UN General Assembly's adoption of an Optional Protocol (OP), giving the CESCR competence to receive and consider 'communications', complete an inquiry procedure into alleged systematic or gross violations and deal with inter-state complaints (rarely used). Under the communications procedure, individuals or groups may bring complaints alleging Convention breaches to the Committee, although its practical utility has proved limited for citizens since domestic remedies must be first exhausted and the process could be somewhat protracted, reducing its value where education matters are concerned.⁶⁶

The European Social Charter

The European Social Charter conveys a universalist message in requiring: that all children should receive 'the education and training they need' and 'a free primary and secondary education'; provision of suitable institutions; encouragement of regular school attendance; and efforts to ensure access to education for those at risk of social exclusion.⁶⁷ The Additional Protocol Providing for a System of Collective Complaints enables complaints of alleged breaches to be brought against States Parties to the European Committee of Social Rights by non-governmental organizations holding participatory status with the Council of Europe, which two Roma organisations do.⁶⁸ While Sweden has accepted this procedure, to date the UK has not. In any event, the lack of specificity in the Charter rights, making

⁶⁴ *Ponomaryovi v Bulgaria* (Application no. 5335/05) (2011) 59 EHRR 799; see paras 34 and 57.

⁶⁵ See *R (Hurley and Moore) v Secretary of State for Business, Innovation and Skills* [2012] E.L.R. 297 at [43], per Elias LJ at [43].

⁶⁶ The Committee's role in such cases is a quasi-judicial one, in that the Committee will express a view or opinion on a complainant but leave it to the individual state to determine how to address the problem which has been identified. In some instances the Committee might make a specific recommendation for redress, including compensation.

⁶⁷ European Social Charter (revised), Arts.17 and 30. See also Art.15 (independence and social integration of disabled people and the taking of measures to provide them with education).

⁶⁸ The European Roma Rights Centre and the European Roma and Travellers Forum: see Council of Europe (2016). On the benefits of this process, see Lundy (2005b: 17).

breaches more difficult to establish, is a limiting factor (Churchill and Khaliq, 2004: 446). There is also no specific mechanism for enforcing a ruling. Remediation of a breach is dependent on the political will of the state concerned.

A number of collective complaints concerning education have been pursued under this procedure,⁶⁹ including seven brought by the ERRC.⁷⁰ The ERRC's first complaint, against Greece, for example, concerned an alleged breach of duty to promote the economic, legal and social protection of family life without discrimination and was upheld.⁷¹ Another upheld complaint, brought against France by *Médecins du Monde*,⁷² concerned a state failure to ensure sufficient access to education for Roma children of Bulgarian or Romanian origin. The Committee of Ministers' subsequent 'follow-up'⁷³ found that France had remedied the breach through seeking better integration and support for Roma children's education.

The European Convention on Human Rights

The ECHR provides in Article 2 to the First Protocol (A2P1) that 'no-one shall be denied the right to education' and, in a second sentence, that 'respect' must be paid to the right of parents to ensure that the education and teaching of their child is 'in conformity with their own religious and philosophical convictions'.⁷⁴ Both the UK and Sweden entered reservations to the second sentence so as not to be bound by it where it would be incompatible with the goals of efficient education or reasonable public expenditure (in the UK) or where parents assert philosophical convictions or want children belonging to the Swedish Church to be excused from religious instruction (in Sweden). Strasbourg judgments

⁶⁹ See for example *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, complaint No. 41/2007, where a complaint that there had been denial of an effective right to education for children residing in homes for the mentally disabled and thus a violation of Art.17 was upheld. See also *International Association Autism-Europe (IAAE) v. France*, Complaint No.13/2002, where the complaint in part concerned the education rights of autistic children and it was held that a violation of Art.15/17 occurred due to the low proportion of autistic children who were being educated in either general or specialist schools.

⁷⁰ For details of the ERRC's work in strategic litigation, see <http://www.errc.org/strategic-litigation> (last accessed 7 July, 2016). Access to education is the fourth largest category within its current caseload. Housing is the most common area, followed by social protection, social assistance and health care. The European Roma and Travellers Forum brought a complaint against France in relation to housing: Collective complaint No.64/2011.

⁷¹ Complaint No.15/2003 and Art.16 of the Charter.

⁷² *Médecins du Monde – International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2012.

⁷³ Ibid. States found to have violated the Charter must notify the Committee of Ministers of the Council of Europe of measures taken or planned to remedy the breach.

⁷⁴ ECHR Article 2 of the First Protocol.

have revealed the right to be limited by States Parties' wide margin of appreciation on educational matters – save where provision constitutes indoctrination.⁷⁵ In *Horváth and Kiss v Hungary* the Court noted that while 'respect' in the second sentence of A2P1 implies a positive state obligation, the state enjoys 'a wide margin of appreciation in determining the steps to be taken to ensure compliance ... with due regard to the needs and resources of the community and of individuals'.⁷⁶ Therefore minority families have faced considerable difficulty in establishing violations of their religious or philosophical beliefs regarding their child's education. Roma families' A2P1 complaints have tended to focus on equal enjoyment of the right, as per Art.14, which requires Convention rights to be 'secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. To justify discrimination based directly or indirectly on membership of a faith or ethnic group the state has a significant burden to discharge (see below).

Other Convention rights have also featured prominently in education-related complaints by minorities – most particularly Arts 8 (right to private and family life) and 9 (freedom of religious expression) rights.⁷⁷ Although Roma tend to identify with various (mostly Christian) faiths (Greenberg, 2010: 994), Art.9 has not been at issue in their education complaints. The relevance of Art.8 to Roma complaints stems from potential clashes between Roma traditions and values and the dominant cultural norms reflected in state educational provision, such as the education system's normative expectations on school attendance or commitment to studies. Generally action to resolve conflicts of this kind focuses on A2P1 with Art.14 (above) (Lundy, 2005a), although in *Aksu v Turkey*⁷⁸ the Grand Chamber

⁷⁵ See *Belgian Linguistics (No 2)* (1979-80) 1 EHRR 252; *Kjeldsen, Busk Masden and Pedersen v Denmark* (1979-80) 1 EHRR 711; *Campbell and Cosans v UK* (1982) 4 EHRR 293; *Hasan and Eylem Zengin v. Turkey* (Application no. 1448/04) (Judgment 9 October 2007); *Dojan v Germany* (Appl nos 391/08, 2455/08, 7908/10, 8152/10) [2011] ELR 511; *Konrad and Others v Germany* (Appln no.35504/03) [2007] ELR 435; *Ali v United Kingdom* (Appln no 40385/06) [2011] ELR 85; *Valsamis v Greece* (1996) 24 EHRR 294; [1998] ELR 430. *Cyprus v Turkey* (2002) 35 EHRR 731; *Folgerø v Norway*, Appln no. 15472/02 [2007] ELR 557. UK cases which have similarly shown the weakness of A2P1 in providing an absolute guarantee of access to a particular form or level of provision include, most notably *Ali v Headteacher and Governors of Lord Grey School* [2006] UKHL 14, [2006] ELR 223 and *A v Essex County Council* [2010] UKSC 33, [2010] ELR 531.

⁷⁶ (Application No 11146/11) [2013] ELR 102, at para 103. Cf *Catan v Moldova and Russia* (Application Nos 43370/04 and 18454/06).

⁷⁷ See e.g. *Valsamis v Greece* (1996) 24 EHRR 294; *Şahin v Turkey*, Application no.44774/98, 10 November 2005; *Dogru v France*, Application no.27058/05 [2009] ELR 77; *Lautsi v Italy*, Application no. 30814/06 [2011] ELR 176 *Grzelak v Poland* (Application no. 7710/02) (2010). See further Harris (2007: 77-82).

⁷⁸ Appln nos 4149/04 and 41029/04, 15 March 2012 (Grand Chamber).

considered but dismissed a claim under Arts 8 and 14 concerning, inter alia, dictionaries – including one text aimed at pupils which allegedly presented a very negative and pejorative view of Gypsies.⁷⁹ The inter-connectedness of education and Roma families' wider situation is also relevant. For example, in *Coster v United Kingdom*⁸⁰ the applicants wished to station and live in Gypsy caravans on land they had purchased, but planning permission was refused. They alleged that having to leave the site meant their children were denied their A2P1 right to education. The complaint, while admissible, was rejected on the facts. However, in *Connors v United Kingdom*⁸¹ the expected disruption to a Gypsy family's children's education on eviction from a site where they had resided for over a decade contributed to a serious and interference with their Art.8 right which was not justified in the absence of a 'pressing social need'.⁸²

Justification for Art.14 discrimination has been accepted where there is an economic case for differentiating between groups⁸³ or where a policy pursues a social goal of overriding national importance – such as where atheist families in Sweden were denied an opt-out from religious education in order that no child lacked knowledge concerning religion,⁸⁴ or where the aim of linguistic unity in Belgium helped to justify the failure to accord French-speaking families the option of French-medium education.⁸⁵ However, the required threshold for justification is highest where the discrimination relates to matters of race or ethnicity. As the Court of Human Rights said in *Oršuš v Croatia*, 'very weighty reasons would have to be put forward before the court would regard a difference of treatment based exclusively on ethnic origin as compatible with the Convention'.⁸⁶ Similarly, in *DH v Czech*

⁷⁹ The Grand Chamber accepted that the dictionary could reflect 'the language used by society', both literal and figurative or metaphorical. It dismissed the claim but stated that 'in a dictionary aimed at pupils, more diligence is required when giving the definitions of expressions which are part of daily language but which might be construed as humiliating or insulting' (at [85]) and took account of the fact that 'the impugned dictionary was not a school textbook and that it was not distributed to schools or recommended by the Ministry of Education as part of the school curriculum' (at [86]). For analysis, see McColgan (2014: 130-132).

⁸⁰ (Application no. 24876/94), Judgement 18 January 2001.

⁸¹ *Connors v United Kingdom* (Appln no.66746/01) (Judgment 27 May 2004), at [85]-[95].

⁸² Ibid.

⁸³ See e.g. *Carson v United Kingdom* (2009) 48 EHRR 41.

⁸⁴ *Angelini v Sweden*, Application No 10491/83, (1988) 10 EHRR CD 123. The authorities had refused to permit children of a non-Christian family but not those of atheist parents to be excused from Christian-focused religious knowledge lessons. This discriminatory policy was held to be in pursuit of a legitimate aim – to ensure that all children had some knowledge concerning religion – and to have had an objective and reasonable justification.

⁸⁵ *Belgian Linguistics* op cit n.75.

⁸⁶ *Oršuš v Croatia*, Application No 15766/03, 16 March 2010 at [149].

Republic the Grand Chamber said: 'Where the difference in treatment is based on race, colour or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible'.⁸⁷

Oršuš and *DH* both concerned Roma children. In *DH* a group of children of Roma origin were placed in special schools for children with learning difficulties based on their individual test scores. Test participation required the consent of the parents' legal representative. This practice resulted in a disproportionately high rate of placement of Roma children in these schools. There were questions about the tests' reliability and whether results analysis had regard to 'the particularities and special characteristics of the Roma children'.⁸⁸ The Grand Chamber accepted that parental consent to the placement could operate as a waiver to a discrimination complaint, but only if properly informed and exercised without constraint. Furthermore, although the Czech Republic attempted to find an appropriate way of meeting Roma children's needs, enjoying a margin of appreciation in doing so, the children were disadvantaged by placement at a school for children with mental disabilities following a more basic curriculum and, moreover, were segregated. Although, in an earlier ruling in the case the measures had been found not to have been based on ethnic or national origin nor discriminatory,⁸⁹ the Grand Chamber held that the less favourable treatment than others would receive in a comparable situation⁹⁰ constituted indirect discrimination which was not objectively and reasonably justified.⁹¹

There was also segregation in *Oršuš* (above), where Roma children were taught separately under a curriculum of reduced content for reasons ostensibly to do with their limited proficiency in Croatian. No denial of Art.14/A2P1 was, however, found. Nevertheless, most complaints reaching decision have been upheld. In *Horváth and Kiss v Hungary*⁹² an overrepresentation of Roma children in remedial schools in Hungary had resulted from the systematic misdiagnosis of mental disability. Their placement in schools following only a basic curriculum amounted to unjustifiable discriminatory treatment. In *Sampanis and*

⁸⁷ Application No 57325/00 (Grand Chamber, 13 November 2007) [2008] ELR 17 at [196].

⁸⁸ *Ibid* at [197].

⁸⁹ *DH and Others v Czech Republic*, appln.no.57325/00 (7 February 2006) [2006] ELR 121.

⁹⁰ *DH* (Grand Chamber) n.87 above at [183]-[184].

⁹¹ The Court awarded €4,000 in respect of non-pecuniary losses to each of the applicants and a joint award of €10,000 in costs.

⁹² Application No. 11146/11, 29 January 2013 [2013] ELR 102.

Others v Greece,⁹³ the children of 11 Greek nationals of Roma origin living at a single residential site could not attend two nearby primary schools because of a blockade by non-Roma parents demanding that they be taught elsewhere. Under pressure, the Roma parents agreed to their children's transfer to an annexe where they received special classes. A discrimination complaint was upheld. Subsequently, in *Sampani and Others v Greece*,⁹⁴ involving 140 applicants, a new school built in place of the annexe was attended by Roma children but was closed due to damage. The pupils were taught in prefabricated and unsuitable classrooms. The textbooks were inappropriate for children whose mother tongue was not Greek. A proposed merger of the closed school and another, to alleviate the situation, was rejected by the municipal authorities. There was a continuing disadvantage to Roma children. Moreover, the authorities did too little to ensure their integration into ordinary schools or receipt of provision appropriate to their needs. A complaint of unjustifiable discrimination in connection with the right to education was upheld. A similar outcome occurred in *Lavida v Greece*,⁹⁵ where Roma children were allocated to a specific school and denied access to another by that school's principal.

Clearly segregation of Roma children is mostly impossible to justify for Art.14 purposes. This can be supported not merely on equality grounds but because of the risk that, as Van de Heyning (2008: 389) comments with reference to *DH*, 'if schools remain segregated for some time, black/white or Roma/white Czech children will accept that a segregated society is normal'. Moreover, by being deprived of an opportunity to learn in an integrated environment, children will probably be less well equipped for life in a multi-ethnic society. However, unfortunately these cases have not produced strong remedial responses from defaulting states. This has been attributed in part to the judges' insufficiently robust signalling and clear guidance on the unacceptability of segregation as distinct from seeing it as an indirect consequence of educational policy (Arabadjieva, 2016: 37-39).

3. The right to education for Roma children: the national context

⁹³ Application No. 32526/05, 5 June 2008.

⁹⁴ Application No.59608/09, 11 December 2012.

⁹⁵ Appln No.7973/10, 30 May 2013.

Despite the efforts to maintain a strong international framework of protection for the right to education for Roma children, realisation of the underlying aims of equality and inclusiveness largely hinges on national measures. The UK and Sweden have education systems experienced in catering for a socially and ethnically diverse population. Nevertheless, considerable inherent barriers to engagement are faced by Roma children. How successfully are the UK and Sweden supporting Roma children's right to education?

A. THE UNITED KINGDOM

Roma children have generally been grouped with Gypsy and/or Travellers for education administration and policy purposes notwithstanding their different histories and ethnicities.⁹⁶ Together they 'suffer the worst health and education status of any disadvantaged group in England'⁹⁷ and, as observed by the UN Committee on the Rights of the Child (2016b: para 21(c)) are among the migrant and vulnerable groups that continue 'to experience discrimination and social stigmatization' in the UK; and Roma, Gypsy and Traveller children are experiencing persistent inequalities in educational attainment and over-representation among children excluded from school (ibid: para 71(a) and (b); see further below). National measures include a positive obligation on public authorities to have regard to the need to eliminate discrimination and advance equal opportunities.⁹⁸ Furthermore, as discrimination on the basis of, inter alia, ethnic or national origin is proscribed under the Equality Act 2010 in relation to issues such as school admission, access to educational provision and exclusion and analogous detriments,⁹⁹ Roma and others have enforceable equality rights in this field.¹⁰⁰ Nevertheless, the UK is one of a number of EU Member States the European Commission (2013: 8-9) considers to have failed, in

⁹⁶ See further Clarke (1999), referring to a range of other groups such as Irish and Scottish nomadic people and so-called New Age Travellers.

⁹⁷ *R (Baker and Others) v Secretary of State for Communities and Local Government and London Borough of Bromley* [2008] EWCA Civ 141 per Dyson LJ at [32].

⁹⁸ Equality Act 2010, s.149. The definition of 'public authority' is in schedule 19 (see s.150) and includes schools' governing bodies and local authorities.

⁹⁹ Equality Act 2010, part 6.

¹⁰⁰ Roma and Irish Travellers have been recognised as ethnic groups: see e.g. *Commission for Racial Equality v Dutton* [1989] QB 783; [1989] 1 All ER 306, CA) and *R (Baker and Others) op cit* n.97.

implementing their NRIS, to take measures to enforce the domestic legislation and increase Roma people's awareness of these rights.

Under the Human Rights Act 1998 schools and local authorities, as public authorities, must not act in ways that are incompatible with an ECHR right (subject to some exceptions);¹⁰¹ and alleged breaches of Convention rights are justiciable in a court or tribunal.¹⁰² As public authorities, the courts must also comply with the Act, and UK legislation must be 'read and given effect' in a manner consistent with the Convention.¹⁰³ A court or tribunal considering a Convention right must take into account any Strasbourg jurisprudence.¹⁰⁴ However, the UK courts regard the A2P1 right to education as offering limited guarantees of access to any specific form of provision and little more than entitlement to basic provision.¹⁰⁵ Recently, however, the UK Supreme Court in *Tigere* concluded that given education's fundamental role in furthering human rights, A2P1 'should not be given a restrictive interpretation'.¹⁰⁶ Here a young woman, originally from Zambia, had only discretionary leave to remain in the UK and therefore lacked eligibility for a student loan. The Court by a majority concluded that the policy's targeting of resources on those likely to stay in the UK and contribute to the economy had a disproportionately adverse impact on some students – one which could easily have been ameliorated through loans – and constituted unjustifiable discrimination. Lady Hale endorsed the robust approach in *Ponomaryov v Bulgaria*,¹⁰⁷ where charges for education provided in Bulgaria to boys born in what is now Kazakhstan, when Bulgarians faced no charges, constituted unjustifiable discrimination. *Tigere* is significant for minorities such as Roma not only by acknowledging the importance of financial support as integral to the right to education¹⁰⁸ but also by underlining the state's burden in justifying education-related policy with a discriminatory impact.

¹⁰¹ Human Rights Act 1998, s.6.

¹⁰² *Ibid* s.7.

¹⁰³ *Ibid* s.3.

¹⁰⁴ *Ibid* s.2.

¹⁰⁵ See in particular *Ali v Headteacher and Governors of Lord Grey School* [2006] UKHL 14 and *A v Essex County Council* [2010] UKSC 33; and Harris (2013: 897-901).

¹⁰⁶ *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 57 [2015] ELR 455 per Lady Hale at [23].

¹⁰⁷ (2011) 59 EHRR 799.

¹⁰⁸ Cf *R (Hurley and Moore) v Secretary of State for Business, Innovation and Skills* [2012] ELR 297; *R (Douglas) v North Tyneside Metropolitan Borough Council and the Secretary of State for Education and Skills* [2004] ELR 117; and *Diocese of Menevia, the Governors of Bishop Vaughan Catholic Comprehensive School and W (by her litigation and best friend SC) v City and Council of Swansea Council* [2015] ELR 389 (in which Wyn Williams J (at

Recognition of limited access to education of Roma and similar groups can be found in the Plowden report on primary education in 1967¹⁰⁹ and the Swann (1985: ch.16) report on education of children from ethnic minorities. Decades later this problem remains, with these children poor school attenders and at greater risk of exclusion from school than others.¹¹⁰ In 2014-15, the overall average pupil absence rate in England was 4.6% but was 13.2% among Roma and Gypsy children (Department for Education/National Statistics, 2016b: 6); and Roma and Gypsy children had six times the average incidence of permanent exclusion and over four times that of fixed-term exclusion (Department for Education/National Statistics, 2016a: table 8).¹¹¹ The UN Committee on the Rights of the Child has long called for measures in the UK to address the Roma and Gypsy exclusion rate (Committee on the Rights of the Child, 2002: paras 47 and 51).

Cultural and social factors contributing to these problems include family concerns about formal education potentially undermining their way of life; clashes between the Roma community's cultural norms (such its emphasis on early financial dependence and family formation) and formal education requirements; and a preference for acquiring skills and knowledge via the family/community rather than in school (Foster and Norton, 2012).¹¹² Another factor is parental failure to give schools advance notice of a family's move of area (BEMIS, 2011: 40). The assumption that education is not valued within Roma, Gypsy and Traveller communities has, however, been challenged (see Hamilton et al., 2007: 105). Nevertheless, parents' own unhappy experience of formal education and their concerns about bullying and discriminatory behaviour generate antipathy towards participation (ibid: 39-41). The problem is compounded by negative attitudes towards these communities within the wider population (see e.g. Ormston et al., 2011). A failure, due to being in

[87]-[89]), agreeing with an earlier ruling (*R (R and Others) v Leeds City Council/Education Leeds* [2006] ELR 25) on the same issue, held that subsidising or paying for transport between home and school was not a necessary part of the obligation to ensure education in accordance with a parent's religious beliefs for the purposes of A2P1).

¹⁰⁹ 'Most of them do not go to school, and the potential abilities of those who do are stunted. They tend to be excluded by their way of life and their lack of education from entering normal occupations and confined to others that compel continuing travelling: Central Advisory Council for Education (England) (1967: para 155 and Vol.2 Appx 12). See also Cemlyn and Clark (2005).

¹¹⁰ As noted in Committee on the Rights of the Child (2016b: para 72). On achievement rates, see Foster and Norton (2012).

¹¹¹ These figures relate to exclusion from state-funded schools.

¹¹² See also the factors uncovered by Penfold (2015: 19-23), such as disorganisation.

unregistered self-employment, to receive in-work social security benefits can affect access to free school meals, while low incomes render school uniform and footwear and sports clothing potentially unaffordable (Foster and Norton, 2012: 94-95). The lack of settled accommodation can also hamper the securing of a school place (ibid: 96). Indeed, research has shown how some Roma families have settled in houses in order to be able to access education (Smith and Greenfields, 2012: 54). Roma education participation rates are higher among those living in settled encampments or housing (Derrington and Kendall, 2004). This reinforces the importance of local authority site provision.¹¹³ Access to education often features in litigation challenging absence of housing or sites for Roma and others,¹¹⁴ as in *Coster* (above).¹¹⁵

Responsibility for responding to the needs of Roma and Gypsy children is now largely devolved to the governments and legislatures of the constituent countries. Much of the ensuing discussion focuses on England, where a large majority of Roma in the UK live. The Education Reform Act 1988 empowered central government to make grants for educational provision for anyone who 'by reason of his way of life (or, in the case of a child, his parent's way of life)... either has no fixed abode or leaves his main abode to live elsewhere for a significant period of the year'.¹¹⁶ This provision continued in the Education Act 1996,¹¹⁷ by which time grants supported the education of Roma, Gypsy and Traveller children at over 3,000 schools (Ofsted, 1996). By 1999 a large majority of local authorities were receiving grants (HM Government, 1999: para 9.49.1).¹¹⁸ Nevertheless, these children were still well behind other groups academically, particularly on entry to secondary education, where a majority were officially classified as having special educational needs (SEN) (Ofsted, 1999: paras 36-38) – even though SEN, as defined, exclude poor ability in English or religious or cultural needs and only include an inherent 'learning difficulty' or a disability hindering

¹¹³ The shortage of it remains a concern (see CESCR 2016b: para.49).

¹¹⁴ See e.g. *Connors* n.81 above.

¹¹⁵ Note 80 above.

¹¹⁶ Education Reform Act 1988, s 210.

¹¹⁷ EA 1996, s 488. See also the Education (Grants) (Travellers and Displaced Persons) Regulations 1993 (SI 1993/569) (as amended).

¹¹⁸ These grants were subsumed into Vulnerable Children Grants in April 2003: see Department for Education and Skills, 2004.

access.¹¹⁹ By age 13-14 many of these children, especially boys, had opted out of education and very few went on to gain GCSEs¹²⁰ or further qualifications.

In the early 2000s the concerns were highlighted by Ofsted (2001; 2003), although attendance in primary schools was improving (Ofsted 2003: para. 19). New central guidance in England and Scotland was issued to local authorities (including Department for Education and Skills, 2003; Scottish Executive et al., 2003), but by 2007/08 the attainment gap remained (Committee on the Rights of the Child, 2008b: para.476). Unequal educational access of Roma, Gypsy and Traveller children was highlighted by the UK's Children's Commissioners (2008: para.128) and the UN Committee on the Rights of the Child (2008a: para.66). Yet the problems were not being ignored by the state. Many local authorities had a 'Traveller Support Service'; and the Labour Government's *Aiming High* strategy for raising achievement levels included a distinct focus on Gypsy, Roma and Traveller children, with a specific support programme in some areas (Department for Education and Skills, 2003; Committee on the Rights of the Child, 2008b: paras 557-561). By 2010, the 'focused efforts and targeted interventions' in England were 'beginning to make an impact', but these children, as a group, remained 'amongst the most vulnerable' and academically under-achieving (Wilkin et al., 2010: viii-ix). At the end of the decade only 25% of 10-11 year old Roma, Gypsy and Traveller children reached the expected national attainment levels in Mathematics and English compared to 74% of the entire age group; and only 12% obtained five or more GCSEs compared to 58.2% of the age group (DCLG, 2012: para.2.1).

The UK's post-2010 coalition government established a ministerial working group on this issue. It reported that 'financial deprivation, low levels of parental literacy and aspiration for their children's academic achievement, poor attendance and bullying' were the critical factors (DCLG, 2012: para.2.2). The ministerial group decided that school inspections should focus on pupils' progress, attainment and attendance; and financial support should be piloted, with a 'senior dedicated individual' appointed to 'champion' Roma children's interests, 'monitor and respond' to attainment and attendance levels, and provide training and support to schools (DCLG 2012: para.2.6). Alternative provision for Roma children

¹¹⁹ Children and Families Act 2014 s.20 and *G v London Borough of Barnet and the SENT* [1998] ELR 480.

¹²⁰ National qualifications taken by most young people, usually at ages 15-16.

excluded from school would also be monitored. It was also proposed to repeal the law¹²¹ excusing non-attendance at school for children of families earning their living travelling from place to place, as recommended many years earlier by Swann (1985: ch.16, para.27). In 2016-17 the progress made in achieving these commitments has been the subject of an inquiry by the House of Commons Women and Equalities Committee,¹²² which has yet to report its findings and conclusions. Since 2012 there have been further government commitments of financial support for schools and local authorities aimed at raising levels of ethnic minority achievement.¹²³ But still fewer than one in seven Roma and Gypsy children gained five or more good GCSE grades in 2013/14 (Equality and Human Rights Commission, 2016: 18).

In Scotland, where Gypsies' and Travellers' 'self-exclusion' has hindered their educational progress (Padfield, 2005), there has been a government action plan, supported by a Scottish Traveller Education Review Group; and the Scottish Traveller Education Programme provides training and support programmes.¹²⁴ In Northern Ireland, Traveller children's continuing education barriers and exclusion (see Bloomer et al 2014) prompted the Northern Ireland Equality Commission (2006) to develop an equality-based strategy for improved participation (ECNI 2006 and 2008), while the government revised its long-standing support guidelines in 2010 (DENI 2010). In Wales, a catalyst for change was Estyn's¹²⁵ finding that few schools had policies, strategies or practices specifically addressing the needs or views of Roma, Gypsy and Traveller pupils and parents (Estyn, 2011: 2). Segregation of a kind was also present in a minority of areas; some of the children were 'inappropriately taught in separate discrete units for their entire secondary education' (Estyn, 2011: 1, para.4). Nor did many Welsh schools offer a culturally-tailored curriculum for this group. But in one school pupils 'spent time learning about the Holocaust and its devastating impact on the Roma community and then went on to study Roma and Gypsy

¹²¹ Education Act 1996, s.444(6).

¹²² See <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/inequalities-faced-by-gypsy-roma-and-traveller-communities-16-17/> (last accessed 3 February 2017).

¹²³ Via the Dedicated Schools Grant (£201 million nationally was allocated). Schools could, for example, fund community outreach work with Roma, Gypsy and Traveller children.

¹²⁴ See <http://www.step.education.ed.ac.uk/what-we-do/> (last accessed 10 August 2016). STEP was established in 1991.

¹²⁵ Estyn is the Welsh equivalent of Ofsted.

Traveller culture’ (Estyn, 2011: 10 para.38). Responses to non-attendance varied. Some local authorities believed prosecution to be counter-productive because it weakened parental co-operation (Estyn, 2011: 9, para.35).

Responding in 2012 to the EU’s Roma Framework call, the UK highlighted various of these initiatives and contrasted the inclusion of migrant Roma children with their treatment in other Member States:

‘85% of the Roma pupils interviewed had been placed in special schools or de facto segregated schools in their countries of origin, but... only a small cohort of Roma pupils at the UK schools surveyed were regarded as requiring special educational needs because of learning difficulties or disabilities. For these Roma, this help was given in mainstream schools’ (HM Government, 2012: 6-7).

Bullying of migrant Roma pupils by others, still commonplace¹²⁶ and a factor in parental indifference or antipathy to their child’s participation in school (Foster and Norton, 2012: 97), is reportedly much less prevalent in the UK schools than elsewhere.¹²⁷ There is also evidence of Roma families’ improved engagement in the education system due mostly to efforts to foster their trust (Scullion and Brown, 2013: 36-37). Also, a small survey in England by Ofsted (2015) has found a strong school and local authority commitment to improving the engagement and achievement of Roma children originally from Eastern Europe, with a culture of welcoming new Roma pupils, whose inclusion did not impact adversely on other pupils’ achievement levels. Nevertheless, new Roma pupils with little previous formal education could find school routines, behavioural standards and the primary-to-secondary school transition problematic (see also Penfold 2015). There was a risk of not receiving targeted support due to their parents’ unwillingness to disclose their Roma ethnicity (due to fear of discrimination) or because they were from itinerant families or, particularly at secondary level, dropped out of school. There was also a shortage of suitably qualified and experienced teachers in learning English as an additional language. Non-English mother

¹²⁶ In one survey in England, two-thirds of Roma children or young people reported having been bullied and/or physically attacked: Ureche and Franks (2007: 4). See also Equality and Human Rights Commission (2016: 19-20 and 53).

¹²⁷ These findings appear to be based on the Equality (2012) report.

tongue teaching and bilingual in-class support in the UK are far from guaranteed (Penn and Lambert 2009: 56-57; Penfold, 2015: 28), although efforts to provide it are commonplace in schools with significant migrant numbers. In 2013 over one million children aged 5–16 in England had a first language known or believed to be other than English (Arnot et al., 2014: 13).

One final point concerns home education. Elective home education (EHE) (chosen by parents) of Roma, Gypsy and Traveller children has been increasing for some years, particularly at the secondary stage (Ofsted, 2003). Evidence from Wales has revealed a ‘rolling stone effect’: ‘once one family opted for EHE, this news spread around the community and several families followed suit’ (Fensham-Smith, 2014: para.6.25). There are, however, concerns about the quality of home education and of the books and other resources available to support it, and about its contribution to achievement (Ofsted 2003: paras 27-28). A majority of the Welsh study’s parents opting for EHE were ‘illiterate’ (Fensham-Smith, 2014: para.6.26). Home education is not covered by Ofsted inspection; local authorities can monitor it under their role of enforcing the parental duty to ensure a child receives a suitable full-time education at school or ‘otherwise’,¹²⁸ but there are persistent doubts about EHE’s effectiveness and concerns it places children at increased risk of harm or radicalisation (Fensham-Smith, 2014; Monk, 2016). That is not to suggest that home-educated Roma children are at any greater risk from EHE than other children whose families have opted for it, but it means that in view of the concerns about EHE, its increased take-up among Roma, Gypsy and Traveller children of home education could be problematic.

Overall, while the various barriers to Roma children’s access to education and academic attainments appear resistant to legal and policy solutions, and under-achievement is still acute (see e.g. Tereshchenko and Archer 2014), there has been a steady improvement in provision and support as experience and expertise have grown. Nevertheless, there is a danger that in seeking to manage the pressures arising from the large influx of migrant

¹²⁸ Education Act 1996, ss 7 and 437. The inclusion of ‘otherwise’ in s.7 provides authority for EHE. See further Monk (2009).

children¹²⁹ – there was, for example, a net increase of 565,000 in the UK's migrant population between 2011 and 2014¹³⁰ – and amid continuing concerns about limited access to education for the 'undocumented' children of asylum seekers or illegal entrants (see Dorling, 2013 and FRA 2011: ch.7), the realisation of the right to education of Roma, Gypsy and Traveller children could be under-prioritised. Furthermore, the EU has funded various specific local Roma projects¹³¹ which have made a positive contribution to educational attainment (see Morris, 2016), but the UK's anticipated withdrawal from the EU could jeopardise future funding for such work (Morris, 2016: ch.4).

B. SWEDEN

In the 1950s a group was identified as 'Swedish Roma', i.e. Roma with Swedish citizenship, including those who obtained a residence permit in Sweden (Montesino, 2010: 48). Since then 'Roma' has been the official term to denominate also 'Travellers' and 'Gypsies', terms considered derogatory in Sweden. However, Swedish Roma do not comprise a homogenous group, nor one with fully shared expectations on, and participation in, education (Skolverket, 2007: 54).

The history of the Roma in Sweden is a difficult one. As early as 1637 a law was enacted classifying them as outlaws and providing for the Crown to pay anyone who took the life of a Roma. Over time the brutal measure came to be replaced via new rules outlawing vagrancy, which in turn were finally abolished in 1965, partly as a result of a comprehensive investigation into the situation of Roma (Abertsmark Departementet, 2014: 26). The investigation also resulted in a pilot project to teach Roma children in public elementary schools, which had previously not been allowed. Around the same time a project began in Stockholm to give Roma permanent residence in apartments (Abertsmark Departementet, 2014: 195-196). Large parts of the Roma population in Sweden in the late 1960s and early 1970s were becoming permanent residents and gave up their travelling lifestyle, leading to

¹²⁹ Such as shortage of school places (see e.g. Silverman, 2013, referring to a 'restricted' (ie unpublished) report by the Department for Education). Also, large influxes of children with limited English language skills (see House of Commons Communities and Local Government Committee, 2008: para.32).

¹³⁰ Migration Observatory tables 1 and 2 at <http://www.migrationobservatory.ox.ac.uk/number-foreign-born-local-area-district> (last accessed 9 March 2015).

¹³¹ For example, the H.E.A.R.T ('Help Educate All Roma Together') project (Morris, 2016: 20).

an increasing number of Roma children admitted to mainstream schools (Abertsmark Departementet, 2014: 234).

The right to education is a fundamental part of Swedish education law and enshrined in the Constitution¹³² as well as guaranteed by the Education Act (*Skollagen*) in providing for compulsory schooling (from the year of turning seven to completion of the ninth grade).¹³³ The right applies equally to all schoolchildren but also embodies rules promoting the interests of children with disabilities and other forms of disadvantage. The Act specifically takes into consideration the culture, language and tradition of the Sami people, while for the other minority groups there is only one specific rule, which guarantees a right to some mother tongue teaching,¹³⁴ although it seems little invoked by Roma families, partly because (as in the UK) some want to hide their Roma background to fear of discrimination or harassment (CAHROM, 2013: para.4.4). There is, in any case, a shortage of teachers in the Romani language (Halleröd, 2011: 4). For this reason, but also the extra cost, some municipalities do not guarantee mother tongue teaching (Catholic International Education Office Human Rights Council, 2015: para.5). In a study by the Swedish School Inspectorate in 2012, only five out of 22 municipalities could provide it in Romani Chib (Skolinspektionen, 2012).

Over 80% of children aged 1-5 years in Sweden attend pre-school, but very few Roma children do, placing them 'at a disadvantage in later school years' (CAHROM, 2013: para.2.4.4). Many Roma children do not attend school regularly, but their absences tend not to result in enforcement action, leading to the description 'the forgotten children' (Catholic International Education Office Human Rights Council, 2015: para.7). There is also evidence that teachers 'tend to have lower expectations about Roma children attending school, which also sometimes results in insufficient efforts to address school absence' (CAHROM, 2013: para.2.4.4). Roma children in Sweden have significantly poorer school results than other groups; and very few leave ninth grade with pass grades (see e.g. Liedholm and Lindberg, 2010). This leads to disadvantage within the labour market (Arbetsgruppen, 1997: 39).

¹³² Swedish Constitution, Instrument of Government, chapter 2 art.18

¹³³ Swedish Education Act chapter 7 art.10 and 12

¹³⁴ Swedish Education Act, chapter 10 art. 7

The Discrimination Act 2008 proscribes discrimination on racial and other prescribed bases in educational provision. Providers must also promote equality actively. Although Roma children have clearly been victims of discrimination, over the last ten years school-related complaints have decreased and there are reportedly few relating to Roma (Diskriminerings Ombudsmannen, 2011: 60). According to the Discrimination Ombudsman the school is now an arena experiencing little discrimination against Roma, although the extent of unreported cases is unclear (Diskriminerings Ombudsmannen, 2012: 22). Reports by this Ombudsman from 2002 and 2003 showed that about 90% of surveyed Roma pupils felt that Sweden was a racist country and that they were victims of discrimination (Skolverket, 2007: 9; Ombudsmannen mot etnisk diskriminering, 2004). Although the picture has improved there is still evidence of bullying of Roma children in school (Catholic International Education Office Human Rights Council, 2015: para.7) and stigmatisation (Wigerfelt and Wigerfelt 2015).

How the goals and visions on Roma inclusion and better education, consistent with the EU Race Equality Directive,¹³⁵ are to be achieved is a question the Swedish authorities address by inviting Roma organizations to an ongoing dialogue, albeit one taking place on unequal terms. The radical change in political discourse has in fact improved the relationship between the authorities and Roma (Montesino, 2010: 48). In 2012 the Swedish government established a long-term strategy for better social inclusion for resident Roma (see Ministry of Employment, 2012) in conformity with the EU's NRIS framework noted earlier. It extends over a 21-year period and aims to strengthen Sweden's existing minorities policy (which applies to five minorities recognised for this purpose – Sami, Sweden Finns, Jews, Roma and Tornedalians). The government allocated SEK 46 million for the Roma inclusion strategy between 2012–15. The strategy includes academic training for people with Romany language and cultural knowledge for future employment as a 'bridge builders' in education and other services, to bridge the mutual trust gap sometimes existing between Roma and others (Skolverket, 2016). Nevertheless, only 15 people were trained as bridge builders before 2015, and the initiative has so far had a minor impact despite being positively assessed (Skolverket, 2013: 4). The government has now announced that 20 persons a year will be trained. This is welcome, as a key to better integration is increased cultural

¹³⁵ Roma are identified for this purpose: see FRA 2012.

awareness, in which education plays a crucial role. However, Sweden's record of discussing Roma issues and pupils' knowledge of Roma culture have not been strong.

A particular legal issue regarding educational inclusion of Roma in Sweden relates not so much to the majority of Roma who are long-term residents, but rather the minority who are EU migrants. Since 2013, most migrant children, regardless of whether their families have a full residence permit, have been guaranteed the right to education under the Education Act. Therefore asylum seekers and those with temporary residence permits are covered by such a right.¹³⁶ Children of EU nationals with a right to reside under EU law, such as when working in Sweden (see below), as well as those that illegally remain in the country after an expulsion, are also covered. Unlike Swedish citizens, however, their right is not also protected under the constitution. While this does not affect the enforceability of the right, it does mean it is more vulnerable to possible legislative withdrawal.

For EU migrants *without an EU right to reside*, which will be the case for many Roma arriving in Sweden, there is a problem however. The EU Charter of Fundamental Rights, which is superior to national Swedish law, provides in Art.14 for a right to education, as noted earlier, and has since 2009 been part of the Lisbon Treaty and therefore part of primary EU law. EU law takes precedence over Swedish law when applicable.¹³⁷ The decisive factor in the individual case is, however, how the domestic courts and other public agencies interpret the Charter. In one notable Swedish case,¹³⁸ it was made clear by the CJEU that the Charter should be applied in the parts where it is concrete and where the EU has competence. Obviously, the EU has it in respect of basic issues rooted in the EU freedom of movement principle. The problem is that many EU Roma migrants in Sweden fail to qualify for a post-3 months' right to reside under EU law because they are unable to meet the qualifying conditions relating to employed/self-employed or self-sufficient status.¹³⁹ Since Swedish law has viewed others staying in the country unlawfully – usually because they are avoiding the implementation of a decision on expulsion – as worthy of protection, and has recognised

¹³⁶ See Education Act, Chapter 29 Section 2.

¹³⁷ Act (1994:1500) on Sweden's accession to the European Union, Section 3. The Charter's applicability is defined in Article 51 and the scope of the rights is defined in Article 52.

¹³⁸ In Case C-617/10 in Haparanda District Court by the February 26, 2013, the court left an advance ruling in a tax case which also included questions about VAT. Since VAT is harmonized within the EU and is the basis of each Member State's contribution to the EU, the Charter was considered to be applicable in this case.

¹³⁹ Directive 2004/38/EC (the Citizenship Directive), Art.7.1.

their right to education,¹⁴⁰ as noted above, an unresolved question is when an EU migrant without a right to reside should nevertheless have access to the free education system. Would they, if in Sweden for more than three months, have the possibility of getting access to the school as an ‘illegal’ resident, under the Education Act? In the light of the overall purpose of the EU Charter the latter interpretation could win support. It is clear, however, that there is a political unwillingness to clearly define the obligations of public agencies to ensure Roma EU migrants’ right to education.

In seeking to enforce such a right, the Schools Board of Appeal¹⁴¹ has jurisdiction and its decisions cannot be appealed further.¹⁴² Legal challenge via the courts is generally precluded.¹⁴³ In a 2015 case that received much national attention, the Board examined whether a Roma family from Bulgaria who had stayed in Sweden for more than three months had a right to education for their child.¹⁴⁴ The Board had no jurisdiction over the issue of a right to education for those staying in Sweden illegally. Instead, the case was confined to the question of the child’s right to education derived from the parents’ status as workers or the equivalent. The Board concluded that as the parents supported themselves only through begging they were not equivalent to workers. After considering the EU Charter and the CJEU’s ruling in *Ibrahim*¹⁴⁵ it nevertheless found that while education is an area covered by EU law the Charter did not take precedence over national law (the Education Act) in the case. As this is the only case to date on this issue it is hard to identify an established practice. Interestingly, the Swedish School Inspectorate, which generally follows the Board’s decisions, in January 2016 came to a very different conclusion, finding that a Polish boy whose parents (non-Roma) had resided in the country for more than three months and had no employment, and were therefore illegally in Sweden, had the right to education under the Education Act.¹⁴⁶

¹⁴⁰ Chapter 29 Sections 2, part 2 point 5 of the Swedish Education Act.

¹⁴¹ In Swedish: Skolväsendets överklagandenämnd (ÖKN).

¹⁴² There is still a possibility though to appeal to the European Court of Human Rights (ECtHR).

¹⁴³ See Chapter 28 of the Swedish Education Act.

¹⁴⁴ Decision (No. 2014: 556) on February 16, 2015.

¹⁴⁵ *London Borough of Harrow v. Nimco Hassan Ibrahim and the Secretary of State for the Home Department*, (Case C-310/08, Section 48).

¹⁴⁶ Case Dnr 41-2015:8526, 13 January 2016.

But the prevalent view within the Swedish authorities is that there is no obligation to guarantee EU migrants without an EU right to reside any education or training, regardless of how long they have stayed in Sweden. The Swedish Association of Municipalities, which has practical responsibility for providing schooling and ensuring the right to education, including in independent schools, does not consider that it is a requirement under the international conventions, even the EU Charter or the ECHR (SKL, 2016). According to one survey only 6 out of 136 respondent municipalities offered schooling to the children of such EU migrants (Anon, 2015). The question ‘why’ can rightly be asked, since a major issue of public expense would not arise. Of course, Swedish schools would not violate the law by an *ex gratia* acceptance of Roma children from, for example, Bulgaria or Romania, for example, without an EU right to reside. On the contrary, the Education Ordinance¹⁴⁷ gives an explicit opportunity to go beyond what the law provides.

Therefore, although the current content of the Education Act has ensured a larger group of children who reside in Sweden than previously benefit from the right to education, it has resulted in Roma children from other EU countries, who lack an EU right to reside, being largely removed from its scope. In practice this means that non-Swedish EU citizens are in a worse position regarding access to education than children coming to Sweden from a non-EU country. The harsh legal framework and the absence of national policies regarding EU migrants in general, and Roma migrants in particular, show that inclusion, as well as involving an actual right to education, depends very much upon the right to reside (see Erhag, 2016).

A final point to note is how the Swedish legal system attaches a rather low value to the international conventions. We have already referred to the rather weak status accords the CRC. So far as the ECHR is concerned, although it has been part of domestic law since 1995 and comprises written law, with the equivalent formal status to any Swedish law – if not higher¹⁴⁸ – the courts often regard it as having limited legal weight domestically (Wiklund, 2008: 192). This is despite the fact that a more correct legal *scientific* interpretation of the applicability of ECHR vis-à-vis education would regard it as affording all children of school

¹⁴⁷ Chapter 4 Section 2 of the Education Ordinance (2011:185).

¹⁴⁸ The Constitution states in Chapter 2 Section 19 that ‘Laws or other regulations shall not be granted in contravention of Sweden’s commitments under the European Convention for the Protection of Human Rights and Fundamental Freedoms’.

age living in Sweden, regardless of length of stay, a right not to be denied education and an entitlement to schooling.

4. Educating Roma children: rights and wrongs – some comparisons between the UK and Sweden

Analysis of the UK and Swedish approaches to the right to education for Roma children, in the specific national legal and social contexts, reveals that while the provision of education to these children is a topic of concern in both jurisdictions the issue of their inclusion in mainstream education gives rise to contrasting legal problems and levels of practical achievement.

Sweden and the UK have each ratified relevant core international human rights instruments and have clearly largely embraced the norms to be identified within the nexus of a 'right to education', albeit with reservations entered in relation to the ECHR A2P1. The UK, unlike Sweden, has not ratified the revised European Social Charter nor the Collective Complaints procedure, thereby denying Roma groups access to a legal arena that has on occasion been used to promote their interests elsewhere. The CRC presents clear obligations to protect all children's education rights in a culturally sensitive way and arguably has had a guiding influence on some areas of national policy, but it has not been formally incorporated into domestic legal or constitutional frameworks in either country nor is there much evidence to date that Roma children and young people have been able to participate in the exercise of the relevant rights. Nonetheless, in England the Children's Commissioner, in exercising her primary function of 'promoting and protecting the rights of the children of England', and when doing so determining such rights and interests, must have regard to the CRC and must also have particular regard to groups of children who may be 'at particular risk of having their rights infringed'.¹⁴⁹ Roma children clearly face such a 'risk' in the education context.

As we have seen, domestic protection of the right to education itself is afforded in Sweden via the constitution as well in public legislation, while in the UK the Human Rights Act underpins the right to education which is implicitly, rather than explicitly, guaranteed by

¹⁴⁹ Children Act 2004, ss.2(1) and (4) and 2A(1), as inserted by the Children and Families Act 2014, s.107.

national education legislation. In both countries Roma (usually alongside Gypsy and Traveller people in the UK) constitute a recognised minority, although in Sweden this may be more symbolic than having a practical bearing on educational provision. There is also formal legal protection under anti-discrimination law for Roma as a recognised ethnic minority and a positive obligation in both countries for public actors to seek to eliminate ethnic and other forms of discrimination. In Sweden there is an Ombudsman with an office working against discrimination, an institution with the capacity to make independent assessments but also initiate court action. In the UK, a similar function is undertaken by the Equality and Human Rights Commission, although the Children's Commissioner could also bring inequalities affecting particular groups of children to the attention of government or Parliament and look into them under her general power to investigate any matter relating to children's rights or interests.¹⁵⁰

Despite these domestic legal and institutional frameworks for the protection of Roma as a minority, with a view to ensuring equal access to education and other services, and in spite of strong evidence of discrimination against Roma, relatively few complaints are made by Roma themselves. Complaints of discrimination against Roma children in schools in Sweden have decreased drastically in recent years. This could be an indication of a remarkably positive development during the past decade and, if correct, a tribute to the 'universal Swedish model' of integration. However, it is very difficult to draw any conclusions as specific evidence is lacking and results can be interpreted in many ways. In the UK, the level of national and local initiatives to address educational barriers for this group has probably limited the basis for complaints.

One issue that emerges from the experience of Roma integration in both countries concerns the inter-relatedness of educational barriers and the wider social situation of this group. There is an argument to be made on the extent to which regulation and policies in the two countries ought to be governed by a logic of social citizenship or one of social human rights and especially children's rights. In a Swedish welfare state setting, the right to education is or has been dependent on other residence-based social rights that in turn govern access to state welfare provision. In Sweden, the right to education in its narrower context is about access to schooling, but there is also a wider context acknowledging that children in order to

¹⁵⁰ Children Act 2004, s.2(3)(h), inserted by the Children and Families Act 2014, s.107.

gain access to education need access to material welfare. However, Roma families in Sweden without formal resident status enjoy very limited social protections and this will impact on their education right. This has been less of an issue in the UK, but while the social environment of Roma children there, including a traveller lifestyle for some, is acknowledged as a potential barrier to educational success, education policies are not as such linked to housing and welfare benefit policies. Even so, from time to time the joined-up nature of these issues is reflected in cases concerning Roma or Gypsy traveller sites.

In Sweden, social rights for children of destitute Roma EU migrant citizens are unacknowledged and the right to education for the majority of Roma children is barely considered. Hopefully, in the long-term, systematic work spurred by the overall EU-Framework programme will improve the situation in Sweden, although there is a growing domestic competition for attention and resources. In the UK there are better protections and they continue despite the widespread public concern about immigration that influenced the EU referendum result in June 2016. When it comes to children's education it seems as if a human rights logic has influence in the UK compared to the strong social citizenship logic which holds sway in Sweden. Despite the universalist approach to social welfare in Sweden, based on a well-founded fear of effecting stigmatisation, the factual situation of migrant Roma children is governed by one of Europe's harshest policies governing their social rights, including education rights. The UK's approach, on the other hand, leans towards more targeted policies and legislation that allow actors to distinguish a traveller and/or Roma lifestyle as an education hazard, and act accordingly.

One of the factors in the divergent levels of provision for Roma children more broadly between the two states concerns the identification of Roma children. In the UK, Roma heritage features in the National Census and there appears no hesitation to develop Roma-specific, ethnically-based, programmes to stimulate integration. Indeed, identification of Roma, Gypsy and Traveller children in the UK, while problematic when families choose not to self-identify ethnically, has facilitated the development of policies and legislative provision for example, on allocating extra resources, grants, to schools working with Roma pupils and excusing unauthorised school absence of children from families with an itinerant occupation. In Sweden, however, while individual membership of a particular minority within the country is based on self-identification (Halleröd, 2011: 4), it is forbidden to create

any kinds of public data based on registration of ethnicity.¹⁵¹ This may have contributed to the failure to make specific provision for Roma children. Although the Swedish Education Act does recognize Roma as one of five national minorities, and Romani as a mother tongue, the rationale is not linked to a policy of allocating resources, nor addressing specific Roma educational needs. Sweden has a troublesome history of research in race biology in the 1930s followed for instance by a programme between 1934-1975 of forced sterilisations which affected a substantial proportion of women with Roma heritage. This history helps to explain why 'race' is a taboo word in a Swedish public context. 'Ethnicity' as a self-identified category is, however, considered acceptable, but public registration or collection of facts related to it is also for historical reasons impossible. An effect of this cultural element is a silence, lack of knowledge and at worse lack of action to secure that Roma children are targeted by measures to ensure their adequate education.

In addition to a failure to self-identify as Roma, common to both countries, there is also hesitation to provide information or have contact with the authorities, even as claimants of civil or social rights. There is still a significant trust barrier to be overcome. Consequently, the true picture regarding access to education is partly uncertain, more so in Sweden than in the UK. Nevertheless, there is at least good evidence, particularly in the UK, of the specific barriers standing in the way of greater access to adequate education among Roma children. Unlike in the UK, however, there has for at least the past five years been very little discussion in Sweden about Swedish Roma and their situation. Instead, there has been a broader focus on how to handle (or not handle) the social situation in general for poor Roma EU-citizens, often from Romania and Bulgaria. At the same time, there are in both states insufficient resources, such as teachers with appropriate knowledge and skills, to meet fully these children's needs.

A final contrast concerns the interaction between state and family interests in relation to education. On a legal level we have the Swedish ECHR A2P1 reservation and a ban on home-teaching, both of which restrict parental autonomy. In the UK, however, there is an

¹⁵¹ A register of people identified as Roma, maintained by Police in the Swedish county of Skåne, was held illegal in 2013 following an investigation by the Swedish Commission on Security and Integrity Protection. A court has held the list to be unlawful ethnic discrimination: see Radio Sweden news report (10 June 2016) at <http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6450629> (last accessed 24 November 2016).

apparently more permissive or open attitude towards parental influence in education, in part a reflection of its multiculturalist tradition, including a right to EHE and some sensitivity towards aspects of Roma culture, even though UK parents may face potential criminal liability over failing to ensure their child's regular school attendance. Regardless of whether the UK's approach is the more conducive to Roma integration, it seems overall to be more clearly in tune with the CRC's requirements.

5. Conclusion

For the children of the groups we have collectively discussed as 'Roma' people, there has been at the European and wider international level clear recognition their access to effective education alongside other children is central to three core aims: the greater social and economic inclusion of Roma communities; increased equality of status and opportunity for Roma people; and proper respect for their culture and traditions. These are additional to the right to education's normative aims concerning the social and intellectual development of the individual child and the realisation of his or her potential; and the socialising and social reproductive functions of education concerned with skills and knowledge acquisition and the instillation of specific values. Coming from such an educationally disadvantaged and marginalised social and ethnic group, indeed one that includes children who have been segregated from others within some educational settings, Roma children have rightly been the target of a range of international initiatives the realisation of whose underlying objectives has been dependent on effective national measures and provision. However, for the most part, the educational opportunities of Roma children have hinged not so much on the formal guarantees of equality and access to schooling but on the extent of the commitment by public agencies to counter the underlying social and familial barriers to participation.

Broadly, across Europe, including Sweden and especially the UK, the right to education of Roma children is acknowledged (although, as we have seen, for migrant Roma in Sweden there is something of a legal lacuna) and their situation vis-à-vis education has improved. Yet, as we have sought to show – highlighting Sweden and the UK as specific case studies – national pictures vary and overall there is still a considerable way to go. Indeed, it has for

example been argued that claims of success in helping Roma children towards realising their educational potential has been 'debatable' (Georgiadis et al. 2011: 105), while according to the European Commission, improvements in education for Roma children have not necessarily translated into improved economic (including employment) prospects (European Commission 2014c). There has even been a suggestion that inclusion practice may be a form of cultural imperialism, in the sense that mainstream education represents a majority practice that Roma are expected to incorporate into their way of life (Engebrigtsen, 2013); such viewpoints may at the very least question 'the extent to which schooling *in its traditional form* is appropriate to meet the needs of Roma' (Symeou et al., 2009: 518 (emphasis added)).

This of course raises more profound questions about the 'normalising' function of (state) education (see e.g. Foucault, 1991; Monk, 2000) and about liberalism and multiculturalism (e.g. Macedo, 1995; Kymlicka, 1995), particularly the extent to which minority cultures and practices which conflict with majoritarian values and conventions should be accommodated (see Lundy, 2005a; Harris, 2007). Consideration of these broader questions cannot be accommodated here, although we have noted that the CRC attempts at a pragmatic approach which seeks to protect minority cultural interests and traditions through education while not prescribing the shape or institutional frameworks for delivering the right to education. We have also seen how success in ensuring a culturally-sensitive approach to education for Roma children in Sweden and the UK has been partial. Arguably, this broader issue, while obviously important, is however transcended by the deep and chronic unmet educational need resulting from failure of participation and the 'interrupted learning' (O'Hanlon, 2010: 247) among Roma children, despite some improvement. Recognition of Roma children's equal right to education, which has occurred on a more comprehensive and substantive basis in the UK than in Sweden, illustrating the international inconsistency in this policy area, is only the starting point in addressing this situation.

REFERENCES

- Abertsmark Departementet (2014), *Den mörka och okända historien - Vitbok om övergrepp och kränkningar av romer under 1900-talet*, Ds 2014:8 Stockholm, Regeringskansliet.
- Ackers L. and Stalford H. (2004), *A Community for Children? Children, Citizenship and Internal Migration in the EU* Aldershot, Ashgate

- Alexiadou, N. and Norberg, A. (2015) *Roma, Education, and Higher Education policies: The International Context & and the Case of Sweden*. Report as part of the Higher Education Internationalisation and Mobility: Inclusion, Equalities and Innovation Project. Marie Skłodowska-Curie Actions, Research and Innovation Staff Exchange, Horizon 2020. Grant agreement No. 643739.
- Amnesty International (2011) *Briefing: human rights on the margins, Roma in Europe*, London: Amnesty International
- Anon (2009) *Sweden RAXEN National Focal Point: Thematic Study: Housing Conditions of Roma and Travellers* online at: http://fra.europa.eu/sites/default/files/fra_uploads/595-RAXEN-Roma%20Housing-Sweden_en.pdf (last accessed 25 November 2016).
- Anon (2015) 'Få barn till EU-migranter får skolgång', *Svenska Dagbladet*, 2 January, 2015 at <http://www.svd.se/fa-barn-till-eu-migranter-far-skolgang> (last accessed 22 November 2016).
- Arabadjieva K. (2016), 'Challenging the school segregation of Roma children in central and Eastern Europe' *Int. Journal of Human Rights*, 20(1), 33-54.
- Arbetsgruppen (1997) *Romer i Sverige – tillsammans i förändring* Ds 1997:49 Stockholm, Inrikesdepartementet
- Arnot M., Schneider C., Evans M., Liu Y., Welply O. and Davies-Tutt D. (2014), *School Approaches to the Education of EAL students* Cambridge, The Bell Foundation
- Arzoz, X. (2010) 'Accommodating Linguistic Difference: Five Normative Models of language Rights', *European Constitutional Law Review*, 6, 1, 102-122
- Barbas Homem, A.P. (1996) 'Right to Education and Minorities: Portuguese report' in J. De Groof and J. Fiers (eds), *The Legal Status of Minorities in Education* Leuven, Uitgeverij Acc, 273-283.
- Bartlett, W., Benini, R. and Gordon, C. (2011) *Measures to promote the situation of Roma EU citizens in the European Union*, Report for the European Parliament, Brussels: Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs
- BEMIS (Black and Minority Infrastructure in Scotland) (2011), *Gypsy Travellers in Contemporary Scotland* Glasgow, BEMIS
- Bloomer, F., Hamilton, J. and Potter, M. (2014), 'Challenges and barriers in primary school education: The experiences of Traveller children and young people in Northern Ireland', *Education, Citizenship and Social Justice*, 9, 1, 3-18.
- Brown, P., Dwyer, P., Martin, P. and Scullion, L. (2014) *Roma Matrix Interim Research Report*, Salford: University of Salford, online at: <https://romamatrix.eu/roma-matrix-interim-research-report> (last accessed 25 November 2016)
- Brown, P., Martin, P. and Scullion, L. (2014) 'Migrant Roma in the United Kingdom and the need to estimate population size', *People, Place and Policy*, 8 (1): 19-33
- Brown, P., Dwyer, P., Martin, P., Scullion, L. and Turley, H. (2015) *Rights, responsibilities and redress? Research on policy and practice for Roma inclusion in ten Member States*, Salford: University of Salford, online at: <https://romamatrix.eu/research/final-research-report> (last accessed 25 November 2016).
- CAHROM (Ad Hoc Committee of Experts on Roma Issues) (2013), *Thematic Report On School Attendance Of Roma Children, In Particular Roma Girls* CAHROM (2013)5 Strasbourg, Council of Europe

- Cashman, L. (2016) 'New label no progress: institutional racism and the persistent segregation of Romani students in the Czech Republic', *Race Ethnicity and Education*, DOI: 10.1080/13613324.2016.1191698).
- Catholic International Education Office, Human Rights Council (2015), *Universal Periodic Review (UPR) 21st Session, Sweden. Key Issue: Right to Education* [file:///C:/Users/mlssnsh/Downloads/OIEC UPR21 SWE E CoverPage%20\(2\).pdf](file:///C:/Users/mlssnsh/Downloads/OIEC%20UPR21%20SWE%20E%20CoverPage%20(2).pdf) (last accessed 22 November 2016).
- Cemlyn S. and Clark, C. (2005), 'The social exclusion of Gypsy and Traveller Children', in G. Preston (ed), *At Greatest Risk. The Children Mostly Likely to be Poor* (London: CPAG), 150-165
- Central Advisory Council for Education (England) (chair: Lady Plowden) (1967), *Children and their Primary Schools, Volume 1: Report* London, HMSO
- CESCR (Committee on Economic, Social and Cultural Rights) (1999), *Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No, 13 (Twenty-first session, 1999), The right to education (Article 13 of the of the Covenant)*, Geneva, UN.
- CESCR (2016a), *Concluding observations on the sixth periodic report of Sweden*, 14 July 2016 (Strasbourg, Council of Europe, 2016),
- CESCR (2016b), *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, June 24, 2016 Strasbourg, Council of Europe
- Churchill R.R. and Khaliq, U. (2004) 'The Collective Complaints System of the European Social Charter: An Effective mechanism for Ensuring Compliance with Economic and Social Rights?' *European Journal of International Law*, 15, 3, 417-456
- Clark C. (1998) 'Counting Backwards: the Roma "numbers game" in Central and Eastern Europe'. *Radical Statistics*, 68, 4
- Clarke C. (1999), 'Race, ethnicity and social security: the experience of Gypsies and travellers in the United Kingdom' *Journal of Social Security Law* 186-202
- Commission of the European Communities (2004), *Commission Staff Working Paper: Progress Towards the Common Objectives in Education and Training: Indicators and Benchmarks*, Brussels, 21.1.2004, SEC (2004) 73
- Commission of the European Communities (2008), Green Paper, *Migration & mobility: challenges and opportunities for EU education systems*, Brussels, 3.7.2008 COM(2008) 423 final
- Committee of Ministers (2012), *Council of Europe Strategy for the Rights of the Child (2012-2015)* (CM(2011)171 final) online at <http://www.coe.int/t/DGHL/STANDARDSETTING/CDcj/StrategyCME.pdf> (last accessed 18 November 2016).
- Committee on the Rights of the Child (2002), *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, 9 October 2002 Geneva, United Nations
- Committee on the Rights of the Child (2008a), Forty-ninth session, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4) 20 October 2008 Geneva, UN
- Committee on the Rights of the Child (2008b), *Third and Fourth Periodic Reports of States Parties Due in 2007: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/4) 25 February 2008 Geneva, UN

- Committee on the Rights of the Child (2014), *Concluding observations on the combined third, fourth and fifth reports of Hungary* (CRC/C/HUN/CO/3-5) (2014).
- Committee on the Rights of the Child (2016a), *Concluding observations on the fifth periodic report of France* (CRC/C/FRA/CO/5).
- Committee on the Rights of the Child (2016b), *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/5).
- Council of Europe (2011a) *Defending Roma human rights in Europe*, Brussels: Council of Europe.
- Council of Europe (2011b) *Protecting the rights of Roma*, Strasbourg: Council of Europe
- Council of Europe (2012) *Council of Europe Strategy for the Rights of the Child (2012-2015)* CM(2011)171 final, Strasbourg, Council of Europe.
- Council of Europe (2016) Governmental Committee of the European Social Charter and the European Code of Social Security, CG(2016)13 *International Non-governmental Organisations (INGOs) Entitled to Submit Collective Complaints*, Strasbourg, 01/07/2016 Strasbourg, Council of Europe, 2016
- Cozma, T., Cucos, C. and Momanu, M. (2000) 'The education of Roma children in Romania: Description, difficulties, solutions', *Intercultural Education*, 11(3), 281–288
- Craig, G. (2011) *Promoting Social Inclusion of Roma: A Study of National Policies*, Brussels: European Commission
- Cullen, H. (2007) 'Between two worlds: the education of migrant children' in N. Lowe and G. Douglas, *Families Across Frontiers* (The Hague: Kluwer Law International, 1996), pp.523-538
- DCLG (Department for Communities and Local Government) (2012), *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers* London, DCLG
- DENI (Department of Education Northern Ireland) (2010), Circular Number 2010/15: *The Education of Children and Young People from the Traveller Community Bangor (NI)*, DENI.
- Department for Education and Skills (2003), *Aiming High: Raising the Achievement of Gypsy Traveller Pupils – A Guide to Good Practice* DfES/0443/2003 London, DfES
- Department for Education and Skills (2004), *Vulnerable Children Grant – Guidance for the Financial Year 2004-05* London, DfES
- Department for Education/National Statistics (2016a), *Permanent and Fixed Period Exclusions in England 2014 to 2015*, SFR 26/2016 London, Department for Education at <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2014-to-2015> (last accessed 29 November 2016).
- Department for Education/National Statistics (2016b), Statistical First Release, *Pupil absence in schools in England: 2014 to 2015*, SFR 10/2016 London, Department for Education. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509989/SFR10_2016_text.pdf (last accessed 11 August 2016).
- Derrington, C. and Kendall, S. (2004), *Gypsy Traveller Students in Secondary Schools: Culture, Identity and Achievement* London, Trentham Books.
- Diskriminerings Ombudsmannen (2011), *Roma Rights: Discrimination, paths of redress and how the law can improve the situation of Roma* Diskriminerings Ombudsmannen at . <http://www.do.se/contentassets/b7f4b55bcf8e4a40b5db846f7f45a2a3/report-roma-rights.pdf> (last accessed 22 November 2016).

- Diskriminerings Ombudsmannen (2012), *Romers rättigheter - Diskriminering, vägar till upprättelse och hur juridiken kan bidra till en förändring av romers livsvillkor*, Diskrimineringsombudsmannen at <http://www.do.se/globalassets/publikationer/rapport-romers-rattigheter-.pdf> (last accessed 22 November 2016).
- Dorling, K. (2013), *Growing Up in a Hostile Environment: The Rights of Undocumented Migrant Children in the UK* London, Coram Children's Legal Centre
- ECRI (European Commission against Racism and Intolerance) (2007), *ECRI General Policy Recommendation No.10 on Combating Racism and Racial Discrimination in and through School Education* Strasbourg, Council of Europe
- ECRI (2011) *ECRI General Policy Recommendation No.13 on Combating Anti-Gypsyism and Discrimination against Roma* Strasbourg, Council of Europe
- Erhag, T. (2016) 'Under Pressure? – Swedish Residence-based Social Security and EU Citizenship' *EJSS* (2016) 18, 2, 207-231
- Engelbriksen, A. I. (2013) 'Great Ideas – Bad Practice: On Implementation of Policies and Programmes for Roma', in M. Goodwin and P. De Hert (eds) *European Roma Integration Efforts – A Snapshot*, Brussels: VUB Press, 129–139
- Equality (2011) *From Segregation to inclusion. Roma pupils in the United Kingdom, a pilot research project*, online at: http://equality.uk.com/Education_files/From%20segregation%20to%20integration_1.pdf (last accessed 25 November 2016).
- ECNI (Equality Commission for Northern Ireland) (2006), *Mainstreaming Equality of Opportunity for Travellers in Education: Towards a Strategy*, ECNI at http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2006/Mainstreaming_Equality_for_Travellers_Education.pdf?ext=.pdf (last accessed 25 November 2016).
- ECNI (2008), *Mainstreaming Equality of Opportunity and Good Relations for Traveller Children in Schools*, Public Policy Statement 2, ECNI, at <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/MainstreamingequalityforTravellerchildreninschools2008.pdf> (last accessed 25 November 2016).
- Equality and Human Rights Commission (2016), *Healing a Divided Britain: the need for a comprehensive race equality strategy* London, EHRC, at https://www.equalityhumanrights.com/sites/default/files/healing_a_divided_britain_-_the_need_for_a_comprehensive_race_equality_strategy.pdf (last accessed 18 August 2016).
- Estyn (2011), *The education of Gypsy and Traveller pupils: an update on provision in secondary schools* Cardiff, Estyn
- European Commission (2004) *The situation of Roma in an Enlarged European Union* Luxembourg: Office for Official Publications of the European Communities
- European Commission (2010), COM(2010) 2020 final, *Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth*, Brussels, 3.3.2010, Brussels, European Commission
- European Commission (2011a), COM(2011) 173 final, *Communication from the Commission to the European Parliament, The Council, The European Economic And Social Committee and the Committee of the Regions*, Brussels, 5.4.2011, Brussels, European Commission

- European Commission (2011b) *Working together for Roma inclusion – The EU Framework explained*, Brussels, European Commission
- European Commission (2012) *National Roma Integration Strategies: A first step in the implementation of the EU Framework*, Brussels, European Commission
- European Commission (2013), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Steps forward in implementing National Roma Integration Strategies* (COM(2013) 454 final Brussels, European Commission
- European Commission (2014a) *The European Union and Roma – Factsheet: Sweden*, online at:
http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2014/sweden_en.pdf (last accessed 25 November 2016).
- European Commission (2014b) *The European Union and Roma – Factsheet: United Kingdom*, online at:
http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2014/united-kingdom_en.pdf (last accessed 18 August 2016).
- European Commission (2014c) *Report on the Implementation of the EU Framework for National Roma Integration Strategies* (European Commission Directorate-General for Justice) at
http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf (last accessed 24 November 2016).
- European Commission (2015), Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation (11/11/2015), p.10, published at .
http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/thematic_guidance_fiche_segregation_en.pdf (last accessed 1 August 2016).
- European Dialogue (2009) *The movement of Roma from new EU Member States: A mapping survey of A2 and A8 Roma in England*, report for the Department for Children, Schools and Families (DCSF), online at:
http://equality.uk.com/Resources_files/movement_of_roma.pdf (last accessed 25 November 2016).
- European Economic and Social Committee (2009), *Opinion of the European Economic and Social Committee on the Green Paper – Migration & mobility: challenges and opportunities for EU education systems* COM(2008) 423 final (2009/C 218/17) .
- European Parliament (1998), Briefing No.33, The PHARE Programme and the enlargement of the European Union, at
http://www.europarl.europa.eu/enlargement/briefings/33a1_en.htm#summary (last accessed 8 July 2016).
- European Roma Rights Centre (ERRC) (2004) *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe*, Budapest: European Roma Rights Centre
- Farkas, L. (2007) *Segregation of Roma Children in Education: Addressing Structural Discrimination through the Race Equality Directive*, Luxembourg: European Commission
- Fensham-Smith, A. (2014) *Gypsy and Traveller Education: Engaging Gypsy and Traveller Families - A Research Report* Cardiff, Welsh Government
- Foucault, M. (1991) *Discipline and Punish: The Birth of the Prison* London, Penguin

- Foster B. and P Norton P. (2012), 'Educational Equality for Gypsy, Roma and Traveller Children and Young People in the UK' *Equal Rights Review* 8, 85-112
- FRA (European Union Agency for Fundamental Rights) (2011), *Fundamental rights of migrants in an irregular situation in the European Union* Vienna, FRA
- FRA (2012), *The Racial Equality Directive: application and challenges* Vienna, FRA
- Friedman, E., Gallová Kriglerová, E., Kubánová, M. and Slosiarik, M. (2009) *School as Ghetto: Systemic Overrepresentation of Roma in Special Education in Slovakia*, Budapest: Roma Education Fund
- Georgiadis, F., Nikolajevic, D. and van Driel, B. (2011) 'Evaluating a project on Roma education', *Intercultural Education*, 22(1), 105–113
- Goodwin, M. (2013) 'An Introductory Essay – Contextualising Romani Integration Efforts in the European Union', in M. Goodwin and P. De Hert (eds) *European Roma Integration Efforts – A Snapshot*, Brussels: VUB Press, 9–24
- Greenberg, J. (2010) 'Report on Roma education today: from slavery to segregation and beyond' (2010) *Columbia Law Review* 110(4), 919-1001
- Halleröd, B. (2011) *Sweden. Promoting the Social Inclusion of Roma* European Commission, at file:///C:/Users/mlssnsh/Downloads/SE_second_network_report_11.pdf (last accessed 30 August 2016).
- Hamilton, J., Bell, J., Bloomer, F. and Holohan J. (2007), *Adequacy and Effectiveness of Educational Provision for Traveller Children and Young People in Northern Ireland* Belfast, NICCY/Equality Commission for Northern Ireland
- Harris, N. (2007) *Education, Law and Diversity* Oxford, Hart
- Harris, N. (2009) 'Playing Catch-up in the Schoolyard? Children and Young People's "Voice" and Education Rights in the United Kingdom' (2009) 23(3) *International Journal of Law, Policy and the Family* 331-366.
- Harris, N. (2013), 'Children and Education', in A. Bainham and S. Gilmore (eds), *Children: the Modern Law* (4th ed) Bristol, Family Law, 881-984.
- HM Government (1999), *Second report to the UN Committee on the Rights of the Child by the United Kingdom* London, The Stationery Office.
- HM Government (2012), *Council Conclusions On An EU Framework Strategy For Roma Integration Up To 2020: United Kingdom Of Great Britain And Northern Ireland* at http://ec.europa.eu/justice/discrimination/files/roma_uk_strategy_en.pdf (last accessed 22 November 2016)
- House of Commons Communities and Local Government Committee (2008) *Tenth report Session 2007-08, Community Cohesion and Migration* (HC 369-I) London, The Stationery Office
- House of Commons Scrutiny Committee (2014), *The application of the EU Charter of Fundamental Rights in the UK: a state of confusion. Forty-third Report of Session 2013-14* (HC 979) London, The Stationery Office
- Hyde, A. (2006) 'Systematic exclusion of Roma from employment', *Roma Rights* 1, 3-8
- Irish Traveller Movement in Britain (2013) *Gypsy and Traveller population in England and the 2011 Census*. London: Irish Traveller Movement in Britain.
- Kovats, M. (2001) Problems of Intellectual and Political Accountability in Respect of Emerging European Roma Policy, *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, 1/2001: 1-10.
- Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights* Oxford, Clarendon Press.

- Liedholm M. and Lindberg G. (2010) *Romska barn i skolan* Lund, Lund University
- Lundy, L. (2005a) 'Family Values in the Classroom: Reconciling Parental Wishes and Children's Rights in State Schools' *Int. J. Law Policy & the Family*, 19, 3, 346-372.
- Lundy, L. (2005b) 'Schoolchildren and Health: The Role of International Human Rights Law', in N. Harris and P. Meredith (eds), *Children, Education and Health. International Perspectives on Law and Policy* (Ashgate, 2005), 3-28.
- Lundy, L. (2012) 'Children's rights and education policy in Europe: the implementation of the United Nations Convention on the Rights of the Child' (2012) *Oxford Review of Education*, 38:4, 393-411
- Lundy, L. (2013) 'Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review', *International Journal of Children's Rights*, 21(3), 442-463
- Macedo, S. (1995) 'Liberal Civic Education and Religious Fundamentalism: the Case of God v John Rawls' 105 *Ethics* 468-496
- Matras, Y. (2013) *Scholarship and the Politics of Romani Identity: Strategic and Conceptual Issues*, RomIdent Working Papers No. 1, University of Manchester, online at: <http://romani.humanities.manchester.ac.uk/virtuallibrary/librarydb/web/files/pdfs/354/Paper1.pdf> (last accessed 25 November 2016).
- McColgan, A. (2014) *Discrimination, Equality and the Law* Oxford, Hart
- Minister for Human Rights (2009) Roma Integration Concept for 2010-2013, online at http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf (last accessed 25 November 2016).
- Ministry of Employment (2012), Government Communication 2011/12:56 *A Coordinated Long-Term Strategy for Roma inclusion 2012-2032*, Ministry of Labour, at http://ec.europa.eu/justice/discrimination/files/roma_sweden_strategy_en.pdf (last accessed 22 November 2016).
- Monk D. (2000) 'Theorising Education Law and Childhood: constructing the ideal pupil', *British Journal of Sociology and Education* 21, 3, 355-370
- Monk D. (2009) 'Regulating home education: negotiating standards, anomalies and rights' *CFLQ* 21, 2, 154-184
- Monk, D. (2016) "'Out of School Education" and Radicalisation: Home Education Revisited' (2016) *Ed Law JI* 17,1, 17-31
- Montesino N. (2010) *Romer i svensk myndighetspolitik – ett historiskt perspektiv* Lund, Socialhögskolan.
- Morris, M. (2016) *Roma Communities and Brexit* London, IPPR.
- Nergelius, J. (2008), '2005–The Year When European Law and its Supremacy was Finally Acknowledged by the Swedish Courts', in P. Cramér and T. Bull (eds), *Swedish Studies in European Law* vol.2, 2007 Oxford, Hart, 145-156.
- Ofsted (1996), *The Education of Travelling Children* London, Ofsted.
- Ofsted (1999), *Raising the Attainment of Ethnic Minority Pupils* London, Ofsted
- Ofsted (2001), *Managing support for the attainment of pupils from minority ethnic groups*, London, Ofsted
- Ofsted (2003), *Provision and support for Traveller pupils*, HMI 455, London, Ofsted
- Ofsted (2015), *Overcoming barriers: ensuring that Roma children are fully engaged and achieving in education* London, Ofsted.
- Ombudsmannen mot etnisk diskriminering (2004), *Diskriminering av Romer i Sverige – rapport från DO:s projekt åren 2002 och 2003 om åtgärder för att förebygga och*

- motverka etnisk diskriminering av Romer DO 2004, Stockholm, Ombudsmannen mot etnisk diskriminering at <http://www.do.se/globalassets/publikationer/rapport-diskriminering-romer-sverige.pdf> (last accessed 22 November 2016).
- O'Hanlon, C. (2010), 'Whose education? The inclusion of Gypsy/Travellers: continuing culture and tradition through the right to choose educational opportunities to support their social and economic mobility', *Compare: A Journal of Comparative and International Education*, 40, 2, 239-254.
- O'Nions, H. (2010) 'Different and unequal: the educational segregation of Roma pupils in Europe', *Intercultural Education*, 21(1), 1–13
- ONS (Office for National Statistics) (2016) *Schools, pupils and their characteristics: January 2016*, online at: <https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2016> (last accessed 25 November 2016).
- Open Society (2011) *EU Policies for Roma Inclusion*, Brussels, Open Society at <https://www.opensocietyfoundations.org/sites/default/files/2011-07%2520EU%2520Roma%2520Inclusion%2520Policies%2520final.pdf> (last accessed 5 July 2016).
- Ormston, R., Curtice, J., McConville, S. and Reid, S. (2011), *Scottish Social Attitudes Survey 2010: Attitudes to Discrimination and Positive Action* Scottish Government at <http://www.gov.scot/Resource/Doc/355716/0120166.pdf> (last accessed 10 August 2016).
- Ottosson, L. and Lundberg, A. (2013) "'People Out of Place'? Advocates' Negotiations on Children's Participation in the Asylum Process in Sweden' (2013), *International Journal of Law, Policy and the Family*, 27(2), 266-287.
- Padfield, P. (2005), 'Inclusive Educational Approaches for Gypsy/Traveller Pupils and their Families: in urgent need for progress?' *Scottish Educational Review*, 37, 2, 127-144.
- Penfold, M. (2015), *Improving education outcomes for pupils from the new Roma communities*, British Council at <https://eal.britishcouncil.org/sites/default/files/document-files/Improving%20education%20outcomes%20for%20Roma%20pupils.pdf> (last accessed 28 October 2016).
- Penn R. and P. Lambert, P. (2009), *Children of International Migrants in Europe* Houndmills, Palgrave Macmillan
- Phillips, D. (2010) 'Minority ethnic segregation, integration and citizenship: a European perspective', *Journal of Ethnic and Minority Studies*, 36, 2: 209-225.
- Ringold, D., Orenstein, M. A. and Wilkens, E. (2005) *Roma in an Expanding Europe: Breaking the Poverty Cycle*, Washington DC: The World Bank
- Ryder, A. R., Rostas, I. and Taba, M. (2014) "'Nothing about us without us': the role of inclusive community development in school desegregation for Roma communities', *Race Ethnicity and Education*, 17(4), 518–539
- Scottish Executive et al (2003), *Inclusive Educational Approaches for Gypsies and Travellers* Edinburgh, Scottish Executive
- Scullion, L. and Brown, P. (2013) 'What's working?': *Promoting the inclusion of Roma in and through education: Transnational policy review and research report*, Salford: University of Salford, online at: <http://www.natt.org.uk/sites/default/files/documents/What's%20working%20-%20FINAL%20REPORT%20March%202013.pdf> (last accessed 25 November 2016).

- Silverman R. (2013) 'Immigration fuels overcrowding crisis at secondary schools, report warns', *The Telegraph* (online) 6 September 2013
<http://www.telegraph.co.uk/education/secondaryeducation/10292941/Immigration-fuels-overcrowding-crisis-at-secondary-schools-report-warns.html> (last accessed 10 August 2016)
- SKL (Sveriges Kommuner och Landsting) (2016), 'Har utsatta EU- medborgare rätt till skolundervisning?' (Do vulnerable EU citizens have the right to schooling?), at <https://skl.se/ekonomijuridikstatistik/juridik/euratt/utsattaemedborgare/kommunenochlandstingetsansvar/harutsattaemedborgareratttillskolundervisning.7038.html> (last accessed 22 November 2016).
- Skolinspektionen (2012), *I marginalen -En granskning av modersmålsundervisning och tvåspråkig undervisning i de nationella minoritetsspråken Kvalitetsgranskning* (Rapport 2012:2) Stockholm, Skolinspektionen
- Skolverket (2007), *Romer i skolan – en fördjupad studie*, rapport 292 Stockholm, Skolverket
- Skolverket (2013), *Delredovisning av regeringsuppdrag inom regeringens strategi för romsk inkludering A2012/1387/DISK* (Dnr 2012:518) at http://modersmal.skolverket.se/romani/images/stories/filer/Delredovisning_brobygggarutbildning_130208.pdf (accessed 22 November 2016).
- Skolverket (2016) *Uppdrag till Statens skolverk och Socialstyrelsen att ta fram och tillgängliggöra en utbildning för brobyggare med romsk språk- och kulturkompetens Ku2016/00995/DISK*, 21 april 2016, at http://www.skolverket.se/polopoly_fs/1.251959!/Brobygggarutbildning.pdf (last accessed 22 November 2016).
- Smith, D. and Greenfields, M. (2012), 'Housed Gypsies and Travellers in the UK: work, exclusion and adaptation', *Race and Class*, 53, 3, 48-64.
- Stalford, H. (2012) *Children and the European Union: Welfare, Law and Accountability* Oxford: Hart.
- Swann, M. (Chair) (1985), *Education for All. Report of the Committee of Inquiry into the Education of Children from Ethnic Minority Groups* (Cmnd.9453), London, HMSO
- Symeou, L., Karagiorgi, Y., Roussounidou, E. and Kaloyirou, C. (2009) 'Roma and their education in Cyprus: reflections on INSETRom teacher training for Roma inclusion', *Intercultural Education*, 20(6), 511–52
- Taylor, R. (2016) 'Putting children first? Children's interests as a primary consideration in public law', *C.F.L.Q.* 28,1, 45-65.
- Tereshchencko, A. and Archer, L. (2014), *New Migration, New Challenges: Eastern European Migrant Pupils in English Schools* London, King's College London.
- Thomson, N. (1983) 'The community directive, 77/486/EEC: Origins and Implementation', *Journal of Multilingual and Multicultural Development*, 4, 6, 437-458
- UK's Children's Commissioners (2008), *UK's Children's Commissioners Report to the UN Committee on the Rights of the Child* London/Belfast/Edinburgh/Swansea, 11 Million and others
- UNICEF (2011) *The Right of Roma Children to Education: Position Paper*, Geneva, UNICEF
- Ureche H. and Franks M. (2007), *This is Who We Are* (London, The Children's Society 2007)
- Van de Heyning C.J. (2008), "'Is it still a sin to kill a mockingbird?'" Remedying factual inequalities through positive action – what can be learned from the US Supreme Court and the European Court of Human Rights case law?' *European Human Rights Law Review*, 3, 376-390

- Vivian, C. and Dundes, L. (2004) 'The Crossroads of Culture and Health Among the Roma (Gypsies)', *Journal of Nursing Scholarship*, 36, 1: 86-91.
- Wallace C. and Shaw, J. (2003), 'Education, Multiculturalism and the Charter of Fundamental Rights of the European Union', in T. K. Hervey and J. Kenner (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights – A Legal Perspective*, Oxford, Hart, 223-246.
- Wigerfelt B. and Wigerfelt A.S. (2015), Anti-Gypsyism in Sweden: Roma's and Travellers' Experiences of Bias-motivated Crime' *Internet Journal of Criminology* at http://www.internetjournalofcriminology.com/Wigerfelt_And_Wigerfelt_Anti-Gypsyism_in_Sweden_IJC_Feb_2015.pdf (last accessed 24 November 2016).
- Wiklund, O. (2008), 'The Reception Process in Norway and Sweden', in H. Keller and A. Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, 165-228, Oxford, Oxford University Press
- Wilkin A. et al. (2010), *Improving the outcomes for Gypsy, Roma and Traveller pupils: final report* Research Report DFE-RR043 London, Department for Education.
- Young, K.G. (2012), *Constituting Economic and Social Rights*, Oxford, Oxford University Press.